

Children's Law Center of Indiana



Paternity

08/21/2008

In ***In Re Paternity of McGuire-Byers***, 892 N.E.2d 187 (Ind. Ct. App. 2008), the Court affirmed in part, reversed in part and remanded the trial court's order establishing paternity and ordering Father to pay retroactive child support from the date of birth. At the time the child was born, June 13, 1987, Mother and Father were living together in Illinois and Father "acknowledged that he was [the child's] father." Father moved to Colorado, back to Illinois, back to Colorado and then to Indiana. From about May 1989, Mother was unable to locate Father to establish paternity. Father's parents would not disclose Father's location. Father contacted the child only through an occasional card post-marked from Father's parents' address or a bank-issued check from Ohio. In 2005, while the child was still in high school, he tracked down Father and lived with him and his family until early 2006. The child finished high school, started living on his own, and started attending college. On April 26, 2006, the child initiated a paternity proceeding against Father and moved to include Mother, as his next best friend, as a petitioner. The trial court granted the motion to include Mother as a petitioner, and paternity was established in Father. On August 15, 2007, the trial court ordered child support retroactive to the child's birth, which resulted in an arrearage the trial court ultimately found to be \$125,008. The trial court ultimately ordered that all checks should be made payable to the child and awarded attorney fees to the attorney representing Mother and the child.

The trial court did not abuse its discretion in ordering Father to make retroactive child support payments; inasmuch as Mother supported the child at least until 2005, she should receive those payments; and the matter was remanded to the trial court to determine whether Mother is entitled to payments for the time the child was living with Father and whether Mother or the child is the proper recipient of the prospective child support payments. *Id.* at 192. The Court found that, (1) because the child was over eighteen when the paternity petition was filed, Mother was not permitted to file it, but the child could file at any time before he reached age twenty, IC 31-14-5-2(b); (2) Mother was a necessary party to the action, IC 31-14-5-6; and (3) the trial court properly ordered the payment of child support from the filing of the petition until the child turns twenty-one or is otherwise emancipated. IC 31-14-11-2(a), IC 31-14-11-5, IC 31-14-11-19. Thus, the Court defined the issue here to be, "whether the trial court properly awarded retroactive child support from the date of [the child's] birth." *Id.* at 191. Contrary to Father's contentions, the Court posited that the appropriateness of a retroactive child support order for an adult child is not based on whether the mother or the child filed the petition, but whether the interests of everyone, including the child are adjudicated. *Id.* (citations omitted). In support of its finding that the order of retroactive child support was not an abuse of the trial court's discretion, the Court noted that (1) generally, an award of retroactive child support from a date prior to the filing of the paternity action, is discretionary with the trial court; (2) Father's assertion that the arrearage would place a hardship on Father's four other young children was not supported by evidence in the record; and (3) Father was aware that he

was the child's father from the time of his birth and knowingly avoided his responsibility to support him. In response to Father's contention that neither Mother nor the child were the proper payee for retroactive child support, the Court noted that, although it was clear that Mother was the proper recipient of the child support for the time she was supporting the child, the record was not clear on precisely when she ceased supporting him if she had. Id. at 192.

The trial court did not abuse its discretion in ordering that Father pay \$7,000 of the \$13,000 in attorney fees paid to the attorney representing Mother and the child, and an award of appellate attorney fees is proper. Id. at 193-94. The Court opined, (1) when making an award of attorney's fees, the trial court must consider the resources of the parties, their economic condition, the ability of the parties to engage in gainful employment and to earn adequate income, and such factors that bear on the reasonableness of the award; (2) any misconduct on the part of one party which causes the other party to directly incur additional fees may be taken into consideration; (3) when one party is in a superior position to pay fees over the other party, an award of attorney fees is proper; and (4) an award of attorney's fees is reviewed for abuse of discretion. Id. at 193 (citations omitted). Contrary to Father's argument that Mother was improperly awarded attorney's fees because she was a "non-party," the Court held that Mother was a necessary party to the proceeding. The Court further noted that IC 31-14-18-2(a)(2) which governs attorney fee awards, does not limit such an award to the "other" party as was impliedly asserted by Father. The Court held that, given that Father's weekly gross income is about \$500 per week higher than Mother's, it could not conclude that the trial court abused its discretion in ordering him to pay about one-half of the attorney fees incurred by the Appellees to establish paternity. Id. at 194. Father agreed that the statute contemplates contribution toward appellate attorney fees, but requested that the award be based on the outcome of the appeal. The Court concluded that, inasmuch as all of the Court's conclusions are in the Appellees' favor, an award of appellate attorney fees was proper, and remanded for the trial court to determine the specific amount of the award. Id.