

Children's Law Center of Indiana



Custody and Parenting Time

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In **Dumont v. Dumont**, 961 N.E.2d 495 (Ind. Ct. App. 2012), the Court affirmed the trial court's denial of Father's contempt petition and request for additional parenting time. Father and Mother were married on May 20, 2006, and one child was born of the marriage. Father filed for dissolution of marriage on October 15, 2008. Father and Mother entered into a Mediated Marital Settlement Agreement (Agreement) which was approved by the trial court and incorporated into the dissolution decree issued on April 8, 2010. The terms of the Agreement included:

(1) Mother was given physical custody of the child; (2) Father and Mother shared joint legal custody; (3) Father had parenting time of two overnight midweek stays as well as alternate weekends; (4) each parent was entitled to two weeks' vacation during which parenting time would be uninterrupted; (5) each parent was responsible to obtain additional daycare; (6) the right of first refusal under the Indiana Parenting Time Guidelines applied; (7) parties were required to notify each other in the event that a "serious illness" or "any other accident" befell the child.

Mother worked at a factory from 6:00 a.m. until 2:30 p.m., and her normal practice was to drop the child off at daycare on her way to work. On the days when the child was with Father, Father dropped the child off at the same daycare at 6:15 a.m. on his way to work. The daycare provider testified that the child arrived in pajamas and slept until his normal waking time of 7:30 a.m. no matter which party dropped him off. Mother's job required her to work on Saturdays and overtime, and she received limited prior notice of overtime, sometimes only the day before. The week of April 5, 2010, Mother worked overtime, and dropped the child off at daycare around 3:45 a.m., and reported to work shortly before 4:00 a.m. In August 2010, Mother informed Father that she intended to take a two week vacation beginning August 2, 2010, during which time her parenting time was uninterrupted under the Agreement. Instead of going out of town, Mother worked 11 days of overtime. During this time period, the three-year-old child was taken to daycare either by Mother at 3:45 a.m. or by Mother's live-in Boyfriend at 6:00 a.m. Around May 18, 2010, the child was scratched by Boyfriend's cat. Mother notified Father, but maintained the scratch was minor. Father demanded the cat's vaccination records, which Mother told Father had been requested, but Boyfriend later refused to provide. Mother told Father that Father would need to seek court assistance to obtain the records. On August 6, 2010, Father filed a Verified Petition for Rule to Show Cause, Enforcement of Marital Settlement Agreement and Modification of Marital Settlement Agreement. Father requested that Mother be found in

contempt for denying parenting time and refusing to provide the cat's vaccination records. Father also requested the trial court to provide him with additional parenting time. Mother and Boyfriend married on August 31, 2010. On September 30, 2010, the cat's vaccination records were provided to Father. The trial court held hearings on Father's petition on November 23, 2010, and January 25, 2011, and received evidence from Father, Mother, Mother's new Husband, and the daycare provider. On March 16, 2011, the trial court issued an Order denying Father's petition. The Order provided that the court: (1) did not interpret the Agreement or the Indiana Parenting Time Guidelines to require that on the occasional mornings that Mother goes to work early, the child should be dropped off at Father's home on Mother's way to work or that Mother was required to take the child to Father's home the night before any morning that Mother has to go to work early; (2) denied Father's request to order Mother, on the occasional days she goes to work early, to drop the child off at Father's home on the way to work or that Mother take the child to Father's home the night before; (3) did not find Mother's swearing at Father a contemptuous act although the court did not condone it; (4) interpreted the Agreement referencing the two week block of uninterrupted time for vacation as a situation where Father and Mother have the right to travel out of town for up to two consecutive weeks during which the non-traveling parent's parenting time will be interrupted; (5) determined that if the parties do not travel out of town on an extended vacation, the other party shall not be denied parenting time; (6) admonished Mother that working through her vacation period is not cause for denial of Father's parenting time; (7) found that Mother's failure to provide vaccination records requested by Father in association with the scratch sustained by the child is not a violation of the Agreement or otherwise a contemptuous act. Father appealed.

The Court did not find that the trial court abused its discretion by declining to find Mother in contempt on parenting time. *Id.* at 500. The Court noted that Indiana Parenting Time Guidelines, section I(C)(3) provide a right of first refusal in favor of the non-custodial parent in the event child care is necessary, but it is subject to practicality concerns of distance, transportation or time. *Id.* Citing Shelton v. Shelton, 835 N.E.2d 513, 517, fn.5 (Ind. Ct. App. 2005), *aff'd*, 840 N.E.2d 835 (Ind. 2006), the Court noted that the term "family member" in the right of first refusal includes persons "within the same household as the parent with physical custody." Dumont at 500. The Court agreed with the trial court that Mother's election to drop the child off early at daycare on those occasional mornings when she went to work early did not constitute a breach of the Agreement or the Guidelines, noting: (1) the daycare provider testified that Mother had dropped the child off at 3:45 a.m. ten times or fewer since April 2010; (2) the daycare provider testified that Mother's new Husband had been dropping the child off at 6:15 a.m. since August 2010; (3) 6:15 a.m. is the same time Father drops the child off. *Id.*

The Court did not find that the trial court abused its discretion in finding that Mother did not violate the Agreement or commit a contemptuous act regarding the vaccination records. *Id.* at 501. The Court stated that isolated acts of misconduct do not necessarily give rise to a finding of willful disobedience, citing Heagy v. Kean, 864 N.E.2d 383, 388 (Ind. Ct. App. 2007), *trans. denied*. Dumont at 500. The Court noted that to find a party in contempt, two

elements are required: a valid court order and a person's willful disobedience of that order. Id. at 499. The Court noted that Mother and her new Husband believed the scratch was minor and that Father's demand to see the vaccination records was an overreaction. Id. at 500-01.

The Court held that the trial court did not abuse its discretion by declining to order additional parenting time for Father. Id. at 501. The Court noted that a trial court's determination of a parenting time issue is afforded latitude and deference, to be reversed only when the trial court abuses its discretion. Id. The Court, citing Duncan v. Duncan, 843 N.E.2d 966, 969 (Ind. Ct. App. 2006), *trans. denied*, observed that in all parenting time issues, courts are required to give foremost consideration to the best interest of the child. Dumont at 501. The Court, citing Hanson v. Spolnik, 685 N.E.2d 71, 78 (Ind. Ct. App. 1997), *trans. denied*, said that, while a custodial parent's egregious violations of a custody order or egregious acts toward another parent may support a modification of custodial arrangements, "isolated acts of misconduct" do not. Dumont at 501. The Court found that at worst, Mother's actions are isolated, and in no event constitute an "egregious violation" of the Agreement, nor an egregious act against Father. Id.