

Children's Law Center of Indiana



Custody and Parenting Time

7/28/16

In **Robertson v. Robertson**, 60 N.E.3d 1085 (Ind. Ct. App. 2016), the Court affirmed the trial court's order granting Father's motion for modification of custody. *Id.* at 1092. Mother and Father had two children together before dissolving their marriage in 2010. In October 2014, Mother married Stepfather. In February 2015, Father filed a petition to modify custody of the two children. Father was in the military and stationed at Fort Riley, Kansas. He expected to be released from the military within sixty days, and planned to relocate to Crawfordsville, Indiana to be closer to the children. A two day hearing was held on Father's petition on August 7, 2015 and August 12, 2015. During the hearing, Father, Maternal Grandmother, two of Mother's friends, and the children's guardian ad litem all testified to negative changes they had noticed in the children since Mother's marriage to Stepfather. Concerns about Stepfather's drug use were raised during the hearing. Stepfather testified that: (1) he had a criminal history; (2) he took prescription pain pills; (3) he hit the younger child; and (4) he drove under a suspended license with the older child in the car. The trial court also conducted an interview of the older child. At the end of the second day of the hearing, the trial court granted Father temporary emergency custody of the children pending a further order, ordered him to submit the name of a temporary custodian for the children in case he became unable or unwilling to continue as custodian due to death or disability, and ordered the parties to submit proposed findings of fact and conclusions of law. On August 14, 2015, Father filed a motion to appoint Aunt as the children's temporary custodian. The trial court granted that motion. On August 14, 2015, Mother filed an objection to Father's motion and filed a motion to restore custody to her if Father were to leave the area without the children. On August 18, 2015, the trial court denied Mother's request to restore primary custody to her. On September 11, 2015, Mother filed a Notice of Appeal of the trial court's orders on temporary emergency custody, the appointment of Aunt as a temporary custodian and the denial of Mother's petition to restore primary custody to her if Father left Indiana without taking the children. On October 19, 2015, following Father's honorable discharge from the military and his relocation back to Indiana, he filed a notice of relocation and a motion to terminate the temporary custody. Father also filed a motion to dismiss Mother's appeal on the grounds that she appealed an order that was not final. The Court's motions panel denied Father's motion to dismiss. The trial court issued its findings of facts and conclusions of law on January 19, 2016. In the order, the trial court concluded that modification of custody to Father was in the children's best interests.

The Court determined that Mother’s appeal should be reviewed on its merits. Id. at 1090. Father argued that Mother’s appeal did not appeal a final order and therefore it should be dismissed. The Court, referencing In re Adoption of O.R., 16 N.E.3d 965 (Ind. 2014), concluded that Mother’s appeal did warrant a decision on the merits. Robertson at 1089-90. The Court noted that Mother attempted to file a timely appeal on September 11, 2015, which the Court’s motions panel deemed to be sufficient, that the fundamental liberty interest involved in the parent-child relationship was of great constitutional importance, and that Appellate Rule 1 allows the Court to consider an otherwise forfeited appeal. Id. at 1090.

The Court found that the trial court did not abuse its discretion by modifying custody to Father. Id. at 1091-92. The Court opined that the evidence showed a change in the children’s relationships since Mother married Stepfather, which constituted a substantial change in circumstances sufficient to warrant a modification of custody. Id. at 1091. The Court noted evidence showing that the children were previously carefree and talkative but had changed to become withdrawn and lethargic, that the children were no longer permitted to spend as much time with their family members and friends, that Mother was no longer as attentive to the children since she married Stepfather, and that Stepfather had exhibited signs of abusing prescription drugs. Id. The Court also noted that Stepfather slapped the younger child for laughing at the dinner table, was arrested for driving with a suspended license when the older child was in the car, and met in chambers with the child, who had previously asked Grandmother to call the police so that he would not have to return to Mother’s home. Id. The Court also found that the evidence showed that modification of custody to Father was in the children’s best interests. Id.