

Children's Law Center of Indiana



Custody and Parenting Time

7/23/2013

In **Stone v. Stone**, 991 N.E.2d 992 (Ind. Ct. App. 2013), the Court affirmed in part, reversed in part, and remanded the matter for further consideration, holding that the trial court did not err in refusing to approve the child custody provision of a settlement agreement without evidence as to whether the agreement was in the child's best interests, and holding that Father's request for a continuance should have been granted.

Mother and Father filed for divorce and went to mediation to resolve all issues; consequently, the trial court never issued a preliminary order. On December 22, 2011, they reached an agreement. Mother and Father agreed share to joint legal and physical custody of the child, with an automatic review of the custody situation to occur in one year. On December 25, 2011, Father entered Mother's residence uninvited, stood in front of the door, and yelled at Mother in front of the child. On December 27, 2011, Mother filed for a protective order against Father. On January 4, 2012, the trial court adopted the settlement agreement as a preliminary order, and on January 25, 2012, Mother agreed to dismiss the protective order in exchange for Father's promise not to stalk, threaten, or harass Mother. Father exhibited other behavior that was concerning, including repeatedly entering Mother's residence and destroying marital photos, sending emails to Mother's family about his anger over the divorce, sending emails to the child's teacher and all of the child's classmates' parents in order to "expose" Mother, and blocking Mother's phone number from both his and the child's cell phone. On February 8, 2012, Mother requested that the trial court approve the settlement agreement as the final dissolution decree. The trial court refused, stating that it would not approve the settlement agreement without explanation as to how the agreement was in the best interests of the child. On March 28, 2012, Mother filed a motion that sought to set aside the settlement agreement, indicated that she did not believe that the settlement agreement was in the child's best interests, and requested a hearing to establish Father's parenting time. On May 21, 2012, a hearing on Mother's motion was held, but not completed. At the May 21, 2012 hearing, the trial court indicated that Father should seek out a mental health evaluation and get an attorney. On June 6, 2012, the trial court referred Father to the Marion County Family Court Project to get a mental health evaluation, but Father was not notified until June 25, 2012. The second part of the trial was to be held on July 11, 2012, and Father filed three separate requests for a continuance, one of which referenced his inability to complete the mental health evaluation before the July 11, 2012 hearing. The trial court denied all three requests. After the July 11, 2012 hearing, the trial court issued an order granting Mother primary physical and sole legal custody of the child, and granting Father supervised parenting

time. The trial court also ordered that Father should complete his mental health evaluation and follow the therapist's recommendations with regard to treatment.

The Court held that the trial court had clearly and properly indicated that it was not going to approve the agreement without some explanation as to how the agreement was in the child's best interests; the Court also held that the trial court acted properly in not preventing Mother from presenting evidence on the child's best interests regarding the agreement on custody, even if that evidence indicated the agreement was not in the child's best interests. *Id.* at 1001, 1002. Father argued on appeal that the trial court erred in refusing to enforce the mediated settlement agreement and in allowing Mother to essentially repudiate the agreement. *Id.* at 999. The Court noted that IC 31-15-2-17(b) provides that trial courts are not required to accept agreements between parties regarding child support and custody, and instead, may enter their own orders. *Id.* Although IC 31-15-2-13 provides that parties to a written settlement agreement may jointly request that a trial court enter a summary dissolution decree based on an agreement without holding a final hearing, the statute only states that a trial court "may" enter such a decree, not that it is required to do so. *Id.* In reaching its decision, the Court referenced Indiana case law on settlement agreements regarding child custody. *Id.* at 999; citing *Keen v. Keen*, 629 N.E.2d 938 (Ind. Ct. App. 1994) (stating that "no agreement between parties that affects the custody of a child is automatically binding upon the trial court"); *Voigt v. Voigt*, 670 N.E.2d 1271 (Ind. 1996) (holding that "the power to disapprove a settlement agreement must be exercised with great restraint...if there is one overriding policy concern in dissolution actions, it is protecting the welfare and interests of children"); *In re Paternity of K.J.L.*, 725 N.E.2d 155 (Ind. Ct. App. 2000) (holding that the trial court erred in adopting the stipulation after Mother repudiated it and erred in not holding a hearing); *Beaman v. Beaman*, 844 N.E.2d 525 (Ind. Ct. App. 2006) (stating that it is the duty of the trial court to consider if an agreement is in the best interests of the child, that trial courts cannot rubber stamp such agreements, and that the agreement contained at least one provision that was likely to be unworkable and lead to future litigation). The Court opined that since the trial court's overriding concern is the best interests of the child, a trial court should not be prohibited from taking a parent's concerns about an agreement into consideration when the trial court is attempting to determine if an agreement is in the child's best interests. *Stone.* at 1001.

The Court noted that it was not determining at this time whether a trial court faced with a settlement agreement regarding child custody always needs to conduct a full evidentiary hearing on child custody in order to determine if the agreement is in the child's best interests. *Id.* at 1002. The Court opined in a footnote that "[w]e need not definitely resolve whether a trial court must always conduct a full evidentiary child custody hearing when the parties have reached a settlement agreement in order to determine whether the agreement is in the child's best interests. It suffices to say that the trial court did not err here in conducting these hearings." *Id.* at 1002 n.4.

The Court opined that based on the facts of the present case, the trial court had abused its discretion in denying Father's third motion for a continuance because Father had demonstrated good cause for continuing the July 11, 2012 hearing, Mother did not show how she would be prejudiced by a continuance, and Father was clearly prejudiced by the denial of the continuance. *Id.* at 1003. The Court noted that Father's third motion for a

continuance was based on the need to complete the mental health evaluation before the hearing. Id. at 1003. In determining that the trial court did abuse its discretion in this case, the Court noted the following facts: (1) It was undisputed that Father did not learn of mental health evaluation referral until June 25, 2012; (2) Although Father immediately scheduled the evaluation, the evaluation could not occur until after the July 11, 2012 hearing; (3) At the July 11, 2012 hearing, the trial court had indicated that it would delay a final ruling until receiving the additional information from the mental health evaluation; however, the trial court issued its order before receiving the information; (4) The mental health evaluation did not indicate that Father had any serious mental health problems; and (5) The trial court's findings indicated that Father's mental health was one of its primary reasons for rejecting the settlement agreement and for limited Father's parenting time. Id. at 1003.