

# *Children's Law Center of Indiana*



## **Custody and Parenting Time (Relocation)**

8/15/14

In **DeCloedt v. Wagaman**, 15 N.E.3d 123 (Ind. Ct. App. 2014), the Court affirmed the dissolution court's order denying Mother's motion to relocate with the child and granting Father's petition to modify custody and parenting time. *Id.* at 125. Mother and Father were married in 2002, and in 2009, Mother gave birth to their child. Mother and Father separated in January 2011, and Mother filed a petition for dissolution. The parties agreed that Mother would have sole physical and legal custody of the child, and Father would have parenting time under the Parenting Time Guidelines. On June 30, 2011, Mother filed a notice of intent to relocate to Texas to live with her boyfriend. Father objected to Mother's relocation with the child, and the dissolution court held a hearing and denied Mother's motion for relocation.

On July 3, 2013, Mother married her boyfriend, who had moved from Texas to California. On July 23, 2013, Mother filed her verified notice of intent to relocate to California. Father filed an objection to Mother's relocation and a verified petition to modify custody, parenting time, and child support. The dissolution court heard evidence and entered findings and conclusions, which included: (1) Father regularly exercised parenting time with the child according to the Indiana Parenting Time Guidelines, and had parenting time with the child lasting up to one week when Mother traveled out of state; (2) Father was consistent in his payment of child support and was current on his weekly support obligation; (3) Mother did not have employment secured in Orange County, California, where her husband lives; (4) Mother had moved five times in less than three years and intended to move with the child to reside in Orange County with her husband immediately or by early the following year; (5) Orange County is approximately 2,141 miles from Fort Wayne, Indiana; (6) Father resided in the former marital residence in Columbia City, Indiana with his fiancé and her children; (7) Paternal Grandparents saw the child at least once per month; (8) Maternal Grandparents lived in Goshen, Indiana, the child currently resided with them, and Father ensured Maternal Grandparents that they would continue to see the child if the child did not relocate to California; (9) the child had a close relationship with both sets of grandparents, the children of Father's fiancé, and cousins; (10) Mother has no biological relatives in California, and Stepfather's parents reside in the Mishawaka, Indiana area; (11) if the child relocated to California, Father would not have the once per week in-person contact he now has with the child; (12) the child's relocation would cause an extreme emotional and financial hardship for Father to ensure that he is able to exercise parenting time. The trial court concluded that Mother's relocation was in good faith and for a legitimate reason, but that Father had proven that the proposed relocation was not in the child's best interests. Mother appealed.

**The Court opined that the trial court's findings and conclusions were not clearly erroneous and that the dissolution court did not abuse its discretion when the court denied Mother's motion to relocate and granted Father's petition to modify custody.** Id. at 131. The Court looked to IC 31-17-2.2-1 and IC 31-17-2.2-5 and stated that: (1) when a parent files a notice of intent to relocate, the nonrelocating parent may object by moving to modify custody or to prevent the child's relocation; (2) when the nonrelocating parent objects, the burden is on the relocating parent to show that the proposed relocation is made in good faith and for a legitimate reason; (3) if the relocating parent meets that burden, then the burden shifts to the nonrelocating parent to show that the proposed relocation is not in the best interests of the children. Id. at 128-29. The Court also noted the factors listed at IC 31-17-2.2-1(b) which the trial court must weigh in considering a proposed relocation: (1) the distance involved; (2) the hardship and expense involved for the nonrelocating individual to exercise parenting time; (3) the feasibility of preserving the relationship between the nonrelocating individual and the child through suitable parenting time, including consideration of the financial circumstances of the parties; (4) whether there is an established pattern of conduct by the relocating individual, including actions to either promote or thwart the nonrelocating individual's contact with the child; (5) the reasons provided for seeking and for opposing the relocation of the child; (6) other factors affecting the child's best interests, including those listed at IC 31-17-2-8. Id. at 129. Citing Baxendale v. Raich, 878 N.E. 2d 1252, 1256-57 (Ind. 2008), the Court observed that the relocation of a custodial parent does not require modification of a custody order, but, when one parent is relocating, it is not necessary for a court to find a substantial change in one of the "other factors" in IC 31-17-2-8 before modifying custody. DeCloedt at 129.

Father conceded that Mother had demonstrated a good faith and legitimate reason for moving to California, so the burden shifted to Father to show that the proposed relocation was not in the child's best interest. Id. On appeal, Mother argued that Father had not satisfied his burden of proof. Mother challenged the dissolution court's conclusion that "it is not feasible to preserve the relationship" between Father and the child, but the Court found that the court's conclusion on this issue was not clearly erroneous. Id. at 130. The Court observed that Mother's contentions on this issue ignored the dissolution court's findings on the child's close relationships with both sets of grandparents, future stepsiblings, and cousin, all of whom live in Indiana or Michigan.

Mother's second contention was that the court erred when it considered the impact of removing the child from his primary caregiver and concluded that it was in the child's best interests to do so. Mother cited In Re Paternity of X.A.S., 928 N.E. 2d 222, 229 (Ind. Ct. App. 2010), *trans. denied*, in support of her argument. In X.A.S., the Court opined that one of the most important facts in the record was that the child had lived with Father for the past nine years, and it would cause "far greater upheaval to tear the child away from his primary caregiver." Decloedt at 130. The Court was not persuaded by Mother's second argument, noting that in X.A.S., the child was five years older than the child in this case, and that in X.A.S. an assessment and report by the Domestic Relations Counseling Bureau concluded that the child should relocate with Father. DeCloedt at 130. The Court found this case to be "obviously a close case," and observed that Appellate Courts give considerable deference to the findings of the trial court in family law matters because "the trial judge is in the best position to judge the facts, to get a feel for the family dynamics, and to get a sense of the parents and their relationship with their children..." Id. at 131.