

Children's Law Center of Indiana



Custody and Parenting Time

7/11/2019

In **Purnell v. Purnell**, 131 N.E.3d 622 (Ind. Ct. App. 2019), the Court reversed the trial court's finding that Father's active duty status supported granting sole legal custody and primary physical custody of the Child to Mother.

When Mother and Father married, Father was an active member of the United States Air Force and stationed in California. Mother relocated to California following the marriage. However, in April of 2016, she relocated back to Indiana claiming her husband hadn't been faithful. At the time of her relocation back to Indiana, she was pregnant. Two weeks after her return, the Child was born. Since the birth of the Child, Mother has been the primary caregiver and Father has had parenting time opportunities while he is in Indiana. During proceedings, Father re-enlisted in the Air Force was assigned to the Cavalier Air Force Base in North Dakota. He lives on the base with his significant other and their eleven-month old child. Father filed for a dissolution of marriage in the Superior Court of Santa Barbara in California. The California court found that it had no jurisdiction to make an initial custody order. Mother then filed a verified petition to establish custody, parenting time, and child support in the trial court in Indiana. Father petitioned for transfer of the child custody jurisdiction, but that petition was denied. The trial court granted Mother temporary custody of the Child.

A final hearing was conducted on the competing custody requests. The trial court subsequently entered an order awarding sole legal custody and primary physical custody of the Child to Mother. The trial court reasoned that although there were concerns about Mother's mental health, her steady engagement in therapy as well as the presence of her family support system cut against those concerns. Furthermore, the court opined that although Father could provide the Child the benefit of a parent with a stable career and a more traditional family unit, the transient nature of Father's career will be difficult for the Child and create significant geographical distance between the Child and Mother. Father appealed.

The application of the statute is not limited to an active duty combatant who has been deployed to another country for a limited period of time; the statute applied to Father even though his deployments were within the United States. *Id.* at 628. Father was the crew chief for a missile radar warning system, and his reassignments are uncertain and not voluntary. *Id.* Since he is serving full time in the armed forces of the United States, he falls within the province of IC 31-17-2-21.3, despite Mother's arguments to the contrary. *Id.* There is no language in the statute limiting the type of active service which qualifies for the statute, and the Court declined to read any further interpretation into the statute. *Id.* at 628-29.

Even though the trial court improperly considered Father’s active duty status in awarding custody to Mother, the trial court’s order was supported by sufficient other evidence. Id. at 629-30. The Court noted that custody determinations and a custody order should be entered “in accordance with the best interest of the child.” Id. at 629. The trial court must consider a number of relevant factors under IC 31-17-2-8. Id. A trial court’s decision on a custody matter will only be reviewed for an abuse of discretion. Id. The Court explained that the trial court made its determination of custody based on the factors found in IC 31-17-2-8 and in its order found ninety-five findings of fact and concluded forty-seven conclusion of law. Id. Father does not contest that the trial court’s findings are supported by the evidence, rather he solely takes issues with the trial court’s consideration of his active duty status in the United States Air Force. Id.