

Children's Law Center of Indiana



Custody and Parenting Time

2/19/15

In **In Re Paternity of Snyder**, 26 N.E.3d 996 (Ind. Ct. App. 2015), the Court affirmed the trial court's order on Father's parenting time and reversed the trial court's order denying Father's request to tell the child that he is her father. *Id.* at 1000. The child was born on May 6, 2008, and Mother and Father lived together until the child was about six months old. Father then moved to Texas, where he remained during the proceedings. On March 13, 2012, Mother petitioned for and was granted a protective order against Father. On April 3, 2013, Father filed a petition to establish paternity and custody. On September 12, 2013, after several filings and hearings, the trial court entered an order establishing child support, denying Father's request to change the child's name, and approving the parties' agreed order that Father's visitation would be supervised by therapist Theresa Slayton. On June 30, 2014, the trial court held a hearing during which Father made argument to extend his parenting time, change therapists, allow regular communication with the child via Skype, and allow Father to tell the child that he is her father. The trial court ordered: (1) Father's parenting time shall continue to be supervised by a therapist; (2) Father and the child shall have the opportunity to communicate by Skype once a week for fifteen minutes; (3) the Skype visits shall be supervised by Theresa Slayton or a member of her staff; (4) each party shall pay one half of the cost of the Skype calls and the supervision fee. Father's requests that the court order a different therapist and that he be allowed to tell the child he is her father were denied.

The Court found that Father had not demonstrated there was a change in circumstances to warrant a modification in parenting time beyond the modification that permitted him to talk to the child via Skype one time each week. *Id.* at 999. The Court noted IC 31-17-4-2, which states, "[t]he court may modify an order granting or denying parenting time rights whenever the modification would serve the best interest of the child." *Id.* at 998. Father asserted that the Court's standard of review should be based on the trial court's placement of restrictions on his parenting time, which would impose on Mother a burden to prove that Father's parenting time should be restricted, but the Court disagreed. *Id.* at 998 n.1. The Court said that, while a party requesting a restriction on parenting time initially has the burden to prove endangerment or impairment, Father's petition to remove the restrictions to which he had agreed was a request to modify the original agreement. *Id.* The Court therefore applied the standard of review for modification of the trial court's order as to these restrictions. *Id.* The Court, quoting Julie C. v. Andrew C., 924 N.E.2d 1249, 1256 (Ind. Ct. App. 2010), observed that a petitioner seeking subsequent modification bears the burden of demonstrating that the existing custody should be altered. *Id.* at 998. The Court noted that, at the time of the order in the instant case: (1) Father

had attended six therapeutic visitation sessions with the child since the September 12, 2013 order; (2) the therapist testified visits were going well, but expressed concerns regarding the consistency of Father's visits; (3) Father had seen the child only five hours in nine months, missed one visit, and indicated he might take a job overseas, which would effectively terminate the therapeutic visitation with the child for an extended period of time. Id. The Court found that Father's argument was an invitation to reweigh the evidence which the Court cannot do. Id. at 999.

The Court found no evidence in the record suggesting how the child's physical health or emotional development would be impaired by telling the child that Father is her biological father, and reversed that portion of the trial court's decision. Id. at 999-1000. Quoting Hatmaker v. Hatmaker, 998 N.E.2d 758, 761 (Ind. Ct. App. 2013), the Court said the collective goal in parenting time disputes is to seek an environment in which a child can have a "well-founded relationship with each parent." Snyder at 999. The Court observed that Father's parental status was determined by statute; once paternity was established, Father *is* the child's birth parent (emphasis in opinion). Id. The Court noted the therapist's opinion that: (1) Father has not "earned the title" of "dad"; (2) this revelation would result in the six-year-old child "spending more time trying to figure out who everybody is"; and (3) Father's desire to inform his daughter of his status should be used as leverage to move him toward more frequent visits. Id. The Court opined that, while this goal was laudable, it was not a legally sufficient basis for denying a father the ability to proclaim his status to his child. Id.