

# Children's Law Center of Indiana



## Custody and Parenting Time

6/13/17

In J.W. v. M.W., 77 N.E.3d 1274 (Ind. Ct. App. 2017), the Court affirmed the trial court's order which modified Parents' joint legal custody agreement and awarded sole legal custody of the two children to Mother. Id. at 1280. The Court reversed the trial court's order which required Father to obtain Mother's consent to the children's extracurricular activities when they are with Father. Id. Parents have two children born of their marriage; the older child was born in November 2008 and the younger child was born in February 2009. Parents divorced on January 14, 2011, and Mother was granted primary physical custody and sole legal custody of the children. Father was awarded parenting time pursuant to the Indiana Parenting Time Guidelines. On May 9, 2013, Father filed a petition to modify custody. On January 28, 2014, the trial court approved Parents' mediated agreement. The agreement provided that Mother and Father would share joint legal custody and Father would have additional overnights with the children on Wednesdays.

Parents' communication deteriorated and they became unable to agree on the children's extracurricular activities. The children were very involved in dance classes and competitions, but Father enjoyed taking them to tennis and golf lessons at his country club. Father was reluctant to provide Mother with contact information when the children were participating in sleepovers and were not at Father's home during his parenting time. Parents filed many pleadings in 2015 and 2016. Among them were Mother's motion to determine the children's extracurricular activities, Father's petition to modify parenting time, and Mother's counter-petition to modify parenting time and custody. The trial court held a hearing on all pending motions on April 14 and July 18, 2016. Finding that Parents were not co-parenting in an effective manner, the trial court issued its order that it was in the children's best interests that Parents not exercise joint legal custody. The court awarded sole legal custody of the children to Mother. The court also ordered that Father should not unilaterally make decisions for the children, and should not sign the children up for extra-curricular activities without Mother's consent.

**The Court found the evidence supported the trial court's conclusions that there was a substantial change in the statutory factor regarding Parents' communication and cooperation and that custody modification was in the children's best interests.** Id. at 1279. Father argued the trial court erred by modifying Parents' joint legal custody arrangement. The Court noted that, when considering a modification from joint legal custody to sole legal custody, the Court must determine whether there has been a substantial change in one or more of the joint legal custody factors listed in IC 31-17-2-15 in addition to considering any substantial change in physical custody factors in IC 31-17-2-8, as is necessary for physical custody modification. Id. at 1277-78. Citing Julie C. v. Andrew C., 924 N.E.2d 1249, 1260 (Ind. Ct. App. 2010), the Court explained that in evaluating a joint legal custody arrangement, the trial court's consideration of

The Derelle Watson-Duvall Children's Law Center of Indiana - A Program of Kids' Voice of Indiana  
9150 Harrison Park Court, Suite C • Indianapolis, IN 46216 • Ph: (317) 558-2870 • Fax (317) 558-2945  
Web Site: <http://www.kidsvoicein.org> • Email: [info@kidsvoicein.org](mailto:info@kidsvoicein.org)

IC 31-17-2-15(2), “whether the persons awarded joint custody are willing and able to communicate and cooperate in advancing the child’s welfare”, is of particular importance in making legal custody determinations. J.W. v. M.W. at 1278. Quoting Best v. Best, 941 N.E.2d 499, 502 (Ind. 2011), the Court said it affords trial courts a great deal of deference in family law matters “because of their unique, direct interactions with parties face-to-face, over an extended period of time....our trial judges are in a superior position to ascertain information and apply common sense, particularly in the determination of the best interests of the involved children.” J.W. v. M.W. at 1278-79. The Court opined that the following evidence supported the trial court’s finding that Parents were no longer able to work together or communicate effectively: (1) Father had failed to provide Mother with the right of first refusal when he was unable to care for the children during his parenting time; (2) Father had refused to provide Mother with the host name and telephone number of the location where the children were staying if they were not with Father during his parenting time; (3) Parents were unable to agree about the children’s extracurricular activities because Mother wanted to increase the time the children spent dancing and Father wanted them to branch out into other activities. Id. at 1279. The Court noted that the trial court had the benefit of assessing the witnesses and the situation in a way the Court could not do based on a paper record, so the Court would not second-guess the trial court’s carefully considered decision. Id.

**The Court reversed the portion of the trial court’s order that required Father to obtain Mother’s permission for the children’s extra-curricular activities when the children were with Father.** Id. at 1280. Father argued that the court’s order requiring him to obtain Mother’s consent to the children’s extra-curricular activities during his parenting time impermissibly infringed on his constitutional rights as a parent. The Court said this portion of the order should not be analyzed in the context of legal custody, but instead in the context of a parent’s right to make unilateral decisions regarding the way the children spend their time when they are in the care and custody of the other parent. Id. at 1279. The Court explained that solving Parents’ difficulty in reaching agreements about the children’s extra-curricular activities by giving Mother the sole right to consent or refuse went a step too far. Id. at 1279-80. The Court noted there was no suggestion that the activities, namely playing golf and tennis, in which the children had participated with Father were inappropriate or harmful in any way. Id. at 1280.