

Children's Law Center of Indiana



Custody and Parenting Time

4/17/2014

In Gilbert v. Gilbert, 7 N.E.3d 316 (Ind. Ct. App. 2014), the Court affirmed the trial court's decision, and held that the trial court did not abuse its discretion in determining that Mother's reasons for her proposed relocation were both legitimate and in good faith, and that the proposed relocation was in the children's best interests. Mother and Father had two children together, and divorced in August 2012; the Decree of Dissolution incorporated an Agreement between Mother and Father which stipulated that they would share joint legal and joint physical custody of the children, and that Father would exercise parenting time in accordance with a schedule that Mother and Father set out. Mother and Father were both involved in the children's activities and education, and for several months after the divorce, lived very close to each other. In 2013, Mother and Fiancée were expecting a new baby and needed a larger house. They found no suitable houses in Albion, where they currently lived, so they purchased a house in Goshen, approximately thirty miles away. In April 2013, Mother filed a Notice of Intent to Relocate, and in May 2013, Father filed an objection to Mother's Notice and also filed a Motion To Modify Custody and Parenting Time. The trial court conducted a hearing in June 2013, and issued an order approving Mother's relocation and denying Father's request to modify custody.

The trial court properly exercised its discretion in determining that Mother demonstrated a legitimate and good faith reason for her proposed relocation. *Id.* at 321. Father argued that the trial court abused its discretion in granting Mother's request to relocate thirty miles away, because Mother failed to satisfy her burden of showing that the relocation was in good faith and for a legitimate purpose. *Id.* at 320. The Court noted that the Relocation Statutes [IC 31-17-2.2] and Indiana case law both require that there be a legitimate reason for relocation, that this reason must be objectively shown, and that good faith requires that the reason is more than just a pretext. *Id.* (citing T.L. v. J.L., 950 N.E.2d 779, 787 (Ind. Ct. App. 2011)). Legitimate, good faith reasons for relocation include employment opportunities, financial considerations, and proximity to family; however, these are not the only acceptable reasons for a proposed relocation. *Id.* In determining that Mother had offered sufficient evidence of a good faith, legitimate purpose for relocation, the Court noted the following findings of the trial court: (1) Mother's expanding family needed a larger house; (2) Mother desired to have her children in a better school district; (3) Mother and Fiancée worked from home, so they needed more office space in their new home; and (4) Mother attempted to accommodate Father in several ways, by switching her house hunting focus to a different school district which was close to Father's work and where Father's two other children attended school. *Id.* at 320-21. The Court characterized Father's arguments regarding these findings as requests to reweigh the evidence, and declined to do so. *Id.* at 321.

The trial court did not abuse its discretion in determining that Mother’s proposed relocation was in the best interests of the children. *Id.* at 323. Father argued that the trial court abused its discretion in determining that the relocation was in the children’s best interests, asserting that the relocation would have a negative impact on his and his family’s relationship with the children, the amount of his time with the children, and the children’s activities. The Court first noted that the Relocation Statute provides that it is Father’s burden to show that the proposed relocation is *not* in the children’s best interests, and that the trial court determined that Father had not carried his burden (emphasis in opinion). *Id.* at 321. The trial court must consider each of the best interests factors, found at IC 31-17-2-8, but it is within the trial court’s discretion to put more weight on certain factors. *Id.* at 322. The Court opined that Father’s arguments were not supported by the evidence, noting that: (1) Father would have precisely the same amount of parenting time after relocation as he had before the relocation; (2) because Father would have the same amount of time with the children, his family would have the same amount of time to interact with the children during Father’s time; (3) Mother’s new residence was only thirty miles away, and the distance was not prohibitive for Father’s involvement in the children’s lives; (4) Father acknowledged that the new school was very close to his work, and the proximity permitted him to engage in all the children’s school activities; and (5) that it was not “axiomatic that changes in the Children’s school, community, and daily routine are contrary to their best interests. Rather, it is their ability to adjust to those changes that determines whether a relocation is appropriate...” *Id.* at 322-23. Since Father was unable to present any evidence of how the proposed relocation would negatively affect the best interests of the children, the Court could find no error in the trial court’s determination that it was in the best interests of the children to allow Mother’s proposed relocation. *Id.* at 323.

The trial court did not abuse its discretion in refusing to appoint a guardian *ad litem* or conduct an *in camera* interview, and the trial court did not fail to consider the wishes of the children. *Id.* at 323. Father contended that the trial court did not properly consider the wishes of the children, because it denied Father’s requests for a guardian *ad litem* and an *in camera* interview. *Id.* at 323. In determining that the trial court did not abuse its discretion by refusing to appoint a guardian *ad litem* or conduct an *in camera* interview, the Court noted that: (1) the children were six and nine years old; (2) the trial court was not required to place heavy weight on their wishes, since they were under the age of fourteen; (3) while an *in camera* interview can be a beneficial tool, it is not a requirement; (4) Father waited until three days after the evidentiary hearing to file his request for an *in camera* interview; (5) it was within the trial court’s discretion to refuse to accept more evidence after the close of evidence at a hearing; (6) the appointment of a guardian *ad litem* is within the trial court’s discretion; (7) Mother and Father were both committed to protecting the children’s best interests, making a guardian *ad litem* unnecessary; and (8) there was sufficient evidence of the children’s wishes, inferred from the testimony of both parties. *Id.* at 323.