



Custody and Parenting Time

GAL/CASA

2/28/2020

In **Rasheed v. Rasheed**, 142 N.E.3d 1017 (Ind. Ct. App. 2020), the Court held that the trial court erred in awarding joint legal custody and reversed and remanded the trial court's decision.

Mother and Father were married in 2011 and have two children. In 2017, Mother filed a petition for a protective order based on domestic violence allegations and filed a petition for divorce. The trial court issued a preliminary order for joint legal custody; Mother was to have primary physical custody, and Father would have parenting time according to the Guidelines. A Guardian ad Litem was appointed.

The record notes the following facts regarding parenting time, information exchanges, and medical information: (1) Father did not believe Mother kept him apprised of any information regarding the children; (2) Father filed multiple petitions for contempt on the subjects of parenting time, communications, and information access; (3) Father alleged Mother made doctor, dental, and counseling appointments without telling him; (4) Father alleged Mother did not provide him information regarding school and daycare; (5) Father alleged Mother did not tell him she took the children out of state; (6) Father and Mother could not agree over participation in basketball program and any subsequent modifications to Father's parenting time; (7) Even the use of a parenting coordinator could not resolve the issues regarding midweek parenting time; (8) Mother thought the child needed a new therapist due to a lack of rapport, and that Father's participation in therapy should be severely curtailed; (9) When Mother asked about a summer camp for the children, Father indicated he wanted to take the children to Pakistan; (10) Mother felt Our Family Wizard helped with the manner of communication, but not with the decision making; (11) Father believed Mother was making false accusation against Father to win custody; and (12) Father believed they should have joint legal custody.

The record notes the following facts regarding the GAL and the parenting coordinator (PC): (1) The GAL filed a motion requesting the appointment of a PC, as the parties were unable to make joint decision; (2) the GAL's reports relayed much of the information contained in the record; (3) The GAL recommended that Mother have sole legal custody because the parties had not demonstrated any ability to co-parent, and that from the beginning, the parties would bicker over the smallest of things; (4) The GAL noticed significant concerns about the children's anxiety and trauma over parenting time with Father; (5) Father reported to the GAL he believed the children were coached, but after extensive contact with the children and witnessing their reactions to parenting time, the GAL did not believe the children were coached; (6) The GAL was extremely concerned about the welfare and in particular, mental health of one child in particular; (7) the PC noted Father's communications were aggressive but not insulting; (8) the parties were

successfully using Our Family Wizard; and (8) the PC did not believe Father was as bad as Mother made him out to be.

The record notes the following regarding domestic violence and cultural concerns: (1) Mother had a PO against Father; (2) the parties are “part of a small Pakistani community where, as explained to the GAL, the culture is very male-dominated and the children and wife are viewed as property;” (3) Mother appeared to the GAL to be genuinely fearful of Father; (4) there were allegations of Father threatening harm to the maternal family members, and of taking the children out of the country; and (5) Mother’s pastor described Father as “tormenting” Mother, and believed Father’s threats to be serious.

The trial court ultimately awarded joint legal custody and physical custody to Mother. Mother appealed the award of joint legal custody.

The award of joint legal custody between Mother and Father was improper; where the parties have made child rearing into a battleground, joint legal custody is not appropriate.

Id. at 1022. Persons awarded joint legal custody must share in authority and responsibility for major decisions involved in raising a child, which includes, but is not limited to, a child’s education, health care, and religious instruction. IC 31-9-2-67. A court’s primary consideration in making an award regarding legal custody is the welfare of the children, and not the wishes of the parents. **Id.** at 1021-22. IC 31-17-2-13 provides that “[t]he court may award legal custody of a child jointly if the court finds that an award of joint legal custody would be in the best interest of the child.” IC 31-17-2-15 pertains to an award of joint legal custody, and provides as follows:

In determining whether an award of joint legal custody under section 13 of this chapter would be in the best interest of the child, the court shall consider it a matter of primary, but not determinative, importance that the persons awarded joint custody have agreed to an award of joint legal custody. The court shall also consider:

- (1) the fitness and suitability of each of the persons awarded joint custody;
- (2) whether the persons awarded joint custody are willing and able to communicate and cooperate in advancing the child’s welfare;
- (3) the wishes of the child, with more consideration given to the child’s wishes if the child is at least fourteen (14) years of age;
- (4) whether the child has established a close and beneficial relationship with both of the persons awarded joint custody;
- (5) whether the persons awarded joint custody: (A) live in close proximity to each other; and (B) plan to continue to do so; and
- (6) the nature of the physical and emotional environment in the home of each of the persons awarded joint custody.

The Court noted that the second factor was of particular importance, and where parties have made childrearing a battleground, joint custody is not appropriate. **Id.** at 1022. An award of joint legal custody may be reversed when the evidence indicates a joint legal custody arrangement creates or perpetuates such a battleground. **Id.** The Court noted all the facts in the record pointed heavily towards joint custody being a battleground between the parents, and concluded that based “on the record before us, and in light of the parties’ history of non-cooperation, we conclude the court erred in ordering the parties to share joint legal custody.” **Id.** The Court noted

the testimony of the GAL and the GAL's recommendations as further evidence that the parties were utterly unable to cooperate. Id.