

Children's Law Center of Indiana



Custody and Parenting Time

8/11/15

In **Maddux v. Maddux**, 40 N.E.3d 971 (Ind. Ct. App. 2015), the Court reversed the trial court's denial of Father's petition for custody modification and remanded for entry of judgment in his favor on this issue and a new calculation of the parties' child support obligations. *Id.* at 981. In March 2005, the trial court granted joint legal custody and awarded Mother primary physical custody of the children, then ages three and one. Father was granted parenting time according to the Indiana Parenting Time Guidelines. Mother obtained a protective order in 2011, alleging that Father was abusing the younger child. In 2011 and 2012, three DCS assessments for physical abuse of the younger child were initiated. All three assessments were eventually unsubstantiated. In 2012, Father filed a verified petition for contempt against Mother, alleging that she had denied him court ordered parenting time and failed to notify him of the children's medical appointments. In 2013, Father filed a verified petition for modification of physical and legal custody. A GAL was appointed; her report filed in January, 2014, recommended that Father be granted custody and that Mother have supervised visitation pending a psychological evaluation. Father filed an amended custody petition in March of 2014. At an emergency hearing in March 2014, the trial court dismissed the protective order against Father and denied his emergency petition for custody modification. A hearing was held in May 2014, and on August 12, 2014, the trial court entered findings of fact and conclusions thereon, holding Mother in contempt for denying Father's parenting time, denying Father's petition for custody modification, and directing Mother to pay \$20,000 of Father's attorney fees. Among the trial court's conclusions of law were: (1) Mother's actions were irreparably harming to the children's relationship with Father and their emotional wellbeing; (2) Father proved a change in circumstances but failed to prove that modification of custody was in the best interests of the children; (3) parenting time must gradually move toward reunification between Father and the children; (4) the court would not substitute its judgment over that of the counselor, but intended to make clear by its order that reunification between the children and Father was the paramount concern; and (5) Father failed to prove that a change in custody was warranted because the children need therapeutic reunification and the children's development was not apparently affected by the conflict between the parents.

The Court opined that the trial court clearly erred in concluding that the children's best interests did not warrant a change in custody. *Id.* at 981. Citing **Hanson v. Spolnik**, 685 N.E.2d 71, 78 (Ind. Ct. App. 1997), *trans. denied*, the Court said that a custodial parent's general lack of cooperation or isolated acts of misconduct cannot serve as a basis for custody modification. **Maddux** at 979. Quoting **Albright v. Bogue**, 736 N.E.2d 782, 790 (Ind. Ct. App.

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

2000), the Court noted that “[i]f one parent can demonstrate that the other has committed conduct so egregious that it places a child’s mental and physical welfare at stake, the trial court may modify the custody order.” Maddux at 979. The Court said it had been asked in the instant case to reverse a judgment denying a custody modification petition where the evidence and findings indicated a pervasive pattern of egregious behavior by the custodial parent adversely affecting the children’s wellbeing. Id. at 980. Although the Court was hesitant to tread upon the trial court’s unique position as finder of both fact and law, the Court noted that its decision was based on the conclusions of law, which are reviewed *de novo*. Id. The Court noted that in one conclusion the trial court characterized Mother’s conduct as causing irreparable harm to the children’s relationship with father and to “their emotional wellbeing.” Id. The Court also noted that, with respect to the children’s best interests, the trial court concluded “the [c]hildren are developing well according to their ages and maturity.” Id. The Court found that these conclusions were inconsistent, and the findings did not support the trial court’s conclusion regarding best interests. Id. The trial court made extensive findings of fact that Mother had jeopardized her children’s emotional health, but, in assessing the children’s best interests, the trial court concluded that this did not warrant a change in custody. Id. The Court observed that the trial court’s conclusion of Mother’s irreparable harm to the children did not support the trial court’s determination concerning the children’s best interests. Id. at 981.