

# Children's Law Center of Indiana



## Custody and Parenting Time

10/9/2013

In **L.C. v. T.M.**, 996 N.E.2d 403, 404 (Ind. Ct. App. 2013), the Court held that the trial court's denial of Mother's petition to modify custody was clearly erroneous; the Court reversed the trial court's judgment, and remanded the case with instructions to enter an order that modified the child custody order to reflect the best interests of the children.

Mother and Father divorced in 2007 and shared joint legal and physical custody of their two children. The children stayed with Father in Mooresville on Mondays, Tuesdays, and alternate weekends from Friday through Sunday. The children stayed with Mother in Carmel on Wednesdays, Thursdays, and alternate weekends from Friday through Sunday. The children were enrolled in the Carmel school system. In a September 2008 order, the trial court ordered Father to enroll the children in fall sports and cover the expenses, and Mother to enroll the children in spring sports and cover the expenses. By 2012, Mother had enrolled both children in travel soccer programs, which last the entire year. Mother filed a petition to modify the custody arrangement, alleging that the following substantial changes had occurred: (1) the children were required to spend many hours in the car being transported back and forth between Mooresville and Carmel; (2) the children expressed a desire to live with Mother; and (3) the children would benefit from having the more structured routine that was present in Mother's home. At the hearings conducted in November and December of 2012, the Guardian ad Litem (GAL) testified that continuing the current arrangement would cause the children to become extremely angry with Father and damage their relationship with him. The GAL also testified that the children were in distress because of perceived negative and different treatment of themselves in Father's home as compared to their step-siblings in Father's home. The GAL recommended, among other things, that the children stay with Father every other weekend, encouraged Father to exercise a mid-week visit, and that the children be allowed to continue to participate in the travel soccer programs. This necessitated Father ensuring that the children's commitments to the programs were met while the children were with Father. The trial court determined that Mother failed to prove a substantial change in circumstances had occurred in at least one of the statutory factors, and that Mother had enrolled the children in a year round soccer program in contravention of the 2008 order that required Mother to enroll the children in spring sports.

**The Court held that Mother had demonstrated a substantial change in circumstances since the entry of the original decree, and that a change in the original physical custody order was in the best interests of the children; the Court determined that the trial court had attempted to bind the parties to their original shared physical custody arrangement despite**

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**the changes that affected the children’s welfare and best interests, and that this was clearly erroneous. Id. at 404, 411.** In coming to its conclusion, the Court first noted D.C. v. J.A.C., 977 N.E.2d 951, 956 (Ind. 2012), in which the Indiana Supreme Court affirmed the trial court’s decision denying Mother’s request to relocate, and vacated the Court of Appeal decision that had overturned the trial court’s decision. In doing so, the D.C. Court noted that “appellate courts are in a poor position to look at a cold transcript of the record, and conclude that the trial judge, who saw the witnesses, observed their demeanor, and scrutinized their testimony as it came from the witness stand, did not properly understand the significance of the evidence.” D.C. at 956-57 (quoting Kirk v. Kirk, 770 N.E.2d 304, 307 (Ind. 2002)). The L.C. Court went on to opine that, while it was mindful of the D.C. opinion, it did not believe that “the rationale espoused in D.C. stands for the proposition that an appellate court’s hands should be so inextricably bound against reversing decisions that do not serve the children’s best interests and promote stability.” L.C. at 409. The Court noted the following evidence supporting its conclusion that the trial court erred in denying Mother’s motion to modify custody: (1) Mother presented evidence in accordance with IC 31-17-2-21 and showed that the shared physical custody order was no longer in the children’s best interests and that a substantial change had occurred which warranted modification; (2) the children were six and seven at the time of the original order, and the children were now eleven and thirteen; (3) the GAL’s report noted that as children age, they ease away from spending large amounts of time with their parents, and that it was not uncommon for children to become resentful when parents cling too tightly and over-control a child while the child seeks to become more independent; (4) the GAL testified that the children’s wishes had changed and they wished to live with Mother, and that the children were becoming distressed at the negative disparate treatment they were receiving at Father’s home in comparison to the treatment that their stepsiblings were receiving at Father’s home; (5) the younger child expressed a specific desire to play in the Carmel soccer program because it was more challenging, and the older child considered her involvement with the soccer program to be extremely important; (6) the GAL was concerned that continuing the current arrangement would greatly harm the relationship between the children and Father; (7) the children were having trouble having their friends come to Father’s house because of logistics; and (8) the parenting coordinator concluded that the current arrangement was not working and the parent’s differing parenting styles made a “difficult shared co-parenting and joint legal and physical custody’ arrangement”. Id. at 410-411. Consequently, the Court held the evidence established that a modification of custody would be in the children’s best interests, that a substantial change had occurred in at least one of the factors set forth in IC 31-17-2-8, and that the trial court had erred in refusing to modify custody of the two children. Id. at 412.