

Children's Law Center of Indiana



Custody and Parenting Time

2/8/12

In **In Re Paternity of N.T.**, 961 N.E.2d 1020 (Ind. Ct. App. 2012), an interlocutory appeal, the Court reversed the paternity court's order which granted Stepfather's motion for change of venue from the judge. The Court remanded the case for contempt proceedings concerning Stepfather's active participation in Mother's violation of the paternity custody order. Mother and Father are the parents of one child, born in July 1999. Mother's successful attempts to frustrate and deny visitation to Father through December 2007 are well documented in the Court's record. On June 5, 2009, the Court issued a prior memorandum decision that accounts in detail the egregious actions of Mother and Stepfather and the emotional harm inflicted on the child while Mother and Stepfather hid the child from Father and the State from August 2003 to December 2007 to evade a change of custody order issued by paternity court. On December 3, 2007, Mother was arrested by Kokomo police on criminal charges and for contempt. The child was taken into custody by the Grant County Department of Child Services, and CHINS proceedings were initiated. A custody determination was held in abeyance until the conclusion of the CHINS case. During the pendency of the CHINS case, on February 18, 2008, the paternity court admitted Mother to bail with the condition that she have no contact with the child until further order of the court. The paternity court modified the contempt bond conditions on September 23, 2008, adding the condition that Stepfather have no contact with the child and denying Mother's request for supervised visitation as allowed by the CHINS court. In its June 5, 2009, memorandum decision, the Court affirmed the paternity court's bond modification order and the paternity court's additional order that Stepfather have no contact with the child.

In September 2010, the paternity court assumed jurisdiction and set all pending matters for trial. On November 4, 2010, Father filed a supplemental application for contempt citation against Stepfather for actively participating in Mother's violation of the 2003 order. Stepfather was not served with the application for contempt until March 9, 2011. On April 6, 2011, Stepfather filed a motion to dismiss and a motion for change of venue from the judge. Following a hearing, the paternity court granted Stepfather's motion for change of venue from the judge on May 20, 2011. The paternity court concluded that service of Father's application for contempt prompted Stepfather to actively protect his rights and, thus, resulted in joining him as a party in the paternity proceeding. The paternity court reasoned that, as a party, Stepfather had a right to change of venue from the judge pursuant to T.R. 76. Father moved to reconsider, which the paternity court denied following another hearing. The paternity court certified the May 20, 2011,

order for interlocutory appeal, and the Court of Appeals accepted jurisdiction of the appeal pursuant to Ind. Appellate Rule 14(B) on September 2, 2011.

The Court opined that paternity court had the inherent power to subject Stepfather, a nonparty, to contempt proceedings for his role in the violation of the court's orders. Id. at 1023. The Court, citing Owen v. Vaughn, 479 N.E.2d 83, 86 (Ind. Ct. App. 1985) and LaGrange v. State, 238 Ind. 689, 153 N.E.2d 593 (1958), observed that Indiana trial courts have inherent authority to enforce their orders through contempt powers, even against nonparties. N.T. at 1022. The Court said that Stepfather's focus on whether civil or criminal contempt has been alleged against him is misplaced, noting that the Indiana Supreme Court has explained contempt "is a *sui generis* proceeding neither civil nor criminal in nature, although both of those labels are used to describe certain categories of contempt." State v. Heltzel, 552 N.E.2d 31, 33 (Ind. 1990). N.T. at 1022.

The Court opined that service of Father's application for contempt did not elevate Stepfather to the status of a party in the underlying civil action entitling him to a change of venue from the judge pursuant to T.R. 76. Id. at 1023. The Court noted that Stepfather is entitled to due process; and an indirect contempt, which is at issue here, requires an array of due process protections, including notice and the opportunity to be heard. IC 34-47-3-5 through -7. Id.