

Children's Law Center of Indiana



Custody and Parenting Time

1/29/2019

In **Hazelett v Hazelett**, 119 N.E.3d 153 (Ind. Ct. App. 2019), the Court held that (1) the trial court failed to enter adequate findings to support its order awarding Mother sole legal and physical custody; (2) father's absence due to his military service could not be considered as a factor in awarding Mother sole legal and physical custody; (3) trial court was required to make specific findings that unsupervised parenting time with Father would endanger the child's physical health or significantly impair the child's emotional well-being before Father's parenting time could be supervised; and (4) the trial court did not abuse its discretion in delaying Father's overnight parenting time with the child.

Mother and Father were married in 2011, and Mother filed for divorce in March 2017. The Child was born in May 2017, and a few days later, Father was deployed to South Korea for a six to nine month military deployment. The trial court held a final hearing on the dissolution in March 2018, and granted sole legal and primary physical custody to Mother based on Father's limited contact with the Child. Further, the trial court limited Father's parenting time to no overnights before the Child attains three (3) years of age, and required supervised parenting time for Father until January 2019 to allow Father and Child to acclimate to one another. Lastly, the trial court ordered Father to pay \$215 per week in child support. Father appealed.

The trial court made no findings regarding any threat to the child's physical health or emotional well-being, and consequently, the order for supervised parenting time for Father was unsupported by the trial court's order. Id. at 161. A parent not granted custody of the child is entitled to reasonable parenting time rights unless the court finds, after a hearing, that parenting time by the noncustodial parent *might* endanger the child's physical health or significantly impair the child's emotional development. IC 31-17-4-1(a) (emphasis added)". Id. Despite the use of the word "might", Court and case law has consistently interpreted this statute to mean "would." Id. The order provided that Father needed to get to know to the child and form a bond with the child, but did not contain any information about Father posing a physical or emotional threat to the child. Id. Therefore, the child court abused its discretion and the Court remanded the matter back to the trial court to either enter sufficient orders showing why supervised parenting time was required, or to remove the supervised parenting time restriction. Id.

The trial court did not err in restricting Father's overnight parenting time until the age of three; the Indiana Parenting Time Guidelines recommend restricted overnights for children under three to encourage healthy development and stability, unless certain

conditions are met. Id. at 162. The Parenting Time Guidelines respect young children’s developmental needs, and encourage routine. Id. The Parenting Time Guidelines address cases of children under three where there has been a lack of significant contact between the child and the noncustodial parent, and in that case, the Guidelines provide for a period of adjustment, phasing in, and the possibility of no overnights. Id. In this instance, the Court found that the trial court appropriately followed the Guidelines, and allowed for the possibility of overnights should Father meet the criteria outlined. Id. The lack of overnight visits was not an abuse of discretion in this instance. Id.

The trial court impermissibly considered Father’s active duty military service and his resulting absence from the child’s life as a factor in awarding Mother sole legal and physical custody; such consideration is prohibited by IC 31-17-2-21.3. Id. at 161. IC 31-17-2-21.3 provides in part that “parent's absence or relocation due to active duty service as a factor in determining custody or permanently modifying a child custody order.” Id. at 160. The trial court specifically found that the Mother should be given sole legal and physical custody in part due to Father’s limited contact with and presence in the child’s life, which was due to his military service. Id. at 160-61. The Court opined that this was impermissible, and reversed and remanded the matter.

The trial court failed to make adequate findings regarding its award of sole legal and physical custody to Mother, and as such, the matter was reversed and remanded. Id. at 160. The Court opined that most of trial court’s findings were a recitation of testimony and contentions, rather than actual determinations. Id. at 159. The two proper findings provided that the Mother and Father had an acrimonious relationship, that Father was in the military and often stationed overseas which reduced his contact with the child, and that the parties were unable to effectively cooperate and communicate. Id. Because the findings were inadequate, the Court was unable to properly assess whether the evidence supported the findings, and whether the findings supported the determination. Id.

Father also appealed the child support award because he was stationed in Colorado, and incurred travel expenses to exercise parenting time with the Child. Id. at 164. Father requested the trial court consider a reduction in his weekly child support amount to reflect these expenses, but the trial court did not address this request. Id. The Court found that “**Father’s military service mandates his absence and in order to exercise parenting time with Child, Father will incur significant travel expenses. The trial court, however, failed to address this issue with relevant findings. We therefore conclude the trial court’s omission was clearly against the logic and effect of the facts and circumstances presented before it.**” Id.

Lastly, Father appealed the trial court’s order to pay child care expenses in the amount of \$125 each week for care provided by maternal grandmother. Id. at 164. Father argued that paternal grandmother lived a short distance from Mother and was willing to provide childcare at no cost. Id. The Court found that **the trial court failed to make any findings regarding the reasonableness of child care costs**, and remanded to the trial court for findings. Id.