

Children's Law Center of Indiana



Custody and Parenting Time

10/13/17

In **Moell v. Moell**, 84 N.E.3d 741 (Ind. Ct. App. 2017), the Court affirmed the trial court's orders which vacated Parents' settlement agreements and modified Father's parenting time with Parents' thirteen-year-old son. *Id.* at 749. The Court reversed and remanded the trial court's order which allowed Parents' seventeen-year-old son to decide how much time to spend with each parent, and to make his own decisions about health care, religious and educational activities. *Id.* Parents divorced on October 2, 2012. The dissolution proceedings resulted in three detailed, mediated settlement agreements regarding the custody and care of Parents' two sons, who were born on November 18, 1999, and October 17, 2003, respectively. Parents used a Parenting Coordinator to assist with co-parenting the children. In 2013, Father remarried and moved about forty-five minutes away from Mother's residence. The children lived in Mother's residence the majority of the time. The children were very involved in extracurricular and religious activities, many of which interfered with parenting time arrangements. On March 24, 2015, Father petitioned to modify parenting time. With the assistance of the Parenting Time Coordinator, Parents entered into a Partial Agreed Order on Father's petition to modify parenting time, and agreed to use Dr. Rebesco to conduct counseling and therapy to help Parents communicate, cooperate and parent the children. On February 22, 2017, Mother filed a motion for contempt based on Father's cancellation of an appointment with Dr. Rebesco.

On March 10, 2017, the trial court held a hearing on Father's petition to modify parenting time and Mother's contempt motion. The sons were seventeen years old and thirteen years old at the time of the hearing. During the hearing, Father indicated that he did not feel that his parenting time was ever given a priority, because Mother routinely scheduled activities on dates when the children were scheduled to be with Father. Mother expressed frustration at Father's alleged inattention to the children's homework responsibilities when they were in his care. The Parenting Time Coordinator indicated that: (1) the seventeen-year-old son expressed to her that he wanted the fighting to stop, did not want Parents to continue going to court, and wanted flexibility; and (2) the fourteen-year-old son was trying to navigate through both parents to stay out of the middle of the conflict. On March 30, 2017, the trial court entered an order modifying parenting time which provided that: (1) Parents maintained joint legal custody, but all three mediated agreements were vacated; (2) the seventeen-year-old son should exercise parenting time, participation in school, extracurricular and religious activities as he determined was in his own best interests and should also make his own health care decisions; (3) Parents should continue to exercise joint legal custody over the thirteen-year-old son, with Mother making all final decisions on education, religious upbringing, and extracurricular activities and Father making all final decisions on health care; (4) Father should have parenting time with the thirteen-year-old son each week from Thursday at 5:00 p.m. through Sunday at 7:00 a.m.; (5) parenting time

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

should be governed by the Guidelines, including the provisions pertaining to Opportunity for Additional Parenting Time, with Mother designated as the custodial parent for the purposes of calculating summer and holiday parenting time; (6) the Parenting Time coordinator and the counselor were discharged with the court's thanks for jobs well done. Mother appealed.

The Court concluded the trial court did not err as a matter of law when it vacated Parents' original settlement agreements regarding the children's care. Id. at 744. Mother argued the trial court lacked authority to vacate the terms of three mediated settlements ratified as part of the dissolution decree. Mother cited multiple family law cases which hold that settlements are binding contracts, but the Court found the cases distinguishable because they dealt with property settlements, not settlements involving the care of children. Id. The Court opined that to treat a settlement agreement regarding the care of children the same as a settlement agreement involving property was contrary to the court's paramount concern of ruling in the best interest of children. (Multiple citations omitted.) Id.

The Court found the trial court did not abuse its discretion when it modified Father's parenting time with Parents' thirteen-year-old son because modification of parenting time was in the son's best interests. Id. at 746. Citing Duncan v. Duncan, 843 N.E.2d 966, 969 (Ind. Ct. App. 2006), *trans. denied*, the Court noted that, when reviewing a trial court's determination of a visitation issue, the Court grants latitude and deference to the trial court, reversing only when the trial court manifestly abuses its discretion. (Multiple citations omitted.) Moell at 746. The Court explained: (1) no abuse of discretion occurs if there is a rational basis in the record supporting the trial court's determination; (2) on appeal, it is not enough that the evidence might support some other conclusion; instead, the evidence must positively require the conclusion contended for by the appellant before there is a basis for reversal; (3) the reviewing Court will neither reweigh the evidence nor judge the credibility of witnesses; (4) courts are required to give foremost consideration to the best interests of the child. Duncan at 969. Moell at 745. The Court noted the trial court's observations that: (1) Father and Mother lived at least a 45 minute drive from each other, causing the thirteen-year-old son to spend large chunks of time being transported; (2) the distance between Father's home and Mother's home also made their Right of First Refusal agreement impractical because the distance was too great to travel for three hours of parenting time. Id.

Mother argued that modification of Father's parenting time was not in the thirteen-year-old son's best interests. The Court disagreed, noting evidence presented by both Mother and Father about difficulty with the current parenting time schedule, including issues with homework completion, transportation, church attendance, and bonding with the stepmother. Id. at 746. The Court concluded that Mother's argument was an invitation to reweigh the evidence, which the Court cannot do. Id.

The Court opined the trial court did not have authority to allow the seventeen-year-old son to make his own decisions on parenting time, religious, educational, and extracurricular activities and health care, so the order was reversed and remanded for proceedings consistent with the opinion. Id. at 749. Mother argued the trial court's order amounted to

“quasi-emancipation” and that the seventeen-year-old son was not emotionally or financially equipped to make the type of decisions the trial court imposed upon him. Father contended the trial court’s decision was an exercise of judicial economy considering the son’s age. The Court noted this was an issue of first impression. Id. at 746. The Court looked to IC 31-16-6-6, which governs the emancipation of a child for child support purposes. The Court noted:

(1) emancipation occurs by operation of the statute when the child becomes nineteen years of age; but (2) emancipation can also occur when a child is at least eighteen years old, has not attended a secondary school or postsecondary educational institution for the prior four months and is not enrolled in a secondary school or postsecondary educational institution, and is capable of supporting himself or herself through employment. Moell at 746-47. The Court observed that the trial court essentially removed the seventeen-year-old son from the care and control of Parents, but Parents were still required to support him financially. Id. at 747. The Court also observed there was no evidence that the seventeen-year-old son lived outside of Mother’s or Father’s house or had employment. Id. The Court was troubled by the implications of allowing a minor, regardless of age or maturity, *carte blanche* in making decisions regarding his life while his parents were still required to support him financially. Id. The Court also noted Indiana Parenting Time Guidelines Section I(E)(3), which states that “[i]n no event shall a child be allowed to make the decision on whether parenting time takes place.” Moell at 747. Based on the level of turmoil between Parents, the Court found it understandable that the trial court wanted to attempt a novel resolution to an issue that might be moot in a short amount of time due to the son’s age. Id. at 748. The Court found that the record did not support how the son would qualify for emancipation when he reached the age of eighteen. Id. The Court noted the order also contradicted the provisions and commentary of the Guidelines. Id.