

Children's Law Center of Indiana



Custody and Parenting Time

3/3/17

In **Riggen v. Riggen**, 71 N.E.3d 420 (Ind. Ct. App. 2017), the Court vacated the trial court's order granting Mother's motion to correct error. *Id.* at 423. The Court reversed and remanded, instructing the trial court, when considering Mother's motion to correct error, to comply with Ind. Trial Rule 59(J), which requires the court to specify the reasons for granting relief. *Id.* Parents' marriage was dissolved in 2014, and Mother had physical custody of their child. Later, Father petitioned to modify custody. The trial court held a hearing on Father's petition, during which it heard testimony from the child's guardian ad litem (GAL) and took judicial notice of the GAL's report. On February 16, 2016, the trial court granted Father's petition. On March 2, 2016, Mother filed a motion to correct error and a motion to stay the order. Mother alleged that: (1) the trial court erred in making its findings; (2) there was insufficient evidence to support the order; (3) "the GAL's report was so flawed it should carry little if any weight." Mother suggested that the GAL investigate further. The trial court entered a stay of its order, set a hearing on Mother's motion to correct error, and requested that the GAL conduct further investigation. The GAL complied and filed a supplemental report. The trial court held a hearing on Mother's motion, and then entered an order granting Mother's motion and denying Father's petition for custody modification. The order did not provide a reason for granting Mother's motion to correct error. Father appealed from the trial court's order. Mother did not file an appellee brief.

The Court concluded the trial court abused its discretion when it granted Mother's motion to correct error without providing a reason for doing so, contrary to T. R. 59(J). *Id.* at 423. The Court noted that Mother, the appellee, failed to file a brief. *Id.* at 422. The Court said that when an appellee fails to submit a brief: (1) the Court need not undertake the burden of developing an argument on the appellee's behalf; and (2) the Court will reverse the trial court's judgment if the appellant's brief presents a case of prima facie error (multiple citations omitted). *Id.* The Court explained that it reviews a trial court's ruling on a motion to correct error for an abuse of discretion and affords the trial court's decision "a strong presumption of correctness." *Id.* at 422, quoting Santelli v. Rahmatullah, 993 N.E.2d 167, 173 (Ind. 2013).

The Court noted Father petitioned to modify a custody order, and quoted Steele-Giri v. Steele, 51 N.E.3d 119, 124 (Ind. 2016), which states "there is a well-established preference in Indiana 'for granting latitude and deference to our trial judges in family law matters.'" Rippen at 422. The Court observed that because the trial court's order granting Mother's motion to correct error effectively denied Father's petition to modify custody, Father was appealing from a negative judgment. *Id.* Citing Comm'r, Dep't of Env'tl. Mgmt. v. RLG, Inc., 755 N.E.2d 556, 559 (Ind. 2001), the Court said: (1) on an appeal from a negative judgment, the Court does not reverse the judgment of the trial court unless it is contrary to law; and (2) the Court will reverse the negative

judgment only if the evidence leads to but one conclusion and the trial court reached the opposite conclusion. Rippen at 422.

Father contended the trial court abused its discretion in granting Mother's motion to correct error because the trial court failed to articulate any reasons for why it granted Mother's motion. The Court looked to T. R. 59(J), which provides that whenever a court grants relief on a motion to correct error, the court "shall specify the general reasons" for granting relief. Id. at 423. The Court found the trial court provided no explanation for its decision to grant corrective relief, contrary to T. R. 59(J). The Court found that Father had directed the Court to prima facie error, and vacated the trial court's order granting Mother's motion to correct error. Id.