

Children's Law Center of Indiana



Custody and Parenting Time

9/10/13

In **Rickman v. Rickman**, 993 N.E. 2d 1166 (Ind. Ct. App. 2013), the Court reversed the trial court's denial of incarcerated Father's petition for telephone and mail communication with his sixteen-year-old child. The Court remanded for the trial court to provide a written explanation for its reasons for denying the petition, including whether the trial court determined the Indiana Parenting Time Guidelines to be applicable and, if so, an explanation for its departure from the Guidelines. Father and Mother were married and had one child, who was born in 1996. On June 5, 1997, Mother petitioned for dissolution of marriage, and petitioned for a joint preliminary injunction and temporary restraining order. In February 1998, the court appointed a court appointed special advocate for the child. On November 23, 1998 the court entered a custody decree which granted sole legal custody of the child to Mother and gave Father supervised visitation. The court appointed special advocate had recommended supervised visitation for Father based on the advocate's investigation into three alleged child molestation reports brought against Father. On July 6, 1999, the court granted the court appointed special advocate's emergency request for modification of visitation between the child and Father pending a hearing. Following the hearing, the court suspended Father's visitation rights. In 2000, Father was sentenced to an aggregate term of fifty years for eight counts of child molesting as class A felonies, child molesting as a class C felony, and criminal confinement as a class C felony. The child was not the victim of the Father's offenses.

On September 30, 2012, Father filed a verified petition for modification of visitation order, requesting that the court grant him telephone access with the child and communication via mail. On September 27, 2012, the court denied Father's petition without a hearing. The chronological case summary (CCS) entry stated that the court, having reviewed Father's verified petition for modification of visitation order, denied such petition without hearing; and that Father is incarcerated on child molesting charges. On October 24, 2012, Father filed a motion to correct error, alleging that the court erred in using his incarceration "as a premise for denying his visitation right(s), in toto,... via the Indiana Parenting Time Guidelines" and that the trial court did not find nor did the State assert "that the [child molesting] charge[s] [were] in any way associated with his own child." On October 30, 2012, the court denied Father's motion to correct error and Father appealed. Mother did not file an appellee's brief.

The Court reversed the trial court's denial of Father's petition for modification of visitation because the order did not state (1) why the petition was denied, (2) whether it was denied pursuant to IC 31-17-4-2, (3) whether the trial court considered the Parenting Time Guidelines, and (4) did not include a necessary finding as to potential endangerment of the

child's physical health or safety or significant impairment of his emotional development.

Id. at 1169. Father argued that the Indiana Parenting Time Guidelines encourage communication with a child by telephone and mail, and that Father wanted this communication if the child was receptive. The Court, citing IC 31-17-4-2, observed that the statute which governs the modification, denial, and restriction of parenting rights provides that “the court shall not restrict a parent’s parenting time rights unless the court finds that the parenting time might endanger the child’s physical health or significantly impair the child’s emotional development.” Id. at 1168. The Court said that the trial court had not made any finding that a restriction on Father’s parenting time consisting of telephone and mail contact might endanger the child’s physical health or significantly impair his emotional development, as required by IC 31-17-4-2. Id. The Court also observed that Indiana Parenting Time Guideline I(A) provides that “both parents shall have reasonable phone access to their child” and “[a] parent and child shall have a right to communicate privately by . . . cards, letters, and packages, without undue influence by the other parent.” Id. The Court also cited Part C of the Preamble to the Indiana Parenting Time Guidelines, which states, inter alia: (1) the Guidelines are not applicable to situations involving family violence, substance abuse, risk of flight with a child, *or any other circumstances the court reasonably believes endanger the child’s physical health or safety, or significantly impair the child’s emotional development*; (2) there is a presumption that the Indiana Parenting Time Guidelines are applicable in all cases covered by these guidelines; (3) any deviation from these Guidelines by either the parties or the court must be accompanied by a written explanation indicating why the deviation is necessary or appropriate; (4) *the written explanation need not be as formal as Findings of Fact and Conclusions of Law; however, it must state the reason(s) for the deviation* (emphasis in opinion). Id. at 1168-69. The Court noted that, absent potential endangerment or significant impairment of the child’s health, safety, or emotional development, the plain language of the Parenting Time Guidelines presumes that the Guidelines would apply in this case. Id. at 1169. Citing Clark v. Clark, 902 N.E 2d 813, 814 (Ind. 2009), in which the Indiana Supreme Court addressed whether incarceration constituted a substantial change in circumstances justifying modification of an existing child support obligation, the Court said that the Indiana Supreme Court has implied that the Parenting Time Guidelines would apply in this case. Rickman at 1169. The Court opined that if, on remand, the trial court determines the Guidelines to be applicable, the trial court must then proffer an explanation for its departure from the Guidelines. Id. The Court said that the trial court must reflect upon the best interests of the child and the possible consequences of its departure from the provisions of Indiana Parenting Time Guideline I(A). Id. The Court said that these actions by the trial court would enable the Court of Appeals to thoroughly and appropriately review the trial court’s deviation and the reasons behind it. Id.