

Children's Law Center of Indiana



Guardianship/Third Party Custody

1/25/18

In **Hays v. Hockett**, 94 N.E.3d 300 (Ind. Ct. App. 2018), the Court held: (1) Paternal Grandparents waived their claim that the Oklahoma Court had jurisdiction; (2) the Indiana trial court did not abuse its discretion by assuming jurisdiction of the case; and (3) Paternal Grandparents failed to rebut the parental presumption in favor of Mother with clear and convincing evidence.

Mother and Father were married when they had their child, and moved to Oklahoma when the child was a few months old. They stayed with Paternal Grandparents at first, then moved into their own place. Paternal Grandparents regularly cared for the child. Mother and Father moved back to Indiana in February 2015, and in May 2015, Paternal Grandparents picked up the child to stay with them in Oklahoma so that Mother and Father could work on their marriage. In June 2015, the child returned to Mother and Father. In August 2015, the child went back to Oklahoma with Paternal Grandparents for what was supposed to be a short visit, which was extended for various reasons. Mother moved in with a friend in October 2015 and Father returned to Oklahoma to live with Paternal Grandparents in December 2015. Mother filed for divorce in Indiana, and then Father filed for divorce in Oklahoma. The Oklahoma Court held a hearing in January 2016 where Father and Paternal Grandmother testified, but the Oklahoma court found that neither Indiana nor Oklahoma met the requirements to qualify as the child's home state for jurisdictional purposes. The Oklahoma court abstained from exercising jurisdiction until it heard from the Indiana court on whether it would exercise jurisdiction, under the "first in time rule", as Mother had filed for divorce in Indiana first. The Indiana court exercised jurisdiction and held hearings in February and March of 2016. Paternal Grandparents intervened and sought custody of the child. The Indiana trial court awarded Paternal Grandparents temporary third party custody of the child. In November 2016, the Indiana trial court issued an order finalizing Mother's and Father's divorce, awarding legal custody of the child to Mother, and setting forth a gradual change of custody schedule from Paternal Grandparents to Mother. Paternal Grandparents appealed, and also filed a motion to stay, which was denied but with provisions made for Mother to provide a consent to treat form for the child.

Indiana case law, on whole, provides that the Uniform Child Custody Jurisdiction Act (UCCJA) does not confer subject matter jurisdiction, and as such, the jurisdiction it does confer is waivable. *Id.* at 306. A decision to retain or relinquish jurisdiction under the UCCJA is reviewed under an abuse of discretion standard, which occurs when the trial court's decision is clearly against the weight and logic of the facts or where the trial court misinterpreted the law. *Id.* at 304. Since there was a conflict in case law as to whether the UCCJA conferred subject matter jurisdiction, the Court addressed the matter. *Id.* The Court noted that older case law very

clearly held that the UCCJA did not confer subject matter jurisdiction. Id., citing Williams v. Williams, 555N.E.2d 142 (Ind. 1990) (holding that the jurisdictional limitations imposed by the UCCJA are not the equivalent of subject matter jurisdiction statements, but instead are more detailed information on a trial court's ability to exercise authority over a particular case, and furthermore, this exercise of authority is waivable). Indiana law provides for two types of jurisdiction: subject matter jurisdiction and personal jurisdiction. Hays at 305. There is no "jurisdiction over a particular case", which is a phrase that confuses legal or procedural error with actual jurisdictional conflicts. Id., citing K.S. v. State, 849 N.E.2d 538 (Ind. 2006). Although the Court had consistently held that the UCCJA did not confer subject matter jurisdiction and therefore, jurisdiction was waivable, Stewart v. Vulliet, 888N.E.2d 761 (Ind. 2008) referred to the UCCJA as dealing with subject matter jurisdiction, without citing to prior case law which held that the UCCJA did not confer subject matter jurisdiction. Hays at 305. After Stewart, case law continued to rely upon the proposition that the UCCJA does not confer subject matter jurisdiction. Id. at 306 (internal citations omitted). Consequently, the Hays Court determined that the UCCJA still does not confer subject matter jurisdiction, as the Indiana Supreme Court did not explicitly overrule prior case law. Id.

The Court held that neither Indiana nor Oklahoma were the child's home state, and that the "significant connections" provisions of the UCCJA found at IC 31-21-5-1(2) properly allowed the Indiana trial court to assume jurisdiction. Id. at 307-308. The Court decided to address the issue of the UCCJA, even though Paternal Grandparents had waived the issue by failing to timely raise it, which they incorrectly characterized as one of subject matter jurisdiction instead of a procedural error. Id. at 306. The Court discounted Paternal Grandparent's argument that the child's home state was Oklahoma, noting that a home state is defined the state where the child and a parent or a person acting as a parent has lived with the child for at least six consecutive months before the commencement of a custody proceeding. Id. at 308. The Court noted that during the relevant time, June 14 to December 14, the child spent significant amounts of time in both states, and did not live for six consecutive months in either state. Id. at 307-8. IC 31-21-5-1 provides for jurisdiction under the UCCJA if one of several factors applies. In particular, IC 31-21-5-1(2) provides that an Indiana court has jurisdiction to make an initial child custody determination if a court of another state does not have home state jurisdiction, or a court of the home state of the child has declined to exercise jurisdiction on the ground that Indiana is the more appropriate forum, and the child and one or both parents have a significant connection to Indiana other than just mere physical presence, and there is substantial evidence in Indiana regarding the child's care, protection, training, and personal relationship. Id. at 307. Since the Oklahoma court had determined that neither state had home-state jurisdiction, neither had exclusive continuing jurisdiction, and both states could claim significant connection jurisdiction; consequently, because the action was filed first in Indiana, the Oklahoma court would await the Indiana court's decision on whether to exercise jurisdiction. Id. at 307. As both states had significant connections, the Court could not say that the Indiana trial court erred in assuming jurisdiction under the premise that given the equally significant connections, the first filing would take precedence in determining jurisdiction. Id. at 308.

The Indiana trial court did not err in determining that Paternal Grandparents did not overcome the strong parental presumption in favor of Mother having custody of the child and in denying Paternal Grandparents' petition for third party custody of the child. *Id.* at 310. Paternal Grandparents argued that they overcame the parental presumption, which favors awarding custody of children to their natural parents, and they argued that placement with them would be in the child's best interests. *Id.* at 308. The Court first noted that it will not reassess the credibility of witnesses or reweigh the evidence on appeal, and generally will not disturb a trial court's determination unless the decision is clearly against the logic and effect of the facts and circumstances before it. *Id.* Specific findings of fact and conclusions of law are not set aside unless they are clearly erroneous. *Id.* at 309. The standard by which requests for guardianship or third party custody must be judged is found in In Re Guardianship of B.H., 770 N.E.2d 283, 287 (Ind. 2002). *Hays* at 309. It provides that in order to place a child in the custody of a third party, the third party must present clear and convincing evidence that the parental presumption must be overcome with clear and convincing evidence of a parent's unfitness, acquiescence, or a the formation of a strong emotional bond between the child and the third party such that severing it would harm the child. *Hays* at 309, quoting Guardianship of B.H. at 287. Once the third party has rebutted this presumption by clear and convincing evidence, then the trial court will move on to address the best interests of the child. *Id.* Paternal Grandparents cited acquiescence and a strong emotional bond as reasons why their petition should have been granted, but the Court noted that those are not the only factors a trial court may consider. *Hays* at 309-310. The Court also characterized this as a request to reweigh the evidence, which the Court will not do. *Id.* at 310. As a further point, the Court opined that it understood that "there was evidence before the trial court which might have supported [Paternal Grandparents'] contentions; however, it is not enough that the evidence *may* support some other conclusion...Rather, the evidence before us must 'positively require the conclusion contended for by the [Paternal Grandparents] before there will be a reversal.'" *Id.* (internal citations omitted). The Court noted the following evidence which supported the trial court's order: (1) Mother was employed with a well-paying job; (2) Mother and the child would qualify for her health benefits; (3) Mother was subjected to random drug screen through her employer and passed a court ordered hair follicle test; (4) Mother submitted to a psychological exam that came back indicating Mother had no mental health problems; (5) Mother had child care for the child; (6) Mother lived with her own supportive parents and the child had his own room; (7) Mother and the child have a strong loving relationship; and (8) Paternal Grandparents also had a strong loving relationship with the child.