

# Children's Law Center of Indiana



## Custody and Parenting Time

5/31/18

In **Hamilton v Hamilton**, 103 N.E.3d 690 (Ind. Ct. App. 2018) *trans. denied*, Mother appealed an award of primary physical custody to Father. The Court of Appeals affirmed, finding no abuse of discretion on the part of the trial court and holding that the evidence at trial supports the trial court's award of custody.

In 2011, Mother and Father began a long-distance relationship – Mother lived in Maryland while Father lived in the Indianapolis area. Mother and Father eventually married in 2013 despite living in different states. In March 2014, Mother gave birth to L.H., and four months later moved to Indianapolis. Mother and Father then purchased a home in Hamilton County together and shared caregiving duties for L.H. equally. In October 2016, Mother filed for legal separation and one month later, Father filed a petition for dissolution. In March 2017, Mother filed a notice of intent to relocate back to Maryland, and Father objected in April 2017. During trial, Mother admitted that she was researching and planning her move as early as October 2016, including applying for private school for L.H., without telling Father about her plans. Mother believed that returning to her old job in Maryland would provide a better life for herself and L.H. due to additional salary and work flexibility, which she did not have in Indianapolis. Mother stated that she did not try to find a new job in Indianapolis, and intended to move back to Maryland after the trial whether or not she was granted custody. Mother also admitted that in the past, she consulted the father of her older child regarding moves and schooling plans, but had not done the same for Father. Father testified that he was unaware of the move to Maryland until Mother filed her intent to relocate with the Court, and he could not relocate away from the Indianapolis area because of the close relationship he has with his older child, who also lives in Hamilton County. Father's work schedule as a firefighter is rigid, working twenty-four hours every three days. His salary is less than Mother's.

**The evidence supported the trial court's award of custody to Father, and thus, the trial court did not abuse its discretion.** *Id.* at 696. The Court first noted that IC 31-17-2-8 provides that there is no preference for either parent in an initial custody determination, and referenced the best interests factors which a court must consider in making its custody determination. *Id.* at 694. The Court also noted that IC 31-17-2.2-2 provides that if relocation is at issue during an initial custody hearing, then the court may consider the relocation factors as part of the initial custody determination. *Id.* Those factors are: (1) The distance involved in the proposed change of residence; (2) The hardship and expense involved for the nonrelocating individual to exercise parenting time or grandparent visitation; (3) The feasibility of preserving the relationship between the nonrelocating individual and the child through suitable parenting time and grandparent visitation arrangements, including consideration of the financial circumstances of the parties; (4) Whether there is an established pattern of conduct by the relocating individual,

including actions by the relocating individual to either promote or thwart a nonrelocating individual's contact with the child; (5) The reasons provided by the (A) relocating individual for seeking relocation; and (B) nonrelocating parent for opposing the relocation of the child; and (6) Other factors affecting the best interest of the child. Id. The relocating parent has the burden to show that the relocation is made in good faith and for a legitimate purpose. Id. In reaching its conclusion, the Court noted the following: (1) The trial court found that the best interest of L.H. was served by primary physical custody with Father, who was maintaining a residence in the area that L.H. considered home; (2) L.H. has a minor sibling and grandparent caregivers in the Indianapolis area, and it would be difficult to foster those bonds from Maryland; (3) Mother would have an easier time visiting L.H. than Father would due to her additional income and work flexibility; (4) the trial court specifically noted Mother's actions in researching and planning her move without informing Father, and (5) Mother's minimization of Father's role in parenting L.H. Id. at 695-696.