

Children's Law Center of Indiana



Custody and Parenting Time

8/15/13

In **Kietzman v. Kietzman**, 992 N.E. 2d 946 (Ind. Ct. App. 2013), the Court affirmed the dissolution court's order which: (1) granted Mother's motion to relocate with the child to China for three years and (2) modified custody to award Mother sole custody of the child. Father and Mother were married and became the parents of one child. They were divorced in 2010. Mother then had another child and later married the father of that child ("Stepfather"). Before and after the dissolution of his marriage to Mother, Father was employed and earned between \$50,000 and \$65,000 per year, and provided insurance and other benefits for the child. Mother and Father shared physical and legal custody of the child after the dissolution of their marriage. In October 2012, Stepfather, an engineer employed by a large chemical manufacturer, was offered a position in China by his employer. Stepfather's new position would involve training local personnel at a factory for three years. The family would live in a special compound populated by employees of large international businesses with operations in China. If the child, who was nine years old, moved to China with Mother, Stepfather, and her half-brother, she would attend a special international school in China. The family would be able to return to the United States twice per year for three or four weeks at a time. On October 23, 2012, Mother filed her motion seeking the dissolution court's permission to relocate to China with the child. Shortly afterward, Father left his employment after selling some farmland. Father planned to live off the proceeds of the sale for several years while he worked part time and studied to become an Emergency Medical Technician, and did not seek to reduce his child support obligations for the child. The child's grades began to suffer, and on December 27, 2012, she was diagnosed with Attention Deficit Disorder, inattentive subtype. Mother and Father did not agree on whether the child should be placed on medication for her ADHD diagnosis.

A guardian ad litem (GAL) was appointed to represent the child's interests during the proceedings. The GAL interviewed the child at both Mother's and Father's residences, and interviewed Mother, Father, and Stepfather. The GAL concluded that it was in the child's best interests to go to China with Mother and Stepfather, with ample parenting time afforded to Father. The dissolution court held a hearing on January 3, 2013 concerning Mother's planned relocation, during which Mother, Father, Stepfather, GAL, paternal aunt, and the child's pediatrician testified. Portions of the child's medical and school records were also entered into evidence. On January 7, 2013, the dissolution court entered its order and found that it was in the child's best interests to relocate to China with Mother. The court ordered that Father have three periods of parenting time with the child per year; two of these would take place when the child was back in the United States with the rest of the family, and one would permit Father to visit the child in China. The court ordered that Mother would have sole custody of the child so that

medical and other decisions could be made quickly while the child was in China. The court also ordered that both parents be afforded liberal access to the child via telephone, Skype, and other forms of communication. Father's appeal ensued.

The Court found no abuse of discretion in the dissolution court's decision to grant Mother's request to relocate with the child to China and the decision to deny Father's request to modify custody, and accordingly affirmed the court's decision. *Id.* at 951. The Court quoted IC 31-17-2.2-5(c), which states that a parent who plans to relocate with the child must bear the burden of proof to show "that the proposed relocation is made in good faith and for a legitimate reason." *Id.* at 949. The Court cited I.C. 31-17-2.2-5(d) which states that, if the relocating party meets its burden, the burden of proof shifts to the nonrelocating parent to show that the relocation is not in the child's best interests. *Id.* The Court also noted the factors listed at IC 31-17-2.2-1(b) which the trial court must consider when reaching a decision on a proposed location: (1) the distance involved in the proposed change of residence; (2) the hardship and expense involved for the nonrelocating individual to exercise parenting time; (3) the feasibility of preserving the relationship between the nonrelocating individual and the child through suitable parenting time, including consideration of the parties' financial circumstances; (4) whether there is an established pattern of conduct by the relocating individual, including the relocating individual's actions to either promote or thwart the nonrelocating individual's contact with the child; (5) the reasons provided by the relocating individual for seeking relocation and nonrelocating parent for opposing the child's relocation; (6) other factors affecting the child's best interests [as stated in I.C. 31-17-2-8]. *Id.* The Court cited *In Re Paternity of J.J.*, 911 N.E. 2d, 725, 729 (Ind. Ct. App. 2009), *trans. denied*, which states that even where there has not been a substantial change in one or more of the statutory factors affecting the child's best interests set forth in IC 31-17-2-8, a change in custody may be ordered due to relocation of a parent. *Kietzman* at 949-50. The Court's review of the dissolution court's order revealed that: (1) the court considered the statutory factors and recognized the distance involved, the duration of time the child would be gone, the need to preserve the child's relationship with Father, the reasons for the move, and the good faith of both parents; (2) the court found that the parental relationship between the child and Father could be preserved through the use of telecommunications and Father's exclusive parenting time during return visits to the United States; (3) the court found that the relocation would be in the child's best interests as an educational and cultural experience for her; (4) the evidence presented indicated that, despite the child's recent diagnosis of ADD, the child could readily adjust to the changes associated with a move to China and would likely thrive there; (5) the court found that Mother was readily able to provide support to aid the child's transition to China because Mother planned to become an at-home parent for much of the duration of the stay in China. *Id.* at 950. The Court characterized much of Father's argument as requests to reweigh evidence or otherwise second-guess the dissolution court's weighing of the statutory factors which the Court cannot do. *Id.* The Court observed that parts of Father's argument would apply equally well to Mother if the dissolution court had denied Mother's motion to relocate with the child in that the child would be separated from one set of family numbers instead of another, Mother would miss parenting time, and Mother and the child would be the same distance and number of hours apart. *Id.*