

Children's Law Center of Indiana



Custody and Parenting Time

5/9/2018

In **Bello v. Bello**, 102 N.E.3d 891 (Ind. Ct. App. 2018), the Court of Appeals affirmed the trial court's denial of Mother's motion for relief from the trial court's orders pursuant to Indiana Trial Rule 60(B). In 2010, Mother was granted sole physical custody of K.B., though Mother and Father had joint legal custody. Father exercised parenting time every other weekend, with overnights each Wednesday and alternating weeks in the summer. All other parenting time was held according to the Indiana Parenting Time Guidelines. In 2016, Father filed to hold Mother in contempt, alleging that Mother was thwarting his parenting time by enrolling K.B. in too many extracurricular activities. The trial court acknowledged that K.B. was overscheduled but declined to hold Mother in contempt, stating that Father's attendance at the extracurriculars without complaint was an acquiescence. The trial court then ordered the parties and K.B. to jointly agree on one sport and one other activity for K.B. per sport season in the future. In 2017, Father filed for contempt again, and this time the trial court found Mother in contempt because she unilaterally enrolled child in multiple sports and activities contrary to the court's 2016 order. Father missed 42 overnights with K.B. because he objected to many activities by refusing to attend. The trial court ordered Mother to pay \$2,500 in attorney's fees to Father. Mother made a motion for relief pursuant to Indiana Trial Rules 60(B) and 60(C). Trial Rule 60(B) affords parties and judges the opportunity to revisit and alter a final order in the interest of equity and justice. Here, the trial court denied Mother's motion, and she appealed.

The Court affirmed the trial court's decision in full due to Mother's failure to provide any argument in support of her appeal of the T.R. 60(B) ruling. *Id.* at 895. Mother argued that she was entitled to relief from the judge's order to pay attorney's fees and framed her arguments as though she were directly appealing the trial court's order, failing to address the trial court's denial of her Trial Rule 60(B) motion. *Id.* at 894. She did not argue that the trial court had failed to consider any of the eight elements of Trial Rule 60(B), choosing instead to argue that the trial court had erred in its original order holding her in contempt because it did not appropriately consider Father's intentional absence and neglect of parenting time. *Id.* The Court observed that "T.R. 60(B) is meant to afford relief from circumstances which could not have been discovered during the period a motion to correct error could have been filed; it is not meant to be used as a substitute for direct appeal or to revive an expired attempt to appeal. Snider v. Gaddis, 413 N.E.2d 322, 324 (Ind. Ct. App. 1980)." *Id.* at 894.