

## RECENT DEVELOPMENTS IN FAMILY AND MATRIMONIAL LAW

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### INTRODUCTION

During the survey period, October 1, 2010 through September 30, 2011, numerous Indiana appellate court decisions were published involving family and matrimonial law. These decisions involve topics such as dissolution of marriage, child custody, support, relocation, paternity, and adoption. This Article reviews and examines developments in Indiana's family and matrimonial case law during the survey period.

### I. DISSOLUTION OF MARRIAGE

The following section reviews noteworthy cases involving jurisdictional issues, marital property issues, property valuation issues, distribution issues, maintenance issues, and other matters related to the dissolution of marriage.

#### *A. Jurisdictional Issues*

Jurisdictional issues frequently arise in family law. In one noteworthy case, *Cotton v. Cotton*,<sup>1</sup> the Indiana Court of Appeals considered whether the summons

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1. 942 N.E.2d 161 (Ind. Ct. App. 2011).

served with a petition for dissolution of marriage must include a clear statement of the risk of default for failure to appear or otherwise respond.

In *Cotton*, the husband and wife married in 2002.<sup>2</sup> In March 2009, the husband filed a petition for dissolution of marriage. The wife was served with a summons and copy of the petition, but she failed to appear and did not respond to the petition.<sup>3</sup> At the final hearing in September 2009, the wife did not appear and she received no notice of the final hearing.<sup>4</sup> The trial court defaulted the wife and entered a final dissolution decree awarding joint legal and physical custody of the parties' son.<sup>5</sup> The wife appealed this ruling.

On appeal, the wife contended that the decree was void because it was entered without personal jurisdiction over her, due to insufficiency of process; specifically, the summons used by the husband did not include language articulating a risk of default for doing nothing.<sup>6</sup> In reviewing the summons, the court of appeals concluded: "We hold that due process requires that, at a minimum, a respondent in a dissolution proceeding be notified of the risk of default for failure to appear or otherwise respond."<sup>7</sup> The court of appeals added, "[T]he command of Trial Rule 4(C)(5), grounded in due process, is that the respondent in a dissolution proceeding must be given notice in a 'clear statement' of the risk of default for failure to appear or other respond."<sup>8</sup> Concluding that the subject summons did not comply with Trial Rule 4(C)(5), or the Due Process Clause, the dissolution decree was reversed and remanded for further proceedings.<sup>9</sup>

### *B. Property Distribution*

Distributing marital property raises issues involving how to define the marital estate, how to value marital property, and how to distribute marital property.

1. *Defining the Marital Estate.*—Generally, assets are subject to division when there is an immediately existing right of present enjoyment. In *Ford v. Ford*,<sup>10</sup> the Indiana Court of Appeals reviewed a trial court decision considering whether the husband's employer-funded health benefit account constituted a marital asset subject to division. The court also considered the value of the account.

During dissolution proceedings between the parties in *Ford*, the parties reached a mediated settlement, in which they agreed to all issues except whether the husband's employer-funded health benefit account, valued at \$28,694.31

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2. *Id.* at 163.

3. *Id.*

4. *Id.* at 163-64.

5. *Id.* at 163.

6. *Id.* at 163-65.

7. *Id.* at 165.

8. *Id.*

9. *Id.* at 166.

10. 953 N.E.2d 1137 (Ind. Ct. App. 2011).

constituted a divisible marital asset.<sup>11</sup> The trial court found that the account was a divisible marital asset.<sup>12</sup> The trial court also found that because the parties had agreed on a value of the account, the trial court should accept that value.<sup>13</sup>

On review, the Indiana Court of Appeals found that the husband had an immediately-existing right of present enjoyment of the account, and therefore was vested in possession with regard thereto.<sup>14</sup> Thus, the court found that the trial court properly concluded that the account was a divisible marital asset.<sup>15</sup> The court did consider the contingencies that might impact the account in the future, but the court determined that the contingencies did not change the fact that the husband had an immediately-existing right of present enjoyment of the account.<sup>16</sup>

The court's review of the valuation of the asset revealed that the parties agreed only that "the sum of \$28,694.31 was the amount of employer contributions in the [account] as of March 2010."<sup>17</sup> The court ruled that this was not the same as agreeing that the value of the account as a marital asset was \$28,694.31.<sup>18</sup> Moreover, the court found that due to the various contingencies that might affect the husband's future enjoyment of the account, "the [a]ccount might well be valued at substantially less than \$28,694.31."<sup>19</sup>

The court affirmed the trial court's conclusion that the account was a marital asset subject to division, but reversed and remanded the trial court's judgment regarding valuation of the account.<sup>20</sup>

2. *Property Valuation Issues*.—Several cases during the survey period addressed the issue of valuing property includable in the marital estate. Specifically, the court considered valuation when the value of an asset has changed significantly during the pendency of dissolution. In *McGrath v. McGrath*,<sup>21</sup> the Indiana Court of Appeals considered the selection of a valuation date for a marital asset, where the trial court has a choice between using a date of filing value and a date closer to the final hearing, and the value of the asset changed significantly during the pendency due solely to market fluctuation.

In *McGrath*, the wife filed a petition for dissolution of marriage in 2005.<sup>22</sup> Several months later, the real estate property that the couple owned in Michigan City was appraised for \$389,000.<sup>23</sup> In late 2009, as the parties' final hearing

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11. *Id.* at 1141.

12. *Id.*

13. *Id.*

14. *Id.* at 1142-43.

15. *Id.*

16. *Id.* at 1143.

17. *Id.* at 1144 (citation omitted).

18. *Id.*

19. *Id.*

20. *Id.*

21. 948 N.E.2d 1185 (Ind. Ct. App. 2011).

22. *Id.* at 1185.

23. *Id.*

approached, the property was appraised again, this time for \$229,000.<sup>24</sup>

In April 2010, the parties' final hearing was held.<sup>25</sup> Both the 2005 and 2009 appraisals for the Michigan City property were admitted into evidence.<sup>26</sup> Following the final hearing, the trial court awarded the Michigan City property to the husband at its 2005 valuation, which the husband argued reduced his share of the marital property to less than fifty percent.<sup>27</sup>

The court of appeals noted the general axioms that the trial court has broad discretion in determining the date on which marital assets should be valued.<sup>28</sup> Further, "for purposes of choosing a date upon which to value marital assets, the trial court may select any date of filing between the date of filing the petition for dissolution and the date of the final hearing."<sup>29</sup> Nevertheless, the court of appeals concluded that "the court abused its discretion in failing to consider the substantial change in value of the [Michigan City real estate] as expressed in the 2009 appraisal report."<sup>30</sup> The trial court's decree was reversed and remanded with instructions to take into account the decline in the value of the Michigan City real estate.<sup>31</sup>

Additionally, during the survey period, the Indiana Court of Appeals issued case law regarding supplemental property settlement payments. The court determined that when more than one property was at issue, the properties must be viewed collectively for purposes of equalization payments.<sup>32</sup>

3. *Distribution Issues*.—Cases regarding distribution issues can arise when a party to dissolution believes their spouse dissipated assets, when events subsequent to dissolution complicate future retirement distribution, or when a property settlement agreement requires clarification. The court has determined that awarding one party more than 100% of the marital estate is an abuse of discretion, absent a finding of dissipation. In *Smith v. Smith*,<sup>33</sup> the Indiana Court of Appeals considered whether the trial court abused its discretion in awarding one party more than 100% of the marital estate, absent a finding of dissipation that supported the award.

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24. *Id.*

25. *Id.*

26. *Id.* at 1188.

27. *Id.* at 1185-87.

28. *Id.* at 1187 (citing *Wilson v. Wilson*, 732 N.E.2d 841, 845 (Ind. Ct. App. 2000)).

29. *Id.* (citing *Wilson*, 732 N.E.2d at 845).

30. *Id.* at 1189.

31. *Id.* Judge Friedlander concurred with a separate opinion, stressing the inconsistencies present in the trial court's decree. *Id.* (Friedlander, J., concurring).

32. See *Connolly v. Connolly*, 952 N.E.2d 203, 207-08 (Ind. Ct. App. 2011) ("[I]n the event of a post-dissolution increase in value of husband's ownership interest in [the property], [w]ife would be entitled to an 'equalization payment' based upon an increase in the value of that interest. . . . it is not disputed that [h]usband's ownership interest in [the property] decreased. Accordingly, wife is not entitled to an equalization payment based on [h]usband's ownership interest (alteration omitted) (citation omitted)).

33. 938 N.E.2d 857 (Ind. Ct. App. 2010).

In *Smith*, the only contested issue for the divorce proceeding was the division of marital assets.<sup>34</sup> The parties had assets of about \$46,000 and debts of about \$39,000, making the value of the marital estate about \$7,000.<sup>35</sup> The husband earned, or was capable of earning \$1,310 per week and the wife earned, or was capable of earning \$686. The trial court found that the wife rebutted the presumption of an equal division of the marital estate due to the earning abilities of the parties.<sup>36</sup> The wife's net award by the trial court was around \$11,500 and the husband's was around (-\$4,500).<sup>37</sup> The husband subsequently appealed.<sup>38</sup>

On appeal, the husband argued that the trial court abused its discretion by awarding the wife more than one-hundred percent of the net marital estate.<sup>39</sup> The court of appeals agreed with the husband, noting that "[a]bsent a finding of dissipation of assets, a property division cannot exceed the value of the marital assets without being considered an improper form of maintenance and an abuse of discretion."<sup>40</sup> The court reversed and remanded to the trial court for a reasonable division of the marital estate not to exceed the net value of the marital estate.<sup>41</sup>

Although this opinion cites the 1999 *Pitman*<sup>42</sup> case, its dicta reveals an important distinction between the two cases. *Pitman* stands for the proposition that, even when dissipation occurs, the divorce court may not divide the marital estate as though the dissipated asset remains fictionally part of the marital estate.<sup>43</sup> Further, *Pitman* notes that, where the remaining, non-dissipated marital property is insufficient to make the non-dissipating party whole, even after receiving one-hundred percent of the remaining marital estate, the aggrieved party's only remedy is to seek a rescission of the transaction that resulted in the dissipation.<sup>44</sup>

By contrast, the *Smith* court implies that, with a finding of dissipation, an award of more than one-hundred percent of the marital estate to the non-dissipating party may be proper.<sup>45</sup> In that regard, *Smith* appears to reverse a portion of the *Pitman* holding. In *Pitman*, the court of appeals found the trial court erred in awarding a money judgment to the wife to compensate her for stock that the husband dissipated through a transfer to family members as part of divorce planning.<sup>46</sup> Under *Smith*, that finding of dissipation would seem to support the overall division of the marital estate undertaken by the *Pitman* trial

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34. *Id.* at 859.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.* at 860.

39. *Id.*

40. *Id.* at 861.

41. *Id.*

42. *Pitman v. Pitman*, 721 N.E.2d 260 (Ind. Ct. App. 1999).

43. *See id.* at 267.

44. *Id.*

45. *See Smith*, 938 N.E.2d at 861.

46. *Pitman*, 721 N.E.2d at 267.

court.

In another case during the survey term, *Bandini v. Bandini*,<sup>47</sup> the court also addressed the restructuring of benefits so as to decrease divisible retirement benefits. In *Bandini*, the Indiana Court of Appeals reviewed a trial court decision considering whether the husband violated the dissolution decree when, after the divorce, he restructured his military benefits so as to reduce his monthly retirement benefit (that was being shared with the wife) in an effort to acquire an increase in new disability benefits (which the husband did not have to share with the wife).

In this case, the husband and wife married in 1971.<sup>48</sup> The husband was in the Army and Army Reserve until 1995.<sup>49</sup> The parties divorced in 2005.<sup>50</sup> The property settlement agreement that was incorporated into their decree provided that the “[w]ife shall have . . . (50%) of [h]usband’s USAR military retirement/pension plan by QDRO, including survivor benefits.”<sup>51</sup> The husband turned sixty in 2008 and began receiving retirement benefits.<sup>52</sup> The government divided each monthly payment so that the husband and wife each received approximately \$925.<sup>53</sup> Also, in 2008, the husband applied for Combat-Related Special Compensation (CRSC) based upon hearing problems that the husband experienced.<sup>54</sup> Receipt of CRSC payments requires the recipient to make waivers of a corresponding portion of retirement pay.<sup>55</sup> However, the net advantage to the recipient is that, unlike retirement pay, the CRSC payments are not taxable income.<sup>56</sup>

In July 2008, the husband was approved for CRSC of \$1006 per month, meaning that the retirement payment that he and wife each received dropped from \$925 each, to \$548 each.<sup>57</sup> The wife demanded that the husband begin paying her the shortfall between her prior payment and the new payment.<sup>58</sup> When the husband refused, the wife filed a contempt petition.<sup>59</sup> After a hearing, the trial court agreed with the wife and ordered the husband to make up for past missed payments, as well as prospectively pay the wife one-half of the his CRSC

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47. 935 N.E.2d 253 (Ind. Ct. App. 2010).

48. *Id.* at 255.

49. *Id.*

50. *Id.* at 255-56.

51. *Id.* at 256 (citation omitted).

52. *Id.*

53. *Id.*

54. *Id.*

55. Def. Fin. & Accounting Serv., *Combat Related Special Compensation (CRSC) FAQs*, MILITARY.COM, <http://www.military.com/benefits/military-pay/special-pay/combat-related-special-compensation-crsc-faqs.html> (last visited June 3, 2012).

56. *Id.*

57. *Bandini*, 935 N.E.2d at 256.

58. *Id.* at 256-57.

59. *Id.* at 257.

payments.<sup>60</sup> The husband appealed.<sup>61</sup>

On appeal, the court of appeals affirmed the trial court's determination.<sup>62</sup> The court reasoned that the decree had referred generically to an equal division of the husband's military retirement benefit and, to the extent that the husband unilaterally converted a portion of that retirement benefit to CRSC benefits, the wife was entitled to be made whole.<sup>63</sup>

In cases where a transfer contemplated under the decree could not be implemented, the court has considered reformation of the decree. For example, in *Evans v. Evans*,<sup>64</sup> the Indiana Court of Appeals considered whether the trial court acted within its discretion by reforming a decree, pursuant to Trial Rule 60(B), to provide an alternate transfer of property to the wife after it was determined that the transfer of retirement funds by QDRO originally contemplated under the decree could not legally be implemented.<sup>65</sup>

In *Evans*, the trial court issued its decree and property division orders on March 7, 2007.<sup>66</sup> The decree found a net marital estate of \$743,860, and concluded that each party should receive half, or \$371,930. The wife was allocated property worth \$263,255.<sup>67</sup> The remaining \$108,675 due to the wife to reach her fifty percent share was to be accomplished by a QDRO that allocated the wife an interest in the husband's UAW pension that would pay her the subject shortfall over ten years, plus five percent interest.<sup>68</sup>

In the following months, counsel for the parties twice failed to accomplish the acceptance by the plan administrator of a QDRO that would perfect the intended allocation.<sup>69</sup> Before the issue could be resolved, the wife died.<sup>70</sup> The wife's estate filed a motion in the divorce court and successfully replaced the wife as an interested party.

The wife's estate also filed a motion to compel payment of the outstanding \$108,675, which the trial court construed as a Trial Rule 60(B) motion.<sup>71</sup> After a hearing, the trial court concluded that transfer of the \$108,675 via QDRO was a legal impossibility, and instead issued an alternative order for the payment of \$108,675 against the husband and in favor of the wife's estate.<sup>72</sup> The husband appealed.

The husband asserted on appeal that the trial court abused its discretion by

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60. *Id.* at 257-58.

61. *Id.* at 258.

62. *Id.* at 264.

63. *Id.*

64. 946 N.E.2d 1200 (Ind. Ct. App. 2011).

65. *See id.* at 1202-03.

66. *Id.* at 1202.

67. *Id.*

68. *Id.*

69. *Id.* at 1202-03.

70. *Id.* at 1203.

71. *Id.*

72. *Id.*

correcting the decree pursuant to Trial Rule 60(B)<sup>73</sup> and, further, the motion filed by the wife's estate was not timely.<sup>74</sup> The court of appeals concluded that the estate's motion properly fell under the catch-all provision of Trial Rule 60(B)(8) to equitably implement relief from a judgment.<sup>75</sup> The court further held that, while the motion could have been filed earlier, it was nevertheless filed within a reasonable time under the circumstances.<sup>76</sup> Thus, the trial court's order was affirmed.<sup>77</sup>

The court further addressed settlement issues in other case law. Notably, the court of appeals determined that a trial court may exercise continuing jurisdiction to reexamine a property settlement where the nature of which is to seek clarification of a prior order.<sup>78</sup> In other significant case law, the court determined that a drafted property settlement agreement, that remains unsigned by one of the parties and is not yet court-approved, is not enforceable upon the death of one of the divorce litigants.<sup>79</sup>

4. *Maintenance Issues.*—During the survey period, the Indiana appellate courts have also addressed various maintenance issues. Evidence of changes in health and financial circumstance justify termination of incapacity-based spousal maintenance. The burden for modifying maintenance awards rests with the party seeking modification, and decision of whether to grant such modification is within the sound discretion of the trial court.<sup>80</sup>

However, an incapacity-based maintenance award is proper when the spouse received disability prior to the marriage and the incapacity was undisputed. In *Clokey v. Clokey*,<sup>81</sup> the Indiana Court of Appeals considered whether the trial court abused its discretion in making a \$2,000 per month incapacity-based maintenance award in favor of the wife, where she had been receiving social security disability payments prior to the marriage and the husband did not dispute her incapacity.<sup>82</sup>

The parties married in 2004.<sup>83</sup> The husband was a retired professor with

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73. *Id.*

74. *Id.* at 1204.

75. *Id.* at 1205-06.

76. *Id.* at 1206-07.

77. *Id.* at 1208. Judge Riley dissented in part. *Id.* (Riley, J., dissenting in part).

78. *See* *Shepherd v. Tackett*, 954 N.E.2d 477, 480-82 (Ind. Ct. App. 2011) (clarifying a settlement agreement consistent with the parties' intent is different from modifying the agreement, and under the circumstances, it was appropriate for the trial court to provide an alternate means of securing the husband's existing obligation after learning the original QDRO could not be enforced).

79. *Murdock v. Estate of Murdock*, 935 N.E.2d 270, 274 (Ind. Ct. App. 2010) (reversing and remanding to probate court to determine whether the husband's filing for divorce constituted forfeiture of his right to inherit from the wife's estate).

80. *See* *Pala v. Loubser*, 943 N.E.2d 400, 409 (Ind. Ct. App.) (affirming trial court's termination of spousal maintenance), *trans. denied*, 950 N.E.2d 1212 (Ind. 2011).

81. 956 N.E.2d 714, *aff'd on reh'g*, 957 N.E.2d 1288 (Ind. Ct. App. 2011).

82. *Id.* at 715-16.

83. *Id.* at 716.

assets exceeding \$600,000.<sup>84</sup> The wife was not working at the time, but was receiving social security disability of \$741 per month. During the marriage, the parties' assets apparently depleted quite rapidly, and they filed for bankruptcy in 2009.<sup>85</sup> In early 2010, the husband filed a petition for dissolution of marriage. After the final hearing, the trial court's decree included both an unequal division of the remaining marital estate to the wife, and an incapacity-based maintenance award of \$2,000 per month in the wife's favor.<sup>86</sup> The husband appealed, asserting the trial court failed to give consideration to his age, ability to pay, and other circumstances.<sup>87</sup> The husband further asserted that the trial court based the maintenance award, in part, on a finding that the husband had dissipated the marital estate.<sup>88</sup>

On review, the court of appeals concluded that the trial court's finding of dissipation by the husband related to its unequal division of the marital estate in the wife's favor, not its decision to order maintenance.<sup>89</sup> As such, the court of appeals concluded that the trial court did not abuse its discretion in issuing its maintenance award.<sup>90</sup>

### *C. Child Custody, Parenting Time and Third Party Visitation*

Custody, parenting time, and visitation disputes are a prominent area of Indiana family law. The following is a brief review of several notable cases from the survey period.

*1. Modification of Custody.*—In *Best v. Best*,<sup>91</sup> the Indiana Supreme Court reviewed a modification of custody decision. There, the mother and father divorced in 2004.<sup>92</sup> In 2005, the trial court approved the parties' agreement on child custody, parenting time, and support as to their two children, a daughter and a son. Significant litigation over parenting issues followed. In 2007, the trial court approved an agreed entry providing that the daughter would be enrolled in public schools.<sup>93</sup> The father subsequently filed a contempt petition against the mother, reciting that she had failed to enroll the daughter in public school.<sup>94</sup> The mother responded with a petition for modification. The trial court subsequently denied the mother's modification request, found the mother in contempt, and ordered the mother to enroll the daughter in public school.<sup>95</sup>

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84. *Id.*

85. *Id.* at 716 n.2.

86. *Id.* at 717.

87. *Id.* at 718.

88. *Id.* at 719.

89. *Id.*

90. *Id.*

91. 941 N.E.2d 499 (Ind. 2011).

92. *Id.* at 501.

93. *Id.*

94. *Id.*

95. *Id.*

In 2008, the father, citing the mother's additional non-compliance, filed a petition to modify custody.<sup>96</sup> The mother filed her own petition to modify custody in response. The trial court granted the father's petition to modify, giving him sole legal custody and primary physical custody of both the son and daughter.<sup>97</sup> The mother appealed.

In considering the mother's appeal, the court of appeals affirmed the trial court's order except as to two points: First, the court of appeals reversed the trial court's decision to modify *physical* custody of the daughter; second, the court of appeals reversed the trial court's finding of contempt.<sup>98</sup>

On transfer, the Indiana Supreme Court summarily affirmed the court of appeals' decision, except for its reversal of the trial court's modification of the physical custody of the daughter.<sup>99</sup> The mother had asserted that the trial court's modification lacked two supporting findings: 1) that a change in circumstances in any of the factors set forth Indiana Code section 31-17-2-21 had occurred, and 2) that the modification of physical custody was in the daughter's best interest.<sup>100</sup> However, the supreme court noted that the trial court's findings listed each of the statutory factors and specifically discussed evidence relevant to each factor.<sup>101</sup> The court also viewed the mother's appeal of the physical custody order as an impermissible request to reweigh evidence.<sup>102</sup> The court stated, "We find no error in the trial court's decision to place [the daughter's] primary physical custody with the father, subject to its specification of parenting time."<sup>103</sup> The decision of the trial court was affirmed, except for its finding of contempt as to the mother, which the court reversed through summary adoption of the court of appeals' determination of the contempt issue.<sup>104</sup>

Additionally, in *Werner v. Werner*,<sup>105</sup> the Indiana Court of Appeals considered whether the trial court's findings were sufficient to support its judgment under the "best interests of the child" standard, when the mother had waived argument as to the standard used when determining whether to modify custody.<sup>106</sup> In this case, the parties were married in 1999 and there were two children born of the marriage.<sup>107</sup> The mother filed a petition for dissolution in 2008.<sup>108</sup>

The parties agreed on all aspects of the dissolution other than physical

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96. *Id.*

97. *Id.*

98. *Id.* at 502.

99. *Id.* at 503-04.

100. *Id.* at 502.

101. *Id.* at 503.

102. *Id.*

103. *Id.* at 504.

104. *Id.*

105. 946 N.E.2d 1233 (Ind. Ct. App.), *trans. denied*, 962 N.E.2d 641 (Ind. 2011).

106. *See id.* at 1235-36.

107. *Id.* at 1235.

108. *Id.*

custody.<sup>109</sup> After the final hearing, the trial court issued its decree, which stated in pertinent part that the children were to reside with the mother through the end of the 2008-2009 and 2009-2010 school years, with the father having physical custody during the summers.<sup>110</sup> The trial court also called for a review hearing during summer 2010 to review the terms of the custody arrangement and stated that the determination of custody at that hearing would be “governed by the ‘best interests’ test, as opposed to the standard which governs the modification of custody orders.”<sup>111</sup> Neither party objected. As the review hearing began, the trial court reiterated its intention to utilize the “best interests” test.<sup>112</sup> The trial court then issued extensive findings and granted physical custody to the father.<sup>113</sup> The mother appealed.

On appeal, the mother argued that the court improperly applied the “best interests” standard instead of “best interests” *plus* a substantial change in a factor outlined under Indiana Code section 31-17-2-8.<sup>114</sup> The court of appeals determined that the mother waived this argument by not objecting to the court’s announcement to use the “best interests” standard in both the dissolution decree and at the beginning of the review hearing.<sup>115</sup>

The mother’s second challenge was “that the trial court’s detailed findings and judgment [were] clearly erroneous.”<sup>116</sup> The court viewed this argument “an invitation to reweigh evidence and assess witness credibility,” and refused to do so.<sup>117</sup>

2. *Third Party Visitation.*—In *Kitchen v. Kitchen*,<sup>118</sup> the Indiana Court of Appeals considered whether the trial court erroneously concluded that it had the authority to award third party visitation to persons other than a grandparent, parent or step-parent.<sup>119</sup>

In this case, sometime after the parties were married and a child was born, the mother filed a petition for dissolution of marriage.<sup>120</sup> In March 2006, the trial court entered a dissolution decree whereby the parents would share legal custody of the child, with the mother having physical custody and the father having regular parenting time.<sup>121</sup> The mother and child then lived with a maternal aunt

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109. *Id.* at 1236.

110. *Id.* at 1239.

111. *Id.* (emphasis omitted) (citation omitted).

112. *Id.* at 1240.

113. *Id.* at 1244.

114. *Id.* at 1245-46.

115. *Id.* at 1246.

116. *Id.* at 1247.

117. *Id.* Judge Kirsch dissented on the basis that the parents’ failure to object to the correct standard cannot operate as a waiver of utilizing the correct standard. *Id.* at 1247-48 (Kirsch, J., dissenting).

118. 953 N.E.2d 646 (Ind. Ct. App. 2011).

119. *Id.* at 647.

120. *Id.*

121. *Id.*

and uncle until December 2007, when the mother died after an extended illness.<sup>122</sup> At that same time, the father petitioned the trial court for immediate custody of the child, while the aunt and uncle filed a petition for guardianship. Ultimately, the father entered into an agreement with the aunt and uncle, which provided that the aunt and uncle would be granted temporary custody and the father was allowed parenting time.<sup>123</sup> However, this arrangement quickly deteriorated.

In June 2009, the trial court held the previously scheduled custody hearing.<sup>124</sup> The father was granted full custody of the child and the aunt and uncle were granted visitation. Then, in March 2010, the father filed a petition requesting that the trial court vacate the portion of its June 2009 custody order granting visitation to the aunt and uncle.<sup>125</sup> The trial court denied the father's petition, finding that the time for such a challenge had passed.<sup>126</sup>

On review, the Indiana Court of Appeals analyzed statutes and case law, which generally do not award third party visitation to persons other than a grandparent, parent or step-parent.<sup>127</sup> Noting that parental rights are constitutionally protected under the Fourteenth Amendment, the court "adhere[d] to the limitation of [Indiana] statutes and case law conferring standing [to petition for visitation] only to parents, grandparents, and step-parents."<sup>128</sup> Thus, the court, in accordance with these findings, determined that "[T]he trial court erred in concluding that it had the authority to grant third-party visitation to persons other than parents, step-parents, or grandparents."<sup>129</sup>

4. *Grandparent Visitation.*—In *M.S. v. A.L.S. (In re J.D.S.)*,<sup>130</sup> the Indiana Court of Appeals considered whether the grandmother's petition to modify grandparent visitation was properly dismissed due to a lack of standing.<sup>131</sup> Here, the father and mother had two children during their marriage.<sup>132</sup> In 2002, the father filed a petition for dissolution of marriage. In 2003, the grandmother intervened in the dissolution requesting grandparent visitation with the children. A month later, the trial court approved an agreed entry that gave grandmother visitation.<sup>133</sup>

In 2007, the grandmother sought to modify the visitation. After a hearing, the

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122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.* at 648.

127. *Id.* at 648-49.

128. *Id.* at 649-50 (citing *Troxel v. Granville*, 530 U.S. 57, 65 (2000) ("[T]he interest of parents in the care, custody, and control of their children— is perhaps the oldest of the fundamental liberty interests recognized by this court.")).

129. *Id.* at 650.

130. 953 N.E.2d 1187 (Ind. Ct. App. 2011), *trans. denied*, 2012 Ind. LEXIS 319 (Ind. Jan. 5, 2012).

131. *Id.* at 1188.

132. *Id.*

133. *Id.*

trial court modified the grandmother's visitation and included a provision that the grandmother would not allow the children to have contact with their father during her visitation time and that any violation would subject the grandmother's visitation to termination.<sup>134</sup>

In 2008, the mother filed a contempt petition against the grandmother, asserting that the grandmother permitted contact between the father and the children during the grandmother's visitation.<sup>135</sup> After a hearing, the trial court ordered that the grandmother's visitation be "TERMINATED" as a result of the violation.<sup>136</sup> In February 2010, the father's parental rights to the children were terminated, and the mother's new husband concurrently adopted the children. Three months later, the grandmother filed a petition to "modify" her grandparent visitation.<sup>137</sup> The mother moved to dismiss the petition, which was granted. The grandmother appealed.

On review, the court of appeals concluded that, at the time the grandmother's petition was filed in 2010, the father's parental rights had already been extinguished, thus removing the grandmother's standing to seek visitation.<sup>138</sup> While the grandmother previously enjoyed a visitation order, in 2008 it was expressly "terminated," not suspended, limited, or otherwise reduced in a temporary manner.<sup>139</sup> Thus, the grandmother's 2010 petition, despite its title, was not really a petition to modify visitation but instead a petition to establish visitation anew.<sup>140</sup> Since the grandmother's petition was not filed until after the father's parental rights had been terminated, the grandmother lacked standing to seek visitation and trial court's dismissal of her petition was proper.<sup>141</sup>

## II. CHILD SUPPORT RULES AND GUIDELINES

The following section reviews noteworthy cases on the topic of child support and the Indiana Child Support Rules and Guidelines (the "Guidelines").

### A. Calculating Child Support

1. *Income Averaging Technique.*—In *Trabucco v. Trabucco*,<sup>142</sup> the Indiana Court of Appeals considered, among other things, whether the trial court properly relied upon the use of an "income averaging" technique to determine weekly gross income for child support purposes.<sup>143</sup> The husband and wife married in 1988, and had two children of the marriage. The husband worked as a physician,

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134. *Id.*

135. *Id.* at 1188-89.

136. *Id.* at 1189.

137. *Id.*

138. *Id.* at 1190.

139. *Id.*

140. *Id.*

141. *Id.* at 1190-91.

142. 944 N.E.2d 544 (Ind. Ct. App.), *trans. denied*, 962 N.E.2d 640 (Ind. 2011).

143. *Id.* at 547.

while the wife was a homemaker. In 2003, the parties moved from New York to Columbus, Indiana.<sup>144</sup>

A marijuana possession conviction of the husband resulted in a six-month suspension of the husband's medical license.<sup>145</sup> Struggling to rehabilitate his medical career, the husband relocated to Nevada in 2007 and opened an urology clinic. The husband reported an annual income of \$104,026 for 2007 and \$67,407 for 2008.<sup>146</sup> The wife filed her petition for dissolution in 2007. Under the terms of a court preliminary entry, the husband transferred \$200,000 from marital accounts to a separate account to fund the college expenses for the parties' son, with left over funds being divided equally between the parties.<sup>147</sup>

After a final hearing, the trial court issued its decree. The decree calculated child support using, as the husband's income, an average of the amounts reported on the tax returns from 2004 through 2008, after throwing out the highest and lowest income figures.<sup>148</sup> The decree also awarded the husband an E\*Trade brokerage account using a date of filing value, even though the account lost substantial value during the pendency due to market declines.<sup>149</sup> The decree also awarded various IRA's to the parties.<sup>150</sup> The decree allocated sixty-four percent of the marital estate to the wife and thirty-six percent of the marital estate to the husband.<sup>151</sup> The husband appealed.

On appeal, the husband challenged the income averaging technique used by the trial court to calculate his income for child support purposes.<sup>152</sup> The husband argued that his income at the time of the final hearing was very low due to his relocation to Nevada, and that the trial court's income averaging technique amounted to an unfair imputation of income.<sup>153</sup> The Indiana Court of Appeals rejected the husband's argument, first noting that income averaging is a recognized child support income calculation method, especially for the self-employed.<sup>154</sup> The court also noted that, because the husband failed to present detailed documentation of his income, he cannot assign error to the method used by the trial court.<sup>155</sup>

The husband also alleged trial court error for including the monies used to fund the college account in the marital estate.<sup>156</sup> The court of appeals rejected this argument, noting that it was uncontroverted that the account was funded with

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144. *Id.*

145. *Id.*

146. *Id.* at 548.

147. *Id.*

148. *Id.*

149. *Id.* at 558.

150. *Id.* at 556-57.

151. *Id.* at 548.

152. *Id.* at 549.

153. *Id.* at 551-52.

154. *Id.* at 552.

155. *Id.* at 553.

156. *Id.*

marital property.<sup>157</sup>

Next, the husband assigned error to the “double counting” of certain IRA’s.<sup>158</sup> The record suggested that various individual IRA’s may have been consolidated into a single IRA prior to the final hearing, but the decree allocated them as separate and distinct assets.<sup>159</sup> The court of appeals remanded the issue for determination by the trial court as to whether “double counting” of the IRA’s had occurred.<sup>160</sup>

Finally, the husband claimed error as to the valuation of the E\*Trade brokerage account that was awarded to him under the decree.<sup>161</sup> Near the date of filing, the account had a value of \$325,132.<sup>162</sup> Closer to final hearing, the account was worth just \$97,470.<sup>163</sup> The husband admitted to withdrawing just over \$50,000 from the account during the pendency, but asserted that the remaining decline of \$176,000 was due to market decline and should not be counted as part of his share of the marital estate.<sup>164</sup> The trial court awarded the account to the husband with a date of filing value of \$325,132.<sup>165</sup> The court of appeals recited the well-settled doctrine that a trial court has discretion to value marital property on the date of filing, the date of final hearing, or any date in between.<sup>166</sup> As such, the trial court’s valuation date was not an abuse of discretion.<sup>167</sup>

2. *Separate Child Support Worksheets.*—Separate child support worksheets should not be used for each child. In *In re Marriage of Blanford*,<sup>168</sup> the Indiana Court of Appeals considered whether the trial court erred by calculating child support using separate child support worksheets for each child, where the parties had two children, one of whom divided time equally between the parents, and one of whom lived full-time with the mother.<sup>169</sup>

In this case, the parties divorced in 1998, with two children.<sup>170</sup> In 2009, the trial court entertained various motions concerning modification of custody, parenting time, and child support. After hearing evidence, the court ordered that one child would divide equal time between the parties, while the other child would spend full-time with the mother and have no overnight parenting time with the father due to a deterioration in the father-child relationship. In calculating the new child support level, the trial court used two child support worksheets, one

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157. *Id.* at 554.

158. *Id.* at 556-57.

159. *Id.* at 557.

160. *Id.*

161. *Id.* at 558.

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.* at 559-60 (citing *Reese v. Reese*, 671 N.E.2d 187, 191 (Ind. Ct. App. 1996)).

167. *Id.* at 560.

168. 937 N.E.2d 356 (Ind. Ct. App. 2010).

169. *Id.* at 358.

170. *Id.* at 359.

giving the father no parenting time and another giving the father 182 overnight parenting time credit.<sup>171</sup> The father was ordered to pay child support to the mother in the amount of the total of the two worksheets.<sup>172</sup> The father appealed.

The father's appeal highlighted a shortcoming of the child support worksheet relevant to the case, in that use of a child support worksheet contemplates that all of the parties' children will have the same number of overnights with the non-custodial parent.<sup>173</sup>

The Indiana Court of Appeals noted that the trial court's method for calculating child support unfairly inflated the father's support obligation because of the recognition that additional children cost only marginally more to raise.<sup>174</sup> Thus, the trial court's use of two child support worksheets, one for each child, treated each child as that most expensive "first child," and never gave the father the appropriate, discounted support amount for a second child.<sup>175</sup>

The father argued on appeal that the trial court should have instead used one child support worksheet that included two children, and then, for the parenting time credit, used an average number of overnights for the two children.<sup>176</sup> The court of appeals declined to adopt the father's proposed method, noting that this method "might extend [the father] too much or too little credit in calculating his support obligation[.]" because the cost for the mother to have one child full-time, and a second child half-time, is not necessarily the same as having two children three-fourths of the time.<sup>177</sup>

On remand, the Indiana Court of Appeals instructed the trial court to calculate support with both children on one support worksheet, and provided that the trial court:

adjust the number of days of overnight credit to reach what appears to be an appropriate result for setting [the father's] weekly support obligation. Because the Guidelines do not afford a basis on which to set the number of days of overnight credit, the trial court must explain the reasons for its use of the specific number of days of overnight credit in its order.<sup>178</sup>

The trial court's child support order was reversed and remanded.<sup>179</sup>

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171. *Id.* at 360-61.

172. *Id.* at 362.

173. *Id.* at 360-61.

174. *Id.*

175. *See id.*

176. *Id.* at 361-62. That is, one child at zero overnights and a second child at one hundred eighty-two overnights resulted in an average of ninety-one overnights. *See id.*

177. *Id.* at 362.

178. *Id.*

179. *Id.*

*B. Complications on Ability to Pay Child Support*

In *J.M. v. D.A.*,<sup>180</sup> the Indiana Court of Appeals considered, among other things, whether the trial court acted within its discretion by imputing income to the father after he decided to leave his job and attend school full-time.<sup>181</sup>

In 2003, the parties divorced with two children. The father was ordered to pay child support. In 2008, the father petitioned to modify child support.<sup>182</sup> At the hearing regarding the father's petition, evidence was presented that the father was fired by Tyson Foods for abandoning his job.<sup>183</sup> Prior to his firing, the father had been earning \$13 per hour plus bonuses. After leaving Tyson, the father became a full-time student at Ivy Tech.<sup>184</sup> After the hearing, the trial court denied the father's requested modification and, further, found the father in contempt for non-payment of child support.<sup>185</sup> The father appealed.

The court of appeals provided an extended discussion of the issue of voluntary underemployment and imputation of income in child support calculations.<sup>186</sup> Ultimately, the court of appeals concluded that the father's efforts to go back to school full-time, while admirable, were not responsible in light of having children to support (including two children with the mother, and two subsequent children).<sup>187</sup>

The court then noted that contempt for non-payment of child support is proper only upon a two-part finding: 1) "that the delinquency was the result of a willful failure by the parent to comply with the support order," and 2) that the "parent ha[d] the financial ability to comply."<sup>188</sup> Here, the trial court made no finding concerning the father's ability to comply.<sup>189</sup> The Indiana Court of Appeals concluded that the record did not support such a finding, and thus, the trial court's finding of contempt against the father was reversed.<sup>190</sup>

Judge Bradford dissented. He would have affirmed the trial court's contempt finding, noting that the father did not dispute that he was aware of his ongoing child support obligation, yet chose to go to school full-time instead of working and supporting his children.<sup>191</sup>

In other case law during the survey period, the court further considered the appropriateness of a contempt order for non-payment of child support. The court has further reinforced that a finding of contempt is appropriate only where

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180. 935 N.E.2d 1235 (Ind. Ct. App. 2010).

181. *Id.* at 1237.

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.* at 1238.

186. *Id.* at 1239-42.

187. *Id.* at 1237, 1242.

188. *Id.* at 1243.

189. *Id.* at 1244.

190. *Id.*

191. *Id.* at 1244-45.

violation of the underlying court order is willful.<sup>192</sup>

*C. Legal Standards and Bright-Line Rules in Child Support Modification*

During the survey period, the Indiana appellate courts also issued case law regarding child support modification. While the provisions of Indiana Code section 31-16-8-1 provide grounds for modification,<sup>193</sup> in certain cases a substantial and continuing change in circumstances must also support modification.<sup>194</sup>

In *Holtzleiter v. Holtzleiter*,<sup>195</sup> the Indiana Court of Appeals considered whether a party who establishes satisfaction of the statutory bright-line test for child support modification (that is, at least one year has passed since support was last ordered, and a new support order would differ by at least twenty percent from the existing order) is entitled to modification.<sup>196</sup> In 2008, the parties divorced, with two children. Pursuant to the decree, the father was ordered to pay child support of \$317 per week. This was based upon the father's gross income at the time of \$89,239 and income imputed to the mother based upon the minimum wage.<sup>197</sup> Over a year later, the father filed a petition to modify. In his petition, the father asserted that there had been "an ongoing and substantial change in circumstances warranting a modification of the child support."<sup>198</sup>

At the parties' hearing, the father introduced a worksheet indicating that his existing support obligation was 43.5% higher than it would be under a current application of the Guidelines.<sup>199</sup> This differential was attributed to the father losing his job and taking a new job that paid \$30,000 per year less, and the

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192. L.R. v. N.H. (*In re* G.B.H.), 945 N.E.2d 753, 756 (Ind. Ct. App. 2011) (finding abuse of discretion where the father had paid child support while employed, made diligent efforts to find employment after losing his job, and that the father resumed paying support when his unemployment benefits commenced).

193. IND. CODE § 31-16-8-1 (2011) ("Provisions of an order with respect to child support or an order for maintenance . . . may be modified or revoked. . . . Except as provided in section 2 of this chapter, modification may be made only: (1) upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable; or (2) upon a showing that: (A) a party has been ordered to pay an amount in child support that differs by more than twenty percent (20%) from the amount that would be ordered by applying the child support guidelines; and (B) the order requested to be modified or revoked was issued at least twelve (12) months before the petition requesting modification was filed.").

194. *See* Reinhart v. Reinhart, 938 N.E.2d 788, 792-93 (Ind. Ct. App. 2010) (estopping the father from relying on the provisions in Indiana Code section 31-16-8-1 because he agreed to a support amount in excess of the guideline amount, and failed to show a substantial and continuing change in circumstances).

195. 944 N.E.2d 502 (Ind. Ct. App. 2011).

196. *Id.* at 503.

197. *Id.* at 504.

198. *Id.* (citation omitted).

199. *Id.* at 503.

mother finding employment.<sup>200</sup> However, the trial court denied the father's petition to modify, concluding that, while there had been a change in circumstances, it did not render the existing support level unreasonable.<sup>201</sup> The father appealed.

The court of appeals concluded that a petition to modify child support need not expressly plead satisfaction of the twelve-month/twenty percent change bright-line test to be considered by the trial court, something the father had not expressly pleaded.<sup>202</sup> Therefore, the father did not waive proceeding under the modification statute.<sup>203</sup> Since the father satisfied the twelve-month/twenty percent criteria, a modification of the father's support was appropriate.<sup>204</sup> Thus, the trial court's denial of the father's petition to modify support was reversed and remanded for further proceedings.<sup>205</sup>

*D. College Expenses, Ability of an Adult Child to Earn  
Income, and Repudiation*

*1. College Expense Obligations.*—In *R.R.F. v. L.L.F.*,<sup>206</sup> the court of appeals considered, among other things, whether the trial court erred in not including the mother's tax credits when allocating college expense obligations.<sup>207</sup> The parties had two children, born in 1987 and 1991.<sup>208</sup> Upon the parties' dissolution of marriage in 2001, the mother had primary physical custody and the father paid child support and exercised parenting time. In 2005 and 2006, the parties entered into agreed orders that modified the father's support obligation and provided that the father would pay college and private school expenses for the children.<sup>209</sup> In 2008, the parties entered into another agreed entry, providing for the father to pay a lump sum for support from March 2008 to May 2009 (the youngest child's eighteenth birthday).<sup>210</sup> The parties agreed to address any further support after May 2009 when the time came. The parties also stipulated that upon payment of the lump sum, the father would have no arrearage and would be current through May 2009.<sup>211</sup>

Upon the youngest child's enrollment in college, in the fall of 2009, the

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200. *Id.* at 505.

201. *Id.*

202. *Id.* at 506. On this point, the court acknowledged that it was reaching a different conclusion than the 2000 *Hay* case, decided by another panel of the Indiana Court of Appeals. *Id.*

203. *Id.*

204. *Id.* at 507.

205. *Id.*

206. 935 N.E.2d 243 (Ind. Ct. App. 2010), *decision reached on appeal by* 956 N.E.2d 1135 (2011).

207. *Id.* at 245.

208. *Id.*

209. *Id.*

210. *Id.*

211. *Id.*

mother petitioned to modify support, establish educational obligations, establish support for the period after May 2009, and to adjudicate arrearage.<sup>212</sup> The trial court granted the petition, establishing the amount of college expenses due by each party and rejecting the father's contention that support should begin only as of September 2009 (the date of filing of the petition).<sup>213</sup> The trial court determined that instead of treating the petition as a petition to modify, it was to be treated as a petition to establish support, and thus, could relate back to May 2009.<sup>214</sup>

The father also requested set-offs for nonconforming support contributions.<sup>215</sup> The trial court found that these set-offs did not meet the requirements set forth by Indiana law, and therefore, declined to give the father any set-off.<sup>216</sup> The trial court also declined the father's request for reimbursement from the mother for tax credits she received for college payments that the father was not entitled to.<sup>217</sup> The trial court noted it was without jurisdiction to "usurp federal tax law" that allowed the credits.<sup>218</sup> The father appealed, presenting three issues for review: the order to pay retroactive support; the denial to award the father a set-off in light of the tax credits the mother will receive as a result of the child's enrollment in college; and the denial to award the father credit for nonconforming support payments.<sup>219</sup>

The Indiana Court of Appeals found that the trial court did not err when it treated the "modification" petition as a petition to establish support for the time period after May 2009, giving weight to the prior agreed entry that stated the parties would revisit the issue when the time comes.<sup>220</sup> The court held that the provision in the parties' agreed entry, whereby the father ceased support upon the child's eighteenth birthday, was contrary to law and void, as the child had not been emancipated.<sup>221</sup>

Next, the court considered the father's contention that the trial court did not properly consider the significant tax credit the mother would receive for her contribution to the child's college expenses before assigning each party's obligation.<sup>222</sup> The division of expenses was ordered to be approximately sixty-four percent for the father and thirty-six percent for the mother.<sup>223</sup> After the mother's significant tax credit, her actual obligation was to be only 1%.<sup>224</sup> Citing

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212. *Id.* at 246.

213. *Id.*

214. *Id.* at 246-47.

215. *Id.* at 247.

216. *Id.*

217. *Id.* at 248.

218. *Id.*

219. *Id.* at 248-52.

220. *Id.* at 248.

221. *Id.* at 248-49.

222. *Id.* at 249.

223. *Id.*

224. *Id.* at 251.

Guideline 8(b) and *Borum v. Owens*,<sup>225</sup> the court remanded with the instructions that the trial court consider the reduction in the parents' obligation toward college expenses realized by the mother's tax credit and then apportion the parties' obligation appropriately.<sup>226</sup>

The father's final assertion was the trial court erred in failing to give him credit for certain nonconforming support payments.<sup>227</sup> After the May 2009 child support obligation ceased, the father made several payments for the child "in much the same way that he would have had the child support order been in place."<sup>228</sup> The court treated these as payments of an undefined support obligation.<sup>229</sup> The court remanded with the instruction that "the [trial] court shall issue an order crediting the [f]ather for those payments."<sup>230</sup>

2. *Support to an Adult Child.*—In *Sexton v. Sedlak*,<sup>231</sup> the Indiana Court of Appeals considered, among other things, whether the trial court acted within its discretion by not terminating child support as to a child who was over eighteen and not enrolled in school, even though there was evidence presented that the child was earning in excess of the minimum wage.<sup>232</sup>

The parties married in 1989, and divorced with three children in 1998. Pursuant to the parties' original decree, the parties shared legal and physical custody of the children, and no child support was due between the parties. In 2002, following a motion by the mother and a hearing, primary physical custody of the children shifted to the mother, and the father was ordered to pay support of around \$154 per week.<sup>233</sup> The father paid accordingly through August 2005, when the parties apparently made an informal change in the custody arrangement; two months later, the mother filed a petition to modify child support, reciting that the parties had returned to shared custody and that child support payments should be terminated.<sup>234</sup> The trial court denied that motion and took no action, referring the parties to seek legal counsel, to prepare child support worksheets, etc. No further action was taken on this support modification petition.<sup>235</sup> In 2006, the parties signed and notarized an agreement that provided for shared custody and recited that no child support payments would be due between the parties.

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225. 852 N.E.2d 966, 969 (Ind. Ct. App. 2006) ("If the trial court determines that an order for college expenses is appropriate, the parents' contributions shall be roughly proportional to their respective incomes.").

226. *R.R.F.*, 935 N.E.2d at 250-51.

227. *Id.* at 251.

228. *Id.* at 252.

229. *Id.*

230. *Id.*

231. 946 N.E.2d 1177 (Ind. Ct. App. 2011), *trans. denied*, 2011 Ind. LEXIS 666 (Ind. July 20, 2011).

232. *Id.* at 1180.

233. *Id.*

234. *Id.*

235. *Id.* at 1181.

However, the agreement was not filed with the trial court.<sup>236</sup>

In early 2009, the oldest of the parties' three children turned twenty-one.<sup>237</sup> In June 2009, the father filed a motion to emancipate the parties' middle child, who was nineteen, along with a request to modify custody and support for the youngest child.<sup>238</sup> Following a hearing, the father's request to emancipate the middle child was denied. Further, the trial court calculated a net arrearage of \$28,000 based primarily upon the father's lack of support payments since 2005, and in spite of the apparent informal agreement between the parties that no support would be due during that time.<sup>239</sup> The trial court also reduced the father's support obligation, from the \$154 per week obligation that had existed since 2002, to \$117 per week.<sup>240</sup> However, the support was lowered retroactively only to June 2009 when the father's petition to modify was filed.<sup>241</sup> The father appealed.

The father's primary argument on appeal was that the trial court erred when it did not retroactively modify his child support obligation to \$0 for the period back to the mother's 2005 petition to modify that was never acted upon.<sup>242</sup> The court of appeals disagreed, concluding that the trial court acted within its discretion by using June 12, 2009, as the effective date for support modification.<sup>243</sup>

Next, the father assigned error to the trial court's refusal to terminate child support as to the parties' middle child.<sup>244</sup> It was uncontroverted that this child was over eighteen and was not attending or enrolled in school.<sup>245</sup> Disputed, however, was the ability of this child to support herself.<sup>246</sup> The father referred to evidence in the record of this child earning in excess of the minimum wage.<sup>247</sup> However, the court of appeals concluded that this earning history did not per se establish cause to terminate weekly support and, instead, the father was simply asking the court of appeals to reweigh evidence. The court of appeals concluded that the trial court's decision not to terminate weekly support as to the parties' middle child was within its discretion.<sup>248</sup>

Finally, the father appealed the calculation of his new child support obligation.<sup>249</sup> The court of appeals rejected various arguments by the father as to

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236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.* at 1181-82.

240. *Id.* at 1182.

241. *Id.*

242. *Id.* at 1183.

243. *Id.* at 1186.

244. *Id.*

245. *Id.* at 1187.

246. *Id.*

247. *Id.*

248. *Id.* at 1188.

249. *Id.*

the trial court's imputation of income based upon voluntary underemployment.<sup>250</sup> However, the court of appeals agreed with the father that the trial court erred when it failed to consider the amount that the parties' middle child was earning in calculating the child support amount.<sup>251</sup> Thus, while the trial court's order was generally affirmed, the calculation of the new support level was reversed and remanded for consideration of the middle child's ability to support herself in calculating the father's child support obligation.<sup>252</sup>

3. *Repudiation.*—Repudiation is not a release of responsibility for child support payments but may obviate a parent's obligation to pay certain expenses. In *Lechien v. Wren*,<sup>253</sup> the Indiana Court of Appeals considered, among other things, whether repudiation was a release of a parent's financial responsibility for the payment of child support.<sup>254</sup> The parties were married and had two children.<sup>255</sup> The daughter was born in 1987 and the son was born in 1991. In 1999, the mother filed a petition for dissolution of marriage, and in 2000 a decree of dissolution was granted. The court awarded physical custody of both children to the mother.<sup>256</sup> Then, in 2008, the court entered a nunc pro tunc order, restoring the mother's maiden name. Also in 2008, the court ordered the father to pay child support for the son in the amount of \$177 per week. In 2009, the son filed a petition to have his last name changed from the father's last name to the mother's maiden name.<sup>257</sup> "During the hearing on his request, the son acknowledged that by changing his name a judge could later decide that he was repudiating his father and that he did not want any help from him and that support could end."<sup>258</sup>

In 2010, the mother filed a modification petition and requested support for son's higher education. She alleged that the son would be residing with her while attending college at IUPUI and requested support modification and a higher educational support order dividing college expenses between herself, the father, and the son.<sup>259</sup> The trial court found that the son and the father had a troubled relationship since the divorce, with the father having sporadic parenting time.<sup>260</sup> The trial court also found that in spite of the judge's warning of the possible adverse effects of the requested name change upon receiving college money from

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250. *Id.* at 1189.

251. *Id.* at 1190.

252. *Id.* Judge Kirsch dissented in a separate opinion, expressing concern that the majority opinion "promote[d] formalism over fairness" in addressing the retroactive modification. *Id.* at 1190-91 (Kirsch, J., dissenting).

253. 950 N.E.2d 838 (Ind. Ct. App. 2011).

254. *Id.* at 840.

255. *Id.*

256. *Id.*

257. *Id.*

258. *Id.*

259. *Id.*

260. *Id.* In fact, the trial court determined that the father had no parenting time since 2008. *Id.* (citation omitted).

the father, the son nevertheless sought to change his name to the mother's maiden name.<sup>261</sup> Pursuant to Indiana case law, the trial court concluded that the son had repudiated the father and was not entitled to college expense contribution from him.<sup>262</sup> The trial court further concluded that the father's duty to pay child support should be modified, ordering the father to pay \$69 per week for the son.<sup>263</sup>

The mother appealed the trial court's order, raising two issues: 1) whether the evidence supported the trial court's determination that the son repudiated his relationship with the father; and 2) whether the trial court erred in modifying the father's weekly child support obligation.<sup>264</sup>

Upon review, the court found that the evidence supported the trial court's conclusion that the son repudiated his relationship with the father.<sup>265</sup> The court then found "that while Indiana law recognizes that a child's repudiation of a parent under certain circumstances will obviate a parent's obligation to pay certain expenses, . . . any such repudiation is not a 'release of a parent's financial responsibility to the payment of child support.'"<sup>266</sup> The court concluded that "repudiation [was] not an acceptable justification to abate support payments for a child less than twenty-one years of age."<sup>267</sup>

Based upon the record and the Guidelines, the court concluded that the trial court erred in adjusting the father's support obligation.<sup>268</sup> The court found this result

consistent with the general duty of a parent to provide support for a child until the child is twenty-one years old, and as previously stated repudiation [was] not a release of a parent's financial responsibility for the payment of child support and [was] not an acceptable justification to abate support payments for a child less than twenty-one years of age.<sup>269</sup>

The court affirmed the trial court's determination that the son repudiated his relationship with the father, reversed the court's modification of the father's child support obligation from \$177 to \$69, and remanded the case to the trial court with instructions to enter a child support order consistent with its opinion.<sup>270</sup>

### III. ISSUES PERTAINING TO RELOCATION

From time to time in Indiana family law issues pertaining to relocation,

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261. *Id.* at 841.

262. *Id.*

263. *Id.*

264. *Id.* at 842, 844.

265. *Id.* at 844.

266. *Id.* at 845 (quoting *Bales v. Bales*, 801 N.E.2d 196, 199 (Ind. Ct. App. 2004)).

267. *Id.* (citing *Bales*, 801 N.E.2d at 199-200).

268. *Id.* at 847.

269. *Id.* (citing *Bales*, 801 N.E.2d at 199-200).

270. *Id.*

attempts at jurisdictional advantage by maintaining a substantial connection to Indiana, and enforcement of foreign child support orders arise. The following section reviews several such noteworthy cases from the survey period.

*A. Burden of Demonstrating a Proposed Relocation*

In *T.L. v. J.L.*,<sup>271</sup> the Indiana Court of Appeals clarified case law regarding the “legitimate” and “good faith” reasons for a proposed relocation. In dicta, the court of appeals suggested that the first prong of the relocation test—that the reasons for the proposed relocation are legitimate and made in good faith—was not intended to be too high a bar, such that the trier-of-fact never gets to the more important second prong: the best interests of the child.<sup>272</sup>

In *T.L.*, the parties married in 1999, had two children together, and divorced in 2009.<sup>273</sup> They shared joint legal custody of the children, with the mother having primary physical custody of the children subject to the father’s parenting time, which was exercised regularly. The father had been a lifelong resident of Montgomery County, Indiana. In 1998, the mother moved to Montgomery County from Tennessee for her job.<sup>274</sup> The father had extended family in the area; the mother had extended family back in Tennessee.

In early 2010, the mother filed a notice of intent to relocate to Tennessee after her employer closed its operations.<sup>275</sup> The mother’s petition stated a variety of reasons for the proposed move: her older family members were in poor health and need her care; she had a better support network in Tennessee; she had better employment opportunities in Tennessee; and the children would have an excellent quality of life in Tennessee.<sup>276</sup> The father objected to the mother’s proposed relocation.

The trial court concluded that the mother had failed to satisfy the first prong of the relocation test. Specifically, the court found that the mother “failed to meet her burden of proof that the proposed relocation [was] for a legitimate reason and in good faith.”<sup>277</sup> The trial court also noted that the father had “clearly shown that the move would not be in the best interests of the children.”<sup>278</sup> The mother appealed.

The Indiana Court of Appeals, reviewing this issue, noted:

[O]ur case law has not set forth explicitly the meaning of legitimate and good faith reasons in the relocation context . . . it is common in our society that people move to live near family members, for financial

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271. 950 N.E.2d 779 (Ind. Ct. App. 2011), *reh’g denied*, 2011 Ind. App. LEXIS 1617 (Aug. 17, 2011).

272. *Id.* at 788.

273. *Id.* at 780.

274. *Id.*

275. *Id.* at 782.

276. *Id.*

277. *Id.* at 783 (citation omitted).

278. *Id.* (citation omitted).

reasons, or to obtain or maintain employment. We infer that these and similar reasons—such as mother gave and the trial court largely accepted—are what the legislature intended in requiring that relocation be for “legitimate” and “good faith” reasons. . . .

If part one, the requirement of a legitimate and good faith reason, posed an inordinately high bar for a relocating parent to meet, it could too often prevent trial courts from reaching part two and appropriately deciding the dispute based upon the best interests of the affected child.<sup>279</sup>

Thus, the court of appeals concluded that the mother had advanced legitimate, good faith reasons for the proposed relocation.<sup>280</sup> Nevertheless, after a detailed review of the factors affecting the children were they to remain in Indiana or relocate to Tennessee, the court of appeals concluded that “the evidence supported the trial court’s conclusion that relocation . . . was not in the children’s best interests.”<sup>281</sup> As a result, the trial court’s judgment denying the mother’s request to relocate was affirmed.<sup>282</sup>

#### *B. Jurisdiction in the Aftermath of Relocation*

In *Lombardi v. Van Deusen*,<sup>283</sup> the Indiana Court of Appeals considered whether the trial court had jurisdiction over a child support modification issue, in the aftermath of relocation. The parties’ marriage was dissolved in 1999 and the father was ordered to pay child support.<sup>284</sup> After the divorce, the father moved to Illinois. The mother later filed for a support modification in the Illinois county where the father lived. The Illinois county had jurisdiction pursuant to an agreed order filed in the Indiana court and signed by both parties.<sup>285</sup> The Illinois court modified the child support order. The father did not object to Illinois jurisdiction.

In 2004, the father filed a motion with the Indiana court asking it to reassume jurisdiction over parenting and child support matters.<sup>286</sup> The mother objected. The Indiana court made a CCS entry indicating that since both parties wished that jurisdiction remain in Indiana, it reassumed jurisdiction.<sup>287</sup> The mother again objected. Later that year, the father filed a petition to modify child support in the Indiana court, arguing that Illinois no longer had jurisdiction because he moved to Pennsylvania.<sup>288</sup> The mother again objected. The Indiana court took no action on this petition for five years, and during this time, the mother received no child

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279. *Id.* at 787 (citations omitted).

280. *Id.*

281. *Id.* at 790-91.

282. *Id.* at 791.

283. 938 N.E.2d 219 (Ind. Ct. App. 2010).

284. *Id.* at 221.

285. *Id.*

286. *Id.*

287. *Id.* at 221-22.

288. *Id.* at 222.

support from the father.<sup>289</sup> In 2009, the father filed a motion to establish child support, arguing for the first time that the Illinois court had not had subject matter jurisdiction; therefore, its prior modification of the original Indiana support order was void.<sup>290</sup>

The Indiana court held a hearing on this motion in 2009.<sup>291</sup> Immediately prior to the hearing, the father and his counsel attended a conference in chambers, which the mother (who appeared pro se) was not permitted to attend. Additionally, during the hearing, the mother was not allowed uninterrupted argument. After cutting the hearing short at the request of the father's attorney, the trial court granted the father's motion, finding the Illinois court never had jurisdiction and that the original support order remained in effect.<sup>292</sup> The mother appealed.

The court of appeals was unconvinced by the father's argument that the Illinois court never had jurisdiction.<sup>293</sup> The mother properly registered the child support order in Illinois, and the parties filed an agreed order in the Indiana court transferring jurisdiction over child support issues to Illinois.<sup>294</sup> Indiana no longer had jurisdiction over the child support at that point.<sup>295</sup>

Turning toward the Indiana court's actions, the appellate court determined that the Indiana court never reassumed jurisdiction after the Illinois court because the father did not follow the Uniform Interstate Family Support Act (UIFSA) requirements.<sup>296</sup> The court of appeals noted that the Indiana court, if it had jurisdiction, could have issued a *prospective* modification, but not a *retroactive* modification.<sup>297</sup> Therefore, the court held that the Illinois court's modification order was valid and the Indiana court's order declaring it a nullity was invalid, along with its purported retroactive modification.<sup>298</sup>

The court also took exception to the trial court's conduct by holding an ex parte meeting that explicitly excluded the mother.<sup>299</sup> The court ordered that on remand, the case must be assigned to a different judge.<sup>300</sup>

#### IV. PATERNITY AND MATERNITY

Issues pertaining to paternity and—occasionally maternity—arise in Indiana family law. The following section reviews several such noteworthy cases from

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289. *Id.*

290. *Id.*

291. *Id.*

292. *Id.* at 222-23.

293. *Id.* at 224.

294. *Id.*

295. *Id.*

296. *Id.* at 225.

297. *Id.* at 226.

298. *Id.*

299. *Id.* at 227.

300. *Id.*

the survey period.

### A. Establishing Paternity

1. *Admission of Mail-In DNA Tests.*—In *In re T.M.*,<sup>301</sup> the Indiana Court of Appeals considered whether a trial court abused its discretion in a paternity suit by refusing to admit a mail-in DNA test, where there was no information in the trial court record establishing a foundation to support the reliability of the results.

In this case, the child was born in 1995 to unmarried parents.<sup>302</sup> The father executed a paternity affidavit the day after the child's birth, claiming to be the child's natural father. In 1997, the father and the mother filed a joint petition to establish support and related matters. Several days later, the court entered an order establishing their parental status. Up until the child reached the age of fourteen, the father held himself out to be the child's father.<sup>303</sup> In 2009, the father's wife purchased a DNA kit from Walgreens and required that the father and the child take mouth swabs and mail them in for testing. The mother did not provide her permission for the child to participate in the test.<sup>304</sup> The results of the DNA test was issued by e-mail and informed the father that he was not the child's biological father. In 2010, the father moved to set aside his paternity affidavit and for DNA testing.<sup>305</sup>

At the hearing, the trial court refused to admit the mail-in DNA results into evidence following the mother's objection on the grounds that they were not properly certified.<sup>306</sup> The trial court then denied the father's petition, "finding no fraud, duress or mistake of fact."<sup>307</sup> The trial court noted by the father relied on the mail-in paternity test in petitioning to rescind his paternity affidavit, "the results of which were not obtained through the course of ordinary medical care or inadvertent discovery."<sup>308</sup> The trial court further noted that the mother testified regarding her exclusive relationship with the father, believing that he was in fact the biological father of the child.<sup>309</sup> The father appealed.

On appeal, the court of appeals found that there was no dispute that the father executed a paternity affidavit in 1995 claiming to be the child's biological father.<sup>310</sup> The court then noted that once a man has executed a paternity affidavit according to the statutory requirements, "he is the child's legal father unless the affidavit is rescinded pursuant to the same statute."<sup>311</sup> Considering that the father

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301. 953 N.E.2d 96 (Ind. Ct. App.), *trans. denied*, 962 N.E.2d 649 (Ind. 2011).

302. *Id.* at 97.

303. *Id.*

304. *Id.*

305. *Id.*

306. *Id.*

307. *Id.* at 98.

308. *Id.*

309. *Id.*

310. *Id.*

311. *Id.* The statutory requirements for a paternity affidavit are found in Indiana Code section

filed his petition to rescind his paternity fourteen years after he executed it, the court held that “a man who executed a paternity affidavit may not fail to timely request genetic testing under Indiana Code section 16-37-2-2.1 and then, as a matter of course, request such testing as a fishing expedition.”<sup>312</sup> The court stated that legal fathers may not rescind paternity after the sixty-day time limitation, unless fraud, duress or a material mistake of fact is present.<sup>313</sup> The court further noted that paternity may be challenged by the legal father only in “extreme and rare instances,” using “evidence that has become available independently of court action.”<sup>314</sup>

The court found that admissibility of evidence, such as the mail-in DNA test, was a matter within the trial court’s discretion and was reversible only upon a showing of abuse of discretion.<sup>315</sup> The court considered that the mail-in DNA kit “specifically stated it was not to be used for legal purposes, and there was no information from the purported laboratory where the tests were conducted, or the persons conducting those tests, establishing a foundation to support the reliability of their results.”<sup>316</sup> Moreover, the court could find no place in the trial court record where the father introduced facts in support of the admissibility and reliability of such tests.<sup>317</sup>

The court distinguished the matter from *In re Paternity of M.M.*,<sup>318</sup> “wherein . . . [the court of appeals] reversed and remanded for genetic testing when two genetic tests showed that a father, who had executed a paternity affidavit for a child, shared no genetic link to the child.”<sup>319</sup> While the court found that the tests in *In re M.M.* were unclear, both parents consented to the genetic testing, both parents took a DNA test, these results were admitted at trial, and the father’s relief was denied on public policy grounds.<sup>320</sup> Therefore, the court emphasized the importance of the fact that the admissibility of tests in *In re M.M.* was not at issue, but also contrasted the cases based on the number of tests conducted, whether both parents consented, and whether the mothers offered testimony unresponsive of a finding of fraud.<sup>321</sup> The court affirmed the trial court’s judgment, finding no abuse of discretion in the trial court’s refusal to admit the test results.<sup>322</sup>

2. *Sperm Donor Agreements.*—In *J.F. v. W.M. (In re M.F.)*,<sup>323</sup> the Indiana

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16-37-2-2.1. *See id.*

312. *Id.* at 99 (citation omitted).

313. *Id.*

314. *Id.* (citations omitted).

315. *Id.*

316. *Id.*

317. *Id.*

318. 889 N.E.2d 846 (Ind. Ct. App. 2008).

319. *In re T.M.*, 953 N.E.2d at 99 (citing *In re M.M.*, 889 N.E.2d at 849).

320. *Id.* (citing *In re M.M.*, 889 N.E.2d at 849).

321. *Id.*

322. *Id.*

323. 938 N.E.2d 1256 (Ind. Ct. App. 2010), *reh'g denied*, 2011 Ind. App. LEXIS 475 (Mar.

Court of Appeals considered whether the trial court erred in interpreting how a sperm donor agreement applied to paternity issues. The mother was cohabiting and in a long-term relationship with a woman (“life partner”).<sup>324</sup> The father, a friend of the mother’s, agreed to provide sperm to the mother, which resulted in a pregnancy. After conception, but before birth, the parties signed a donor agreement that contained provisions whereby the mother waived all right to financial assistance and support from the father; the father waived all rights of custody or visitation for the resulting child.<sup>325</sup> The donor agreement also contained a covenant not to sue in which the mother and father agreed to refrain from bringing an action to establish legal paternity. The child was born in September 1996.<sup>326</sup> Years later, in 2003, another child was born to the mother, while the mother and life partner were still together.

In 2008, the relationship ended between the mother and life partner, and the mother filed for financial assistance, which ultimately resulted in the county filing a petition to establish paternity.<sup>327</sup> The father responded with multiple defenses, all grounded in the donor agreement. It was established through DNA testing that the father was the biological father of both children.<sup>328</sup> At the hearing, the father stressed that the donor agreement precluded a paternity action. The mother claimed that the donor agreement was invalid as against public policy, running “afoul of the principle that the law will not enforce a contract that divests a child of support from either parent.”<sup>329</sup> Entering findings and conclusions sua sponte, the trial court held that the donor contract was valid and that the mother was prohibited from establishing paternity with the father.<sup>330</sup> The mother appealed.

The court of appeals determined that the viability of the donor agreement depended on the manner in which insemination occurred.<sup>331</sup> According to *Straub v. B.M.T.*,<sup>332</sup> if insemination occurred via intercourse, the donor agreement would be unenforceable as against public policy.<sup>333</sup> The court determined that because the mother was looking to avoid the donor agreement, she maintained the burden of proof on such matters of avoidance.<sup>334</sup> While recognizing the strong public policy in favor of parents supporting their biological children, the court could not

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14, 2011).

324. *Id.* at 1257.

325. *Id.* at 1257-58.

326. *Id.* at 1258.

327. *Id.*

328. *Id.*

329. *Id.*

330. *Id.*

331. *Id.* at 1260. Other criteria for the enforceability of donor agreements are that a physician be involved in the insemination process and that a written, thorough, and formalized instrument exist to memorialize the arrangement. *Id.* at 1261 n.1.

332. 645 N.E.2d 597 (Ind. 1994).

333. *In re M.F.*, 938 N.E.2d at 1259-60.

334. *Id.* at 1260.

find any legal basis for allocating the burden to the father.<sup>335</sup> The court determined that the trial court did not err in denying her petition to establish paternity for the older child.<sup>336</sup> The court then addressed the issue as it related to the younger child.

The donor agreement contained a clause that the father would not be responsible for the older child “and any further children which might result from the [the father’s] donated sperm.”<sup>337</sup> However, the rest of the donor agreement was drafted with the older child in mind, by using such phrases as “the child,” “such child” and “the child due to be born on or about September 19, 1996.”<sup>338</sup> The court concluded that the trial court erred in applying the donor agreement to the younger child as the donor agreement indicated that the contract applied specifically and only to the older child.<sup>339</sup>

### *B. Setting Aside Paternity*

*1. Paternity Based on Fraud or Mistake.*—During the survey period, the court of appeals addressed the time limitation to set aside paternity based on intrinsic fraud. In *Jo. W. v. Je. W.*,<sup>340</sup> the court of appeals reviewed a decision that a father’s motion to establish paternity was not an independent action, as the father did not allege or present evidence of *extrinsic* fraud or fraud upon the court.

In this case, the parties were married in 2001, and a child was born in 2003.<sup>341</sup> The mother filed for dissolution of marriage in 2005, and the trial court entered the dissolution decree in 2006.<sup>342</sup> Four years later, in 2010, the father filed a verified motion to establish paternity.<sup>343</sup> The trial court denied the father’s motion, finding that the motion did not comply with the time limits required by Indiana Trial Rule 60(B)(3).<sup>344</sup> The father then filed a motion to correct error which the court also denied. The father appealed.

On appeal, the father asserted that the mother committed extrinsic fraud by indicating on the dissolution petition that there was a child born of the marriage.<sup>345</sup> In considering this allegation, the court noted that Trial Rule 60(B)(3) contemplates “a motion based on intrinsic fraud, extrinsic fraud, or

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335. *Id.*

336. *Id.* at 1261.

337. *Id.* at 1262 (emphasis omitted).

338. *Id.* at 1262-63 (citation omitted).

339. *Id.* at 1263. Judge Crone dissented, arguing that the father should bear the burden of proving the consistency between the donor agreement and public policy. *Id.* at 1264-65 (Crone, J., dissenting).

340. 952 N.E.2d 783 (Ind. Ct. App. 2011).

341. *Id.* at 784-85.

342. *Id.* at 785.

343. *Id.*

344. *Id.*

345. *Id.* at 786.

fraud on the court . . . if the fraud was committed by an adverse party and had an adverse effect on the moving party.”<sup>346</sup> Additionally, the court noted that while relief under Trial Rule 60(B)(3) has a one-year time limit, this does not prohibit the trial court from entertaining an independent action for relief from a judgment, order or proceeding, or for fraud upon the court.<sup>347</sup> The court then found that “[a]n independent action can be brought within a reasonable time after the judgment and must allege either extrinsic fraud or fraud upon the court.”<sup>348</sup>

When the mother filed the dissolution action, she was required to include any child “of the marriage” in the dissolution petition as set forth in Indiana Code section 31-15-2-5.<sup>349</sup> The court found that the child was presumed to be of the marriage.<sup>350</sup> The court noted that the father failed to attend the dissolution hearing, did not respond to the mother’s petition, and failed to rebut the presumption of paternity.<sup>351</sup> Moreover, the court considered that the father did not argue that the mother questioned the child’s paternity or ever indicated that he might not be the father, nor did he present evidence that the mother improperly influenced the court’s decision.<sup>352</sup> Thus, the court found that the elements of extrinsic fraud and fraud upon the court were not satisfied.<sup>353</sup> The court concluded that the fraud alleged by the father was only intrinsic fraud, governed by Trial Rule 60(B)(3).<sup>354</sup> Therefore, the father’s motion for relief needed to be brought within one year from the date of the judgment challenged.<sup>355</sup>

2. *Vacating Child Support Arrearages.*—Child support arrearages should be vacated if paternity is based on fraud or mistake. In *C.L. v. Y.B. (In re Paternity of D.L.)*,<sup>356</sup> the court of appeals considered whether a child support arrearage that accrues in a man who mistakenly believes he is the father of the child should be vacated if genetic testing subsequently determines the man is not the father and, thus, the paternity was based upon fraud or a mistake of fact.

In this case, in 1996, the mother gave birth to a child, and then brought a paternity action against the purported father.<sup>357</sup> The purported father admitted paternity, and was ordered to pay child support. In 2008, the purported father petitioned to modify custody of the child. At the time, he had a child support arrearage.<sup>358</sup> After a hearing, the trial court modified custody and reduced the

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346. *Id.* at 785 (citation omitted).

347. *Id.* at 786 (citing IND. TR. R. 60(B)).

348. *Id.* (citation omitted).

349. *Id.*

350. *Id.*

351. *Id.*

352. *Id.*

353. *Id.* at 786-87.

354. *Id.* at 787.

355. *Id.*

356. 943 N.E.2d 1284 (Ind. Ct. App. 2011).

357. *Id.* at 1284.

358. *Id.* at 1285.

purported father's weekly child support obligation.<sup>359</sup> In 2008, the mother put the issue of custody back before the court. DNA testing was ordered by agreement.<sup>360</sup> The result of the DNA testing established that the purported father was not the child's biological father.<sup>361</sup> It was later determined the biological father's paternity had been established by stipulation in another cause number.<sup>362</sup> At the time, purported father had a support arrearage of approximately \$9000.<sup>363</sup> The trial court denied the purported father's request to vacate his arrearage and he subsequently appealed.<sup>364</sup>

On review, the Indiana Court of Appeals noted Indiana Code section 31-14-11-23, which provides: "If a court vacates or has vacated a man's paternity of a child based on fraud or mistake of fact, the man's child support obligation, including any arrearage, terminates."<sup>365</sup> Based upon this statute, and in a review of first impression, the court of appeals concluded that the purported father's paternity was based upon a mistake of fact and, therefore vacated the arrearage.<sup>366</sup>

3. *Setting Aside Paternity.*—In *J.M. v. M.A.*,<sup>367</sup> the Indiana Supreme Court considered whether genetic testing that excludes the party as the biological father is required, when a party seeks to set aside a paternity affidavit. The mother and "father" began dating in 1998, at which time the mother was already four months pregnant with what both parties knew was another man's child.<sup>368</sup> When the mother gave birth, the "father" signed a paternity affidavit acknowledging himself as the natural father of the child. The "father" was not quite eighteen years old at the time.<sup>369</sup>

In 2009, upon the application of benefits for the child, the State intervened by filing a Title IV-D petition against the "father" to establish child support and health insurance coverage.<sup>370</sup> The "father" was given notice, and a hearing was set.<sup>371</sup> The "father" filed a pro se motion for continuance, reciting that he was working out-of-state and was trying to obtain legal counsel. The "father's" continuance was denied, and in his absence, the trial court entered a default judgment adjudicating the "father" as the father of the child, and ordering him to pay support of \$47 per week.<sup>372</sup>

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359. *C.L. v. V.B. (In re D.L.)*, 938 N.E.2d 1221, 1223 (2010), *clarified and aff'd*, 943 N.E.2d 1284 (Ind. Ct. App. 2011).

360. *In re D.L.*, 943 N.E.2d at 1284.

361. *Id.* at 1284-85.

362. *Id.* at 1285.

363. *In re D.L.*, 938 N.E.2d at 1223.

364. *In re D.L.*, 943 N.E.2d at 1285.

365. *Id.* (quoting IND. CODE § 31-14-11-23 (2011)).

366. *Id.*

367. 950 N.E.2d 1191 (Ind. 2011).

368. *Id.* at 1191.

369. *Id.*

370. *Id.* at 1192.

371. *Id.*

372. *Id.*

The “father” obtained counsel, and filed a motion to set aside the default judgment of paternity and support.<sup>373</sup> At the hearing on that motion, the evidence, including testimony from the mother, was that the “father” was *not* the child’s biological father, and that the mother was puzzled as to why the “father” signed the paternity affidavit in the first place.<sup>374</sup> The trial court denied “father’s” motion to set aside, and the “father” appealed.

The court of appeals agreed with the “father” that the trial court erred when it refused to set aside its default judgment against the “father.”<sup>375</sup> Indiana Code section 31-14-7-3 permits a paternity affidavit to be rescinded only after a determination that: (1) fraud, duress, or material mistake surrounded its execution; and (2) that genetic testing excludes the man as the child’s father.<sup>376</sup> The court of appeals concluded that, under the totality of the circumstances, the “father’s” execution of the paternity affidavit constituted a material mistake of fact.<sup>377</sup> And, importantly, the court of appeals determined it unnecessary to meet the technical statutory requirement of genetic testing in light of the stipulation of all parties regarding paternity.<sup>378</sup> Thus, the court of appeals vacated the trial court’s order finding paternity and ordering support.<sup>379</sup>

The Indiana Supreme Court granted transfer. The supreme court also agreed it was appropriate to reverse the denial of the motion to set aside the trial court’s default judgment.<sup>380</sup> However, the supreme court disagreed with the court of appeals’ conclusion that the statutory genetic testing requirement could be avoided.<sup>381</sup> Therefore, the supreme court remanded the issue to the trial court so that the request to rescind the paternity determination could be made in compliance with Indiana Code section 31-14-7-3.<sup>382</sup>

### C. Custody Issues in Paternity Cases

Indiana case law suggests that the trial court has significant discretion in deciding custody issues; however, the best interests of the child must be considered.<sup>383</sup>

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373. *Id.*

374. *Id.*

375. *Id.*

376. *Id.* at 1192-93.

377. *Id.* at 1192.

378. *Id.*

379. *Id.*

380. *Id.* at 1193.

381. *Id.*

382. *Id.*

383. *See* K.W. v. B.J. (*In re* M.W.), 949 N.E.2d 839, 843 (Ind. Ct. App. 2011) (reversing the trial court where “nothing in the record indicate[d] that the trial court considered the best interests of [the child] before determining custody,” and where the mother did not know custody would be decided at the hearing).

1. *Suspending Parenting Time.*—In *P.S. v. W.C. (In re W.C.)*<sup>384</sup> the Indiana Court of Appeals considered whether the trial court erred by suspending the mother’s parenting time in the absence of evidence that the mother endangered the child’s physical health and well-being, or significantly impaired the child’s emotional development.<sup>385</sup> The parties had one child together in 2000.<sup>386</sup> The father’s paternity of the child was established two years later, and the father received parenting time under the Guidelines.<sup>387</sup> In 2009, custody was modified from the mother to the father, and in 2010, the trial court significantly the restricted the mother’s parenting time.<sup>388</sup>

At a subsequent review hearing, the father testified in detail about the mother’s parenting time interactions with the child, claiming she was treating him like a baby and discussing the ongoing court proceedings.<sup>389</sup> Following this review hearing, the trial court issued an order suspending the mother’s parenting time and contact with the child.<sup>390</sup> The mother appealed.

On appeal, the court of appeals first observed that the trial court “failed to make the requisite statutory finding of endangerment to [the child’s] physical health and well-being or significant impairment to [the child’s] emotional development.”<sup>391</sup> The court noted that the mother’s parenting time was already limited and that the record presented “does not approach the egregious circumstances in which we have previously found that parenting time may be terminated.”<sup>392</sup> Therefore, because no evidence in the record supported the conclusion that the mother posed a threat to the child, the suspension of parenting time was reversed.<sup>393</sup>

2. *Modifying Joint Custody to Sole Custody.*—In *B.M.S. v. E.M. (In re A.S.)*,<sup>394</sup> the Indiana Court of Appeals reviewed the trial court’s decision to modify joint legal and physical custody of the daughter, in light of evidence that the parties failed to co-parent effectively.<sup>395</sup> The mother and the father had one child together, a daughter, who was born in 2007.<sup>396</sup> In 2008, paternity was formally established, and the parties agreed to joint legal custody, and an alternating weekly equal-time parenting schedule.<sup>397</sup>

Subsequently, the parties’ co-parenting relationship became increasingly

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384. 952 N.E.2d 810 (Ind. Ct. App. 2011).

385. *Id.* at 811.

386. *Id.*

387. *Id.*

388. *Id.*

389. *Id.* at 812-13.

390. *Id.* at 814.

391. *Id.* (citing IND. CODE § 31-14-14-1(a) (2011)).

392. *Id.* at 816-17 (citation omitted).

393. *Id.* at 817.

394. 948 N.E.2d 380 (Ind. Ct. App. 2011).

395. *Id.* at 381.

396. *Id.* at 381-82.

397. *Id.*

hostile and acrimonious.<sup>398</sup> Matters came to a head when the mother began to threaten to withhold parenting time, which resulted in the father filing a motion for custody and parenting time, to which the mother responded with a petition to modify custody. After a hearing, the trial court modified the joint custody arrangement to sole legal custody and primary physical custody with the mother, subject to alternating weekend parenting time with the father.<sup>399</sup> The father appealed.

The father disputed whether the modification by the trial court was in the daughter's best interests.<sup>400</sup> The father's appeal endeavored to critique the mother's parenting behaviors to portray her as the less capable parental figure, and argued that custody should have been awarded to him.<sup>401</sup> Nevertheless, the court of appeals determined that there was ample evidence that the parties could no longer co-parent effectively, and that the father was less willing to be cooperative than the mother.<sup>402</sup> Thus, the modification of custody was not an abuse of discretion.<sup>403</sup>

3. *Appointment of a Parenting Coordinator.*—In *K.L. v. M.H. (In re C.H.)*,<sup>404</sup> the Indiana Court of Appeals reviewed the trial court's decision to appoint a Level II Parenting Coordinator.<sup>405</sup> The parties dated and lived together in 2005. Later that year, the mother gave birth to a child. Paternity was subsequently established.<sup>406</sup> The mother and the father's relationship was turbulent, and they eventually separated.

The mother and father began to disagree on various custody and parenting time issues. The mother filed a petition to establish child support and a parenting time schedule.<sup>407</sup> As part of the trial court's review of the matter, the trial court ordered the parties to participate in parenting time coordination with an appointed Level II Parent Coordinator.<sup>408</sup> The trial court also ordered a parenting time schedule and child support order. The mother appealed.

On appeal, the mother argued that the appointment of the parenting coordinator was an abuse of discretion because neither party requested or agreed to such appointment.<sup>409</sup> On review, the court of appeals noted that the mother and the father clearly had a difficult time communicating and working through

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398. *Id.* at 381, 384.

399. *Id.* at 384.

400. *Id.* at 387.

401. *Id.*

402. *Id.* at 388.

403. *Id.* Judge Robb filed a lengthy dissent, believing the parents' reluctance to cooperate was not a sufficient basis to modify custody. *Id.* at 390-93 (Robb, J., dissenting).

404. 936 N.E.2d 1270 (Ind. Ct. App. 2010), *trans. denied*, 950 N.E.2d 1210 (Ind. 2011).

405. *Id.* at 1271.

406. *Id.*

407. *Id.*

408. *Id.* at 1272.

409. *Id.* at 1274.

parenting time issues.<sup>410</sup> The court also noted that, when the trial court announced its intention of appointing a parenting coordinator, the mother responded, “that would be great.”<sup>411</sup> Thus, the court of appeals concluded that in light of the evidence and the spirit of the Guidelines, the trial court did not err in its appointment.<sup>412</sup>

## V. ADOPTIONS

Issues related to adoption occasionally arise in Indiana family law. The following section reviews several such noteworthy cases from the survey period.

### *A. Limits on Statutory Law Circumventing Adoption Law*

In *M.S. v. C.S.*,<sup>413</sup> the Indiana Court of Appeals considered whether Indiana Code section 31-17-2-3, which, on its face, broadly permits any parent or non-parent to initiate proceedings to determine the custody of a child, may circumvent Indiana’s more restrictive adoption statute.

In *M.S.*, the parties were involved in a same sex relationship. The biological mother was artificially inseminated and subsequently had a child.<sup>414</sup> After petitioning the trial court in 2007, the court awarded joint legal custody to the couple and parenting time to the partner. The relationship between the couple ended in 2009 and soon after, the trial court, sua sponte, voided its 2007 order.<sup>415</sup> The partner appealed, arguing the order was valid.

On review, the court of appeals noted that Indiana Code section 31-17-2-3 does broadly permit the initiation of a custody determination by either “a parent” or “a person other than a parent.”<sup>416</sup> But, the court of appeals concluded that the Indiana General Assembly could not have intended this statutory provision to be used to establish joint custody between a parent and any non-parent, because doing so would circumvent the procedural safeguards set forth in the adoption statutes.<sup>417</sup> The court further explained that, because the trial court lacked authority to issue the 2007 order, it was void and not merely voidable.<sup>418</sup>

The partner argued that, even in the absence of the 2007 order, she was nevertheless entitled to parenting time with the child.<sup>419</sup> However, the Indiana Court of Appeals refused to consider whether the partner was a legal parent of the

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410. *Id.*

411. *Id.* (citation omitted).

412. *Id.*

413. 938 N.E.2d 278 (Ind. Ct. App. 2010).

414. *Id.* at 281.

415. *Id.*

416. *Id.* at 282 (quoting IND. CODE § 31-17-2-3 (2011)).

417. *Id.* at 282-83. The court specifically noted the procedural safeguard requiring consent of the natural parent. *Id.* (citing IND. CODE § 31-19-9-1(a)(2) (2011)).

418. *Id.* at 284.

419. *Id.* at 285.

child because she failed to raise that argument before the trial court.<sup>420</sup> The partner also argued that she was entitled to third party visitation with the child.<sup>421</sup> The court determined that even if there was a basis for third party visitation, the partner was not entitled to it because such visitation would not serve the best interests of the child.<sup>422</sup> The trial court's decision was affirmed.<sup>423</sup>

### *B. Consent to Adoption*

Consent to adoption is required absent a showing of a failure to pay support. In *In re Adoption of M.B.*,<sup>424</sup> the Indiana Court of Appeals reviewed the trial court's denial of a petition to adopt a child without the parent's consent.<sup>425</sup>

The mother and the father became engaged approximately two months after the birth of the child, but never married.<sup>426</sup> During the first five months of the child's life, the mother would leave the child at the father's home when she went to work to avoid the cost of daycare. After that initial period, the mother unilaterally decided to take the child to daycare.<sup>427</sup> The mother then allowed the father to see the child one day a week. Shortly thereafter, the mother began seeing stepfather and they were married approximately one year later.<sup>428</sup>

Since the child's birth, the father was intermittently employed, generally in minimum wage or low-paying jobs.<sup>429</sup> He offered to arrange child support payments, but the mother refused the offer. The father exercised visitation informally one day per week until July 2009, when the mother refused to allow the father to see the child from that point forward.<sup>430</sup> In September 2009, the father filed a petition to establish paternity. The stepfather filed a petition to adopt the child and a motion to proceed with the adoption without the consent of the father in October of 2009.<sup>431</sup> Relying on Indiana Code section 31-19-9-8, the court determined that the stepfather had not met his burden by "clear, cogent, and indubitable evidence" that he could proceed forward without the consent of the father.<sup>432</sup>

The court of appeals examined the language of Indiana Code section 31-19-9-8, which provides that the stepfather could proceed without the father's consent

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420. *Id.*

421. *Id.* at 285-86.

422. *Id.* at 287. This determination was supported by trial testimony regarding a violent altercation between the parties that was witnessed by the child. *Id.*

423. *Id.*

424. 944 N.E.2d 73 (Ind. Ct. App. 2011).

425. *Id.* at 74.

426. *Id.*

427. *Id.*

428. *Id.*

429. *Id.* at 75.

430. *Id.*

431. *Id.*

432. *Id.* at 76.

if the father had “knowingly fail[ed] to provide for the care and support of the child when able to do so as required by law or judicial decree.”<sup>433</sup> The court found that even though the father had limited income and there was no formal support order, he had a common law duty to provide support.<sup>434</sup> However, the trial court correctly determined that the father’s provision of childcare constituted support.<sup>435</sup> The trial court’s denial of stepfather’s adoption petition was affirmed.<sup>436</sup>

Additionally, consent to adoption is not required upon evidence of serious drug addiction and knowing and intentional failure to pay child support. For example, in *B.F. v. L.F. (In re Adoption of K.F.)*,<sup>437</sup> the Indiana Court of Appeals considered whether the trial court correctly determined that the mother’s consent to the adoption of her children was not required where the mother did not pay child support and had a drug addiction.<sup>438</sup>

The parties divorced in 2002. The father was awarded custody of their two children; the mother was ordered to pay support.<sup>439</sup> The mother battled a serious drug addiction, and she paid little child support to the father. By 2009, her arrearage was over \$14,000.<sup>440</sup> The mother’s parenting time was required to be supervised, and the mother was subject to drug screens that she repeatedly failed. The mother was arrested for dealing heroin in 2009.<sup>441</sup>

The father remarried the stepmother in 2006.<sup>442</sup> In 2008, the stepmother filed a petition to adopt the children. Typically, a natural parent’s consent is required before a third party may adopt a child. However, by statute, such consent is not required under various circumstances, including: 1) when the parent knowingly fails to provide for the care and support of the child as required by law or decree; or 2) it is proven by clear and convincing evidence that the parent is unfit, and that the best interests of the child would be served if adoption can proceed without the parent’s consent.<sup>443</sup>

After a hearing, the trial court determined that these exceptions had been proven, and the adoption of the children by the stepmother was approved without the mother’s consent.<sup>444</sup> The mother appealed.

The mother disputed the lack of support exception finding, saying she had struggled to maintain employment since the divorce.<sup>445</sup> The court of appeals

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433. *Id.* (quoting IND. CODE § 31-19-9-8(a)(2) (2011)).

434. *Id.* at 77.

435. *Id.*

436. *Id.* at 78.

437. 935 N.E.2d 282 (Ind. Ct. App. 2010), *trans. denied*, 950 N.E.2d 1196 (Ind. 2011).

438. *Id.* at 283.

439. *Id.*

440. *Id.*

441. *Id.*

442. *Id.*

443. *Id.* at 286 (citing IND. CODE § 31-19-9-8 (2011)).

444. *Id.* at 287.

445. *Id.* at 288.

rejected the mother's argument, finding it dispositive that, on three occasions since the decree, the mother had signed agreed entries that recited her non-payment of support was knowing and willing.<sup>446</sup>

As to the issue of the mother's unfitness, the court of appeals reviewed the significant evidence of failed drug screens, and evidence of the mother using cocaine, heroin, Percocet, and assorted opiates.<sup>447</sup> "The evidence is sufficient to prove that [the m]other is unfit to be a parent."<sup>448</sup> Since the record supported the trial court's conclusion that the mother had failed to support the children, and that the mother was an unfit parent, the trial court's approval of the stepmother's adoption, without the mother's consent, was affirmed.<sup>449</sup>

### *C. Granting Adoption Before the Requisite Objection Period Has Run*

In *D.H. v. J.H.*, (*In re L.C.E.*),<sup>450</sup> the Indiana Court of Appeals considered whether the trial court erred when it granted an adoption petition without giving the custodial stepfather of the child thirty days, per statute, to file an objection to the adoption petition. The stepfather and mother married in 1999.<sup>451</sup> At that time, the mother had a prior born child ("child") for whom paternity had not been established.<sup>452</sup> During the parties' marriage, two more children were born. The stepfather and the mother divorced in 2007.<sup>453</sup> Under their settlement agreement incorporated into the decree of the Johnson County Circuit Court, custody, parenting time, and support were determined as to the other children; however, the decree was silent as to the child.

In 2009, the stepfather filed an emergency petition for custody in the divorce court and was granted joint legal custody and primary physical custody of all of the children, including the child.<sup>454</sup> In 2010, the mother's father ("grandfather") filed a petition to adopt the child in the Lawrence County Circuit Court. Twenty-six days later, the court granted the adoption petition.<sup>455</sup> Three days after that, but still within thirty days of the filing of the grandfather's petition, the stepfather filed his objection to the adoption proceedings.<sup>456</sup> The stepfather appealed.<sup>457</sup>

The court of appeals concluded that the stepfather had standing because of

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446. *Id.*

447. *Id.* at 289.

448. *Id.*

449. *Id.*

450. 940 N.E.2d 1224 (Ind. Ct. App. 2011).

451. *Id.* at 1225.

452. *Id.* The opinion suggests an open question as to whether the child was the stepfather's biological child.

453. *Id.*

454. *Id.*

455. *Id.* at 1226.

456. *Id.*

457. *Id.*

the 2009 court order giving him joint legal custody of the child.<sup>458</sup> The court also noted that, by statute, such an objection by a party with standing must be filed within thirty days of service of the adoption petition.<sup>459</sup> Here, the stepfather timely filed his objection.<sup>460</sup> However, the Lawrence County Circuit Court had already granted the adoption petition.<sup>461</sup> In reversing the trial court's granting of the grandfather's adoption petition, the court of appeals noted that the trial court "erred when it failed to consider [the s]tepfather's objection . . . because [the s]tepfather was [the child's] legal custodian pursuant to the Johnson County order."<sup>462</sup>

#### *D. Post Adoption Visitation Rights for Biological Parents*

In *J.S. v. J.D.*,<sup>463</sup> the Indiana Court of Appeals considered whether: 1) Indiana Code section 31-19-16-2 is the exclusive means for a biological parent, who has consented to adoption, to petition for and assert visitation rights; and 2) the trial court lacks the power to grant visitation rights to birth parents outside of this statute.<sup>464</sup>

The child was born to the biological father and the biological mother in 2002.<sup>465</sup> The parents were still in high school and the child had significant health problems. The mother's parents adopted the child shortly thereafter, with the consent of both biological parents.<sup>466</sup> The father visited the child regularly and was referred to as "dad" by the child. The mother and father were married and eventually moved in together with the child.<sup>467</sup> They had a second child during this period. They eventually filed a petition to adopt the child, to which the adoptive parents (grandparents) consented, but this process was never finalized.<sup>468</sup>

In 2008, the mother filed for dissolution from the father.<sup>469</sup> The child was not named in the petition. During the pendency of the dissolution, the father exercised regular visitation with both children.<sup>470</sup> The marriage was eventually dissolved and the settlement agreement made no mention of visitation with the child (but did provide for visitation with the second child).<sup>471</sup> The father still

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458. *Id.* at 1228.

459. *Id.*

460. *Id.*

461. *Id.*

462. *Id.*

463. 941 N.E.2d 1107 (Ind. Ct. App. 2011), *trans. denied*, 2011 Ind. LEXIS 478 (Ind. June 2, 2011).

464. *Id.* at 1108.

465. *Id.*

466. *Id.*

467. *Id.*

468. *Id.*

469. *Id.*

470. *Id.*

471. *Id.* at 1109.

continued visitation until the mother remarried and visitation with the child was terminated. The father continued to exercise visitation with the second child.<sup>472</sup>

The father filed a petition to establish visitation for the child in the dissolution court and moved to join necessary parties, including the child's adoptive parents.<sup>473</sup> The trial court, citing *Collins v. Gailbreath*,<sup>474</sup> granted the visitation petition on the grounds that the father "qualified as a third-party nonparent custodian" whose court-ordered visitation was in the child's best interests.<sup>475</sup> The trial court stated its judgment did not affect the adoption decree.<sup>476</sup> The mother and the adoptive parents appealed.<sup>477</sup>

Relying on *In re Visitation of A.R.*,<sup>478</sup> the court of appeals concluded that Indiana Code section 31-19-16-2 was the exclusive means for seeking visitation privileges.<sup>479</sup> The court distinguished *Collins* because the father was a birth parent, not a third-party nonparent.<sup>480</sup> The judgment of the trial court was reversed and remanded with instructions to vacate the visitation order.<sup>481</sup>

#### *E. Jurisdiction to Issue Conclusions Regarding an Adoption Petition*

In *Devlin v. Peyton*,<sup>482</sup> the Indiana Court of Appeals considered whether the dissolution court had proper jurisdiction to issue conclusions regarding an adoption petition filed in a different jurisdiction, when the adoption court denied a motion to transfer to the dissolution court.<sup>483</sup> The court of appeals determined that because the adoption was still pending in the adoption court, the dissolution court did not have jurisdiction over the adoption.<sup>484</sup> Because the adoption court denied the father's motion to transfer to the dissolution court, the adoption action remained in the adoption court.<sup>485</sup> The father's only recourse was an interlocutory appeal.<sup>486</sup> Expressing no opinion on the merits, the court vacated the dissolution court's conclusions regarding the adoption petition, and affirmed that court's conclusions on the issue of parenting time, noting that the mother failed to

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472. *Id.*

473. *Id.*

474. 403 N.E.2d 921 (Ind. Ct. App. 1980).

475. *J.S.*, 941 N.E.2d at 1109.

476. *Id.*

477. *Id.*

478. 723 N.E.2d 476, 479 (Ind. Ct. App. 2000).

479. *J.S.*, 941 N.E.2d at 1110.

480. *Id.* at 1111.

481. *Id.* Judge Crone concurred in the result, by separate opinion. *Id.* at 1111-13 (Crone, J., concurring).

482. 946 N.E.2d 605 (Ind. Ct. App. 2011), *reh'g denied*, 2011 Ind. App. LEXIS 988 (May 24, 2011).

483. *Id.* at 606.

484. *Id.* at 607.

485. *Id.*

486. *Id.*

challenge that issue.<sup>487</sup>

#### CONCLUSION

This Article reviews developments in Indiana's family and matrimonial law through the examination of many notable cases. These decisions will undoubtedly impact future cases involving dissolution of marriage, child custody, support, relocation, paternity, and adoption.

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487. *Id.* at 607-08.