



## Custody and Parenting Time

4/22/2020

In **Anselm v. Anselm**, 146 N.E.3d 1042 (Ind. Ct. App. 2020) *trans. denied*, the Court held that the trial court entered sufficient findings and did not abuse its discretion in awarding Mother primary physical custody of the children; the Court also made other orders regarding child support and medical expenses.

Mother and Father had two children together; during the marriage, Father's work schedule required him to work overnights on a regular basis. Mother worked as an office manager. Mother first filed a petition for separation and received temporary custody orders; Mother eventually converted it into a petition for the dissolution of marriage. The trial court appointed a GAL, who submitted a report recommending that Mother have primary physical custody, based on the fact that Mother was the primary caregiver and was in charge of all doctor's appointments and routine daily needs of the children. At the final hearing, the GAL testified that it was in the children's best interests to remain with Mother because Mother provided stability and consistency. In its order granting Mother primary physical custody, the trial court found "[t]he Father and Mother shall have joint legal custody of the minor children with Mother awarded physical custody of the minor children. The Court finds that it is in the best interest of the minor children that they remain in physical custody of the Mother as she is the primary caregiver of the minor children and it is important that the [C]hildren have a consistent routine." Id. at 1045. Father appealed.

**The trial court's findings regarding its award of primary physical custody to Mother were not insufficient, even if the trial court did not explicitly list every best interests factor found at IC 31-17-2-8. Id. at 1047.** Father argued that the trial court erred in granting primary physical custody to Mother and that the trial court's findings were insufficient because the trial court's order did not explicitly list every factor. Id. The Court declined to accept Father's argument. Id. IC 31-17-2-8 provides that in making custody determinations, the court must consider all relevant best interests factors and make an order in accordance with those factors. The best interests factors found at IC 31-17-2-8 include the age and sex of the children; the wishes of the children's parent or parents; the wishes of the children, with more consideration given if the children are at least fourteen years of age; the interaction and interrelationship of the children with their parents, sibling, and any other person who may significantly affect their best interests; the children's adjustment to the their home, school, and community; the mental and physical health of all individuals involved; evidence of a pattern of domestic or family violence by either parent; evidence that the children have been cared for a by de facto custodian; and a designation in a power of attorney of the children's parent or de facto custodian. The Court opined that trial courts are not required to enter findings as to each statutory factor they consider when making custody determinations. Id. at 1047, citing Hecht v. Hecht, 142 N.E.3d 1022 (Ind. Ct. App. 2020) (holding that a trial court did not err when it entered an order modifying custody even though it

did not specifically mention each factor it was required to consider). The plain language of the statute only requires the trial court to consider the factors, not make a finding as to each factor. Anselm at 1047. The Court presumes that trial courts know and follow the law, even if the trial court did not specifically mention the statute. Id. The Court opined that the trial court's findings were sufficient for the purposes of Trial R. 52(A) and showed the theory upon which the trial court decided the case. Id. The Court noted the following: (1) the trial court found Mother was the primary caregiver; (2) a consistent routine was important for the children; (3) the GAL testified that the children were well adjusted to the schedule with Mother; (4) the GAL testified it would be detrimental to the children to change their routine now; and (5) the GAL testified that it was in the children's best interests for Mother to have primary physical custody because she could provide them with consistency and stability. Id.