

Children's Law Center of Indiana



Custody/Parenting Time

7/27/18

In **Matter of the Paternity of J.G.L.**, 107 N.E.3d 1086 (Ind. Ct. App. 2018), the Court vacated the trial court's order retaining jurisdiction under the Uniform Child Custody Jurisdiction Act ("UCCJA"), and remanding back to the trial court with instructions. The Court held that the trial court abused its discretion by failing to consider all the relevant factors before making a determination as to jurisdiction.

The Child was born in March 2016, and paternity was established in February 2017. Despite having lived in California with Mother in the interim, the trial court instructed that Child was to remain in Indiana until a determination could be made regarding custody and parenting time. A month later, the parties came to an agreement giving Mother primary physical custody, and the trial court ordered that Mother could move to California permanently. In August 2017, Father filed Motion to Show Cause stating that Mother was interfering with his parenting time, while Mother requested supervised parenting time for Father, alleging threats, violence, and drug use. The trial court denied both orders. In early 2018, Mother filed for transfer of the case to California under the UCCJA and Indiana Code 31-21-5-8, which states:

“(a) An Indiana court that has jurisdiction under this article to make a child custody determination may decline to exercise its jurisdiction at any time if the Indiana court determines that: (1) the Indiana court is an inconvenient forum under the circumstances; and (2) a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised on motion of a party, the court's own motion, or request of another court.

(b) Before determining whether an Indiana court is an inconvenient forum, the Indiana court shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the Indiana court shall allow the parties to submit information and shall consider the relevant factors, including the following: (1) Whether domestic violence has occurred and is likely to continue in the future and which state is best able to protect the parties and the child. (2) The length of time the child has resided outside Indiana. (3) The distance between the Indiana court and the court in the state that would assume jurisdiction. (4) The relative financial circumstances of the parties. (5) An agreement of the parties as to which state should assume jurisdiction. (6) The nature and location of the evidence required to resolve the pending litigation, including the child's testimony. (7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence. (8) The familiarity of the court of each state with the facts and issues in the pending litigation.”

Mother included a January 2018 California restraining order with her motion, which kept Father away from Mother and Child for a period of three years. The Indiana trial court held a hearing in February 2018, and the judge declined to transfer jurisdiction, noting that “From day one the mother has repeatedly attempted to keep [Father] out of this child’s life...I’m not giving up jurisdiction on this case. So, I don’t know where that leaves either one of you but I’m not gonna’ do it”. *Id.* at 1089. The trial court did not address the enumerated factors listed in the Indiana Code in its order, or orally in court.

The trial court abused its discretion in failing to consider each of the factors the enumerated factors as is required by IC 31-21-5-8(b). *Id.* at 1091. The Court noted that “the plain language of Indiana Code section 31-21-5-8(b) requires a trial court to consider the enumerated factors as well as any additional relevant factors for which the parties submit information. This is not to say, however, that a trial court need explicitly address each enumerated factor; as the statute’s use of ‘relevant’ suggests, the trial court need not consider factors not implicated by the evidence. Ind. Code § 31-21-5-8(b).” *Id.* at 1091-92. The Court opined that the trial court judge made his decision orally prior to weighing each of the required factors listed above. *Id.* at 1092. “Indiana Code section 31-21- 5-8(b) requires a trial court consider all relevant factors before making such determination. Therefore, we conclude the trial court abused its discretion.” *Id.* Thus, the matter was remanded to the trial court, with instructions to expressly consider all the relevant factors prior to rendering a decision about retaining jurisdiction. *Id.*