



Custody and Parenting Time

3/29/21

In Faulk v. Faulk, 166 N.E.3d 939 (Ind. Ct. App. 2021), the Court held that the trial court erred in changing Child's last name and in calculating Mother's income, but it did not err in calculating Father's income or in placing limits on Father's opportunities for additional parenting time.

Mother and Father were married in February 2017 and became pregnant in December 2017. In June 2018, Mother left the marital residence and moved into her parents' home, where she has lived ever since. Mother filed a petition to dissolve the marriage in July 2018. The Child was born in August 2018. Before Father was able to visit the Child in the hospital, Mother signed the Child's birth certificate with her maiden name, Bissell, instead of Father's last name, Faulk. At the final divorce hearing, Father asked the Child's last name be changed to Faulk and Mother asked that the name either not be changed or changed to Bissell-Faulk. In the divorce decree, the court awarded primary physical custody to Mother subject to Father's parenting time with joint legal custody, Father's support obligation based upon his base annual income including an 11% true-up in the event he earns more than the anticipated base salary and changed the Child's name to Bissell-Faulk. Father appealed.

The trial court erred in changing the Child's surname because it had no statutory authority to do so. Id. at 942. The only statute that would authorize a name change for the Child is Indiana Code Section 34-28-2-2, which requires "a parent or guardian who wishes to change the name of a child" to file a petition, which "must be verified" and "must state in detail the reason the change is requested." Ind. Code § 34-28-2-2(b). In addition, "the written consent of a parent must be filed with the petition." Id. "Before a minor child's name may be changed, the parents or guardian of the child must be served with a copy of the petition as required by the Indiana trial rules." Ind. Code § 34-28-2-2(c). And, upon filing a petition for a name change, the applicant must give public notice of the petition pursuant to Indiana Code Section 34-28-2-3. None of these procedures were followed in this case, and therefore Child's name change was not authorized. Faulk v. Faulk at 943.

The trial court abused its discretion in failing to impute income to Mother when calculating her weekly gross income for child support purposes. Id. at 944. Specifically, Father argued that Mother's residing with her parents and their subsidizing of in-kind benefits increases Mother's income available to support the Child. Id. Evidence was presented that Mother lives rent-free with her parents and has no plans to obtain her own residence. Id. at 945. Mother also admitted that she does not contribute to the utility, taxes, or insurance expenses while residing with her parents. Id. The Court agreed that Mother's rent-free living arrangement with her parents reduces her living expenses, freeing up money to support the Child Id. Thus, the value of Mother's in-kind benefits should be included in the calculation of her weekly gross income for child support purpose. Id.

The trial court did not abuse its discretion in adopting an 11% true-up for calculating Father's child support obligation. Id. The trial court used a base yearly gross income to calculate Father's child support and included a true-up percentage in case he earns more than the anticipated yearly gross income. Id. Father stipulated to a base income of \$90,000 and acknowledged that his income fluctuates and that a true-up of support would be proper; however, Father testified that his income fluctuations can be very large and expressly rejected Mother's proposed 11% true-up in exchange for a true-up method that would not overstate any additional support owed. Id. at 946. There is no evidence in the record as to the income tax rate paid by Father, nor does Father propose a different method to address the income amount that exceeds his base income. Id. Rather, Father focuses on the possible overstatement that may result when the irregular income exceeds a certain amount. Id. Commentary 2(b) to the Child Support Guidelines specifically provides that "the obligor may seek to have the irregular income calculation redetermined by the court." In other words, for any year in which the calculation of irregular income results in an overstatement of support, the obligor may simply file a motion seeking an adjustment for that year. Id. Father failed to establish the trial court abused its discretion as to the 11% true up. Id.

The trial court did not abuse its discretion in placing limits on Father's opportunities for additional parenting time. Id. Father argued that the trial court erred in placing limits on his opportunities to exercise additional parenting time. Id. The trial court outlined on days that Mother is working and Father is available to provide care, Father has the right to exercise OAPT. Id. at 947. Further, to balance parenting time with the Child, on days Father exercises the OAPT he shall return the Child to Mother earlier than the usual time. Id. Father argued that the limitation implies that Father may only exercise additional parenting time when Mother is working. Id. at 948. Contrary to Father's contention, the Court reasoned when Father exercises the additional parenting time on a day when he also has regular evening parenting time, Father would forgo the evening parenting time. Id. The Court reasoned Father would have eight hours of parenting time on days when he exercises the additional parenting time, it would be equitable for Mother to have parenting time in the evening on those days, especially considering Child's young age and Mother's role as primary physical caregiver. Id.