



## Kids' Voice of Indiana

Advocate. Educate. Protect.

### Custody and Parenting Time

3/3/22

In **McClendon v. Triplett**, 184 N.E.3d 1202 (Ind. Ct. App. 2022), the Court found that the trial court did not err when it denied Mother's motion to continue, when it denied her motion to exclude three witnesses, and when it granted Father's motion for modification of physical and legal custody. The Court further concluded that the trial court did not abuse its discretion when it allowed one of the children to testify without her parents in the courtroom.

Mother and Father married and had a child, D.T., the same month. Father then adopted Mother's child from a previous relationship, K.T. Mother and Father later divorced and agreed to joint legal and joint physical custody of the children with a parenting time schedule. Mother and the children moved six times between North Carolina and South Carolina in pursuit of employment, to be closer to D.T.'s birth father, and upon getting married and divorced twice. K.T. expressed desire to move back to Indiana with Father, and when she did, Mother did not have contact with K.T. or Father for six weeks and prevented Father from contacting D.T. for four months. Father filed a petition for modification of custody requested sole custody of the children. Father later filed a motion for the appointment of a GAL. A GAL was appointed and filed a report two days before the hearing. Mother filed a motion to continue the evidentiary hearing due to the "late filing of the Guardian Ad Litem Report." The trial court denied Mother's motion to continue and held the hearing as scheduled. At the hearing, the trial court ordered separation of witnesses at Mother's request. Mother made a point to inquire with certain witnesses whether they had spoken to one another outside the courtroom. After testimony was presented, the trial court awarded primary physical and sole legal custody of the children to Father with parenting time to Mother. The trial court also found "no violation of its separation of witnesses order" because any conversations between witnesses outside the courtroom occurred prior to any testimonies, and thus denied Mother's motion to exclude certain testimony. Mother appealed.

**Mother failed to demonstrate that she was prejudiced by the denial of her motion to continue. Id. at 1209-10.** Mother merely argued that the GAL's report contained many negative allegations against her and that she did not have an opportunity to explore due to the late disclosure of the report. Although the GAL was not required to file a report in this matter, the GAL did, two days before the hearing. Indiana T.R. 53.5 provides that a upon a motion, the trial court has discretion to continue a matter and shall be allowed if good cause is shown by evidence. Good cause was not shown and the timeliness of the hearing was at issue since the children were to start school soon. The trial court did not abuse its discretion because the trial court did not require a GAL report, Mother was able to cross examine the GAL's testimony at the hearing, Mother's own conduct delayed the filing of said report, and she failed to demonstrate any prejudice by the denial of the motion to continue.

**Mother's due process rights were not violated when K.T. was allowed to testify outside the presence of Mother and Father. Id. at 1210-11.** Mother argued the trial court's decision to allow sixteen-year-old K.T.'s testimony outside the presence of Mother and Father violated Mother's due process rights because she was deprived of her right to confront K.T. as a witness. K.T., one of the children at issue, was allowed to testify without her parents present to eliminate any undue pressure and to encourage truthful testimony. The attorneys remained in the courtroom to examine and cross-examine K.T. Ind. Evid. R. 611 allows for a court to "exercise reasonable control" over the processes of examining witnesses to "(1) make those procedures effective for determining the truth; (2) avoid wasting time; and (3) protecting witnesses from harassment or undue embarrassment." Allowing K.T. to testify outside of her parents' presence was consistent with this Rule.

**The trial court did not abuse its discretion when it denied Mother's motion to strike the testimony of three witnesses. Id. at 1211-12.** Mother argued that three witnesses violated the separation of witnesses order and their testimony should have been excluded. Ind. Evid. R. 615 governs separation of witnesses orders and the premise of separating witnesses is to prevent them from hearing each other's testimony and then influencing each other's testimony. Several witnesses had conversations outside of the court room, but it was prior to their offered testimony, and thus did not violate the order. Also, Mother failed to demonstrate any prejudice that occurred because of said conversations.

**The trial court's findings were supported by sufficient evidence to show a substantial change in circumstances to support modification. Id. at 1213-16.** Mother argued that there were no substantial changes that would allow the trial court to modify custody, and it was not in the children's best interests. After reviewing the trial court's findings regarding the same, the Court concluded that the findings were supported by the evidence, and Mother's arguments were merely a request to reweigh the evidence and judge the credibility of witnesses.