

Children's Law Center of Indiana



Custody and Parenting Time

10/28/16

In Quinn v. Quinn, 62 N.E.3d 1212 (Ind. Ct. App. 2016), the Court affirmed the portions of the trial court's dissolution order which: (1) awarded sole physical custody of the parties' thirteen-year-old son to Father, and (2) calculated child support. Id. at 1214. The Court reversed that portion of the trial court's order valuing the marital estate and remanded with instructions to recalculate the division of assets without a hearing. Id. Parents married in 1993. Their two daughters were born in 1994 and 1996. Their son, who was diagnosed with ADHD during the pendency of the dissolution, was born in 2002. In January 2013, Mother left her family and moved into an apartment. She apparently leased the apartment in Father's name without his knowledge. Two weeks later, Mother had Father served with a protective order, which required Father to vacate the family home and prohibited him from contacting Mother. In February 2013, Father filed a petition for dissolution of the marriage. In May 2013, the parties entered into a preliminary agreement, which awarded physical custody of the children to Mother and Guideline parenting time to Father. Father was removed by police from his son's football practice in the summer of 2013, was handcuffed in the parking lot, taken to jail, and charged with invasion of privacy. The Police told Father that he should have left the football practice as soon as Mother arrived. In August 2013, Father filed a petition requesting custody of his younger daughter. Hearings on pending motions were continued multiple times, both parties changed counsel, and mediation was unsuccessful. In November 2014, the parties' younger daughter voluntarily moved in with Father following her eighteenth birthday. In January 2015, shortly before the dissolution hearing, Father was coaching the son's basketball team when Mother walked in and told the son to leave. The police walked in immediately thereafter, told Father to leave the premises, and informed Father that he should have left the building as soon as he saw Mother walk in the door.

The trial court held the dissolution hearing in January and March 2015. Father requested custody of the son. Among the evidence Father offered on his custody request was: (1) during the marriage, he had been the children's primary caregiver by making breakfast, transporting them to and from school or after school care and helping them review for their school tests; (2) he attended the children's class parties and chaperoned their field trips; (3) he and the son had "[done] everything together, such as getting haircuts and going to the grocery store, and had always been especially close"; (4) he had coached the son in every sport the son had played since the age of three years; (5) he had requested additional parenting time with the children "hundreds and hundreds of times," but Mother granted his request only five times; (6) Mother had not

provided him with any additional information about the son's ADHD condition, and he had been unable to attend the son's doctor appointments or parent-teacher conferences because of the protective order; (7) he had always been flexible with Mother and granted her requests for changes in parenting time; (8) he had maintained email contact with his children's teachers. Father also asked the court to dismiss the protective order, explaining that he had never physically or emotionally abused Mother. According to Father, Mother had been physically and mentally abusive to him and to the children. When asked why he had not previously challenged the protective order, Father explained that he had a different attorney at the time it was issued, and he was not advised that he had any recourse to challenge it.

On August 14, 2015, the trial court issued a detailed twelve page decree of dissolution and disposition of collateral matters. In its decree, the court found and concluded that it was in the best interest of the younger daughter and the son for Father to receive sole physical custody. The trial court also issued orders requiring Mother pay child support and dividing the debts and assets of the marriage. Mother appealed the trial court's order, arguing that the court erred in awarding custody of the son to Father. Mother did not appeal the custody order for the younger daughter.

Finding that Mother's argument was simply a request for the Court to reweigh the evidence, the Court affirmed the trial court's order awarding custody of the son to Father. *Id.* at 1221. Citing *Kondamuri v. Kondamuri*, 852 N.E.2d 939, 945-46 (Ind. Ct. App. 2006), the Court observed that: (1) a trial court's custody determination is afforded considerable deference because the trial court sees the parties, observes their conduct and demeanor, and hears their testimony; (2) on appeal, the Court does not reweigh the evidence or assess the credibility of witnesses and does not substitute its judgment for that of the trial court; (3) the Court will affirm the trial court's custody determination unless it is clearly against the logic and effect of the facts and circumstances or the reasonable inferences drawn therefrom. *Quinn* at 1220. The Court found the following evidence supported the trial court's conclusion that it was in the son's best interest for Father to receive custody: (1) Father had historically been the son's primary caretaker and Father and the son are extremely close; (2) Mother could have ameliorated the strain placed on the son but chose not to do so; (3) Mother selectively enforced the protective order when Father attempted to coach the son or attend his school events; (4) Father was not given information on the son's ADHD diagnosis; (5) Mother rarely accommodated Father's requests for additional parenting time even though Father accommodated Mother's similar requests. *Id.* at 1220-21. The Court found no abuse of the trial court's discretion. *Id.* at 1221.