



Custody and Parenting Time

9/22/20

In **Lynn v. Freeman**, 157 N.E.3d 17 (Ind. Ct. App. 2020), the Court held while the trial court erred in its determination about Mother's good faith in proposing a relocation, the trial court did not err in finding that it was not in the child's best interests to relocate to Illinois with Mother.

The trial court had determined that Mother failed to show the proposed relocation was made in good faith, and further found that Father carried his burden in showing that the proposed relocation was not in the child's best interests. However, the trial court found Mother's proposed relocation was not made in good faith for the following reasons: (1) the timing of the relocation notice versus the dissolution agreement was "awfully convenient" suggesting Mother entered into the agreement with no intention to stay in the area; (2) Mother's extremely large number of motions attempting to restrict or change Father's parenting time; (3) Mothers' hiring a private investigator to follow Father; (4) Mother's constant attacks on Father's choices regarding raising the child showed a desire to control Father's influence on the child rather than nurture the relationship; (5) Mother's proposals of how to handle transportation had major impracticalities and the trial court doubted Mother would follow through; (6) the trial court doubted her credibility; and (7) Mother had repeatedly indicated she did not trust Father and demonstrated a willingness to undermine him. The trial court made similar findings regarding the child's best interests, as well as findings about how even a short distance move would negatively impact the father-child relationship.

The Relocation Statutes provide that in certain circumstances, a parent intending to move must file a notice of intent to relocate. A nonrelocating parent may respond by (1) not objecting, or (2) not objecting to the move but request a modification of custody, parenting time, or child support, or (3) objecting to the relocation and seeking a temporary or permanent order preventing the relocation and modifying custody, parenting time, and child support as a result of the relocation. Father in this case selected the third option. A trial court is required to hold a full evidentiary hearing regarding these matters, and the relocating parent has the initial burden to show that the proposed relocation is made in good faith and for a legitimate reason. Once that burden is met, the nonrelocating parent must show that the proposed relocation is not in the child's best interests.

Legitimate purpose and good faith are two prongs which may be analyzed either separately or together; however, they are a low bar to moving on to the question of a child's best interests. The trial court erred in concluding Mother's move was not in good faith. Mother's initial burden, pursuant to IC 31-17-2.2-5(e), was to show the proposed relocation was made in good faith for a legitimate purpose. The trial court found that Mother's new job was a legitimate purpose, but not made in good faith. Mother argued that this was actually a single standard, and if you satisfied one word, such as legitimate purpose, then you had also satisfied the other word,

such as good faith. The Court opined that in most cases, a legitimate purpose would also make it a good faith relocation; however, the Court did not agree with Mother that they must be analyzed together. Despite this, the Court did not agree with the trial court's good faith analysis; prior case law provides that moving for jobs, financial reasons, or family reasons are relocations that are in good faith for legitimate reasons. The Court noted that Mother's reasons for moving were objectively legitimate, and the trial court itself acknowledged the untenable situation Mother was in with respect to her family situation and her job. The Court opined that this made Mother's proposed relocation one of good faith. The Court noted the evidence could show that Mother had acted in bad faith at times, but there was no evidence that her proposed relocation was merely pretextual. If "the requirement of a legitimate and good faith reason posed an inordinately high bar for a relocating parent to meet, it could too often prevent trial courts from reaching and appropriately deciding the dispute based on the best interests of the child." The Court noted that there was a preference for custody issues to be decided on the best interests of the child standard. The trial court's determination regarding good faith was more relevant to the best interests of the child.

The trial court's best interests determination was supported by the evidence, and was not in error. At the outset, the Court noted that the trial court's determination regarding good faith was more relevant to the best interests of the child. Mother argued specifically that the trial court did not consider the best interests factors in light of a modification, and asserted that Dr. Jenuwine did not consider Mother's proposed parenting time plan when making his recommendations. IC 31-17-2.2-1(c) sets forth a variety of factors for a court to consider in addition to best interests in a relocation case. The Court noted that prior case indicates that while these are factors listed in whether to allow a relocation, they are also factors weighing in a child's best interests. The Court noted the trial court had extensive findings regarding the child's best interests, and these findings weighed heavily in favor of Father. The Court opined that the findings were sufficient and the trial court was not required to make a finding as to every single factor. With respect to Mother's arguments about Dr. Jenuwine not considering certain evidence and circumstances, "we reiterate that the trial court expressly considered Mother's proposal regarding parenting time and transportation and indicated a disinclination to believe that her offer would stand the test of time."