

Members

Rep. Vanessa Summers, Chairperson
Rep. John Day
Rep. Phyllis Pond
Rep. Heath Vannatter
Sen. Brent Steele
Sen. Brent Waltz
Sen. James Arnold
Sen. Jean Breaux
Judge Marianne L. Vorhees
Greg DeVries
Robert Bishop
Bruce Pennamped



CHILD CUSTODY AND SUPPORT ADVISORY COMMITTEE

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

LSA Staff:

K.C. Norwalk, Attorney for the Committee
Bill Brumbach, Fiscal Analyst for the Committee

Authority: IC 33-24-11-1

MEETING MINUTES¹

Meeting Date: September 11, 2008
Meeting Time: 1:30 P.M.
Meeting Place: State House, 200 W. Washington
St., Room 404
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Rep. Vanessa Summers, Chairperson; Rep. John Day; Rep. Phyllis Pond; Rep. Heath Vannatter; Sen. James Arnold; Sen. Jean Breaux; Judge Marianne L. Vorhees; Greg DeVries; Robert Bishop; Bruce Pennamped.

Members Absent: Sen. Brent Steele; Sen. Brent Waltz.

Call to Order

Representative Vanessa Summers, Chairperson, called the meeting to order at 1:40 P.M. and the members of the Committee introduced themselves.

Putative Father Registry

Steven M. Kirsh, an adoption attorney, introduced himself to the Committee and explained that he assisted with drafting Indiana's putative father registry in the mid 1990s.

Mr. Kirsh then showed the Committee a television news report discussing the "Baby

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Jessica" case, a well publicized custody battle in the mid-1990s between Baby Jessica's adoptive parents and her natural parents. In the Baby Jessica case, Jessica's natural mother put Jessica up for adoption without informing Jessica's natural father. The mother later changed her mind and informed the natural father, who then sought custody of Jessica. A custody battle ensued for over two years between the adoptive parents and the natural father until the Michigan and Iowa supreme courts ordered that the natural father was entitled to custody of Jessica.

Mr. Kirsh stated that after the "Baby Jessica" case, he drafted Indiana's putative father registry so Indiana would not have a situation similar to the "Baby Jessica" case. Indiana's putative father registry is a confidential registry for men to register that they may be the father of a child and then receive notification of an adoption petition if an adoption petition is filed for the child. Mr. Kirsh explained that fathers learn about the putative father registry because notices are posted in maternity wards throughout the state and added that since the registry has been in effect, over 12,000 men have registered. Mr. Kirsh also stated there currently is a bill in the United States Congress that will require all states to have putative father registries.

Sen. Breaux asked Mr. Kirsh whether a potential father has to prove with DNA that he is the father of a child for the putative father registry. Mr. Kirsh answered that the putative father registry does not require proof of fatherhood, but instead has the purpose of notifying potential fathers of adoption petitions.

Rep. Pond asked Mr. Kirsh if a man says he is the father of a child and an adoption is successfully contested, does that man have a financial duty to support the child. Mr. Kirsh answered that a court would later have to determine the support and custody of the child.

John Herrin, an adoption attorney, also spoke about the putative father registry. Mr. Herrin stated that he filed the first appeal concerning the putative father registry and the registry concept has been approved by different state and federal appellate courts. Mr. Herrin also stated that the goal of the putative father registry is to give the putative father rights in the adoption process and to give permanent and early stability for the placement of a child.

Supervised Visitation

K.C. Norwalk, attorney for the Committee, stated that the Committee was charged with studying whether IC 31-17-2-8.3 should be expanded to cover situations in which domestic or family violence have been alleged and the noncustodial parent was either not charged or charged and acquitted for the alleged violent act. IC 31-17-2-8.3 provides that there is a rebuttable presumption that a noncustodial parent's parenting time will be supervised if the noncustodial parent has been convicted of a crime involving domestic or family violence.

Bruce Pennamped stated that although IC 31-17-2-8.3 is limited because it only applies if there is a conviction for a crime of domestic or family violence. A court could order supervised parenting time if the court determines it is necessary, even if there is not a conviction. Further, Mr. Pennamped stated that there could be constitutional and due process issues if a court has to order or may order supervised parenting time based on an allegation.

Rep. Pond stated that she could envision problems if a court ordered supervised parenting time based on an allegation and that could lead to custodial parents making dishonest allegations.

Judge Vorhees added that the protective order statute is pliable and judges are allowed to determine visitation schedules.

Rep. Summers concluded that the current system seems to allow judges the power to order supervised visitation when necessary. She then asked the Committee if they consented to recommending that IC 31-17-2-8.3 not be modified to allow or require a court to order supervised visitation based on an allegation of domestic or family violence, and the Committee consented.

Father's Rights Issues

Stuart Showalter - Mr. Showalter introduced himself to the Committee and provided a written copy of his testimony (Exhibit 1). Mr. Showalter stated that he believes that when a court makes a custody determination, the court should be required to explain what the best interests of the child are in relation to the court's determination.

Judge Vorhees responded that not all cases require detailed findings of fact. Judge Vorhees also mentioned that if the Committee thinks that judges should give detailed findings of facts in custody situations, the Committee could make a recommendation to the Indiana Supreme Court Rules Committee.

Mr. Showalter also stated that "shared parenting" should be the ideal custody situation for children of divorced parents.

Mr. Pennamped asked Mr. Showalter if he meant joint legal custody or joint physical custody. Mr. Showalter stated that if both parents previously lived together, a court should determine that shared custody of a child, including physical custody, is the best situation for the child. Mr. Pennamped then clarified that joint legal custody means that both parents participate in the joint decision making concerning a child's health, education and religion; but joint legal custody does not mean joint physical custody.

Rep. Pond stated that several states have a presumption of joint legal custody and she is in favor of Indiana adopting this presumption. She also stated that if a court in Alabama or Connecticut does not make a custody decision based on joint legal custody, the court must make a specific finding to support the court's decision.

Randall Richter - Mr. Richter stated to the Committee that he believes that the time it takes a parent in a divorce proceeding to obtain a hearing is unreasonable. He stated that it took him four months to get a one hour hearing and eight months to get a full day hearing in his divorce proceeding.

Mr. Richter also stated that he believes that parenting coordinators are extremely helpful and that more courts should use parenting coordinators to assist with parenting and custody issues. Mr. Richter added that parenting coordinators also work best if parents have joint custody; a parent with sole custody of a child would be less motivated to use or obey parenting coordinators.

Judge Vorhees added that she thought the State Bar Association was going to study parenting coordinator issues and that Indiana statutes do not provide for the structure or criteria for parenting coordinators. Mr. Pennamped stated that the State Bar Association will discuss parenting coordinators in October.

Charles Erickson - Mr. Erickson presented written testimony (Exhibit 3) and testified to the Committee that divorce proceedings are biased against men. He further stated that while family laws are written in a gender neutral manner, the family laws are executed in a manner that is biased against men.

Rep. Pond asked Mr. Erickson if he thought that Indiana's family laws would be less biased against men if Indiana courts had to presume joint legal custody. Mr. Erickson said that joint legal custody is more fair because one party would not have the upper hand.

Robert Monday - Mr. Monday, of the Children's Rights Council, testified that he believes that IC 16-37-2-2.1 is unfair because if a man signs a paternity affidavit after a child is born out of wedlock, the mother gets sole custody of the child. Mr. Monday stated that it is extremely difficult to challenge a paternity affidavit under IC 16-37-2-2.1.

Judge Vorhees stated that the policy behind IC 16-37-2-2.1 could be that if a child is born out of wedlock and the father signs a paternity affidavit under IC 16-37-2-2.1, there will be no disagreement as to who gets custody of the child when the baby is ready to leave the hospital.

John Dustin - Mr. Dustin presented the Committee with a letter (Exhibit 4) and stated that he believes it is in the best interest of a child to have the involvement of both parents in the child's life. Additionally, Mr. Dustin said that the parents of a child born out of wedlock should have joint custody of a child.

Judge Vorhees explained that a policy reason why parents of babies born out of wedlock do not have immediate joint physical custody is because women often breast feed newborn babies and try to breast feed frequently. Judge Vorhees also stated that judges often will order visitation of newborns in short, but frequent increments of time, because of the sleep and breast feeding schedules of a baby.

Steve Lefebvre - Mr. Lefebvre introduced himself to the Committee and gave the Committee members a folder (Exhibit 5) containing documents related to his child custody case and non-custodial parental rights information. Mr. Lefebvre then described his child custody proceedings. He stated that after he was divorced, he had sole custody of his son. Mr. Lefebvre's ex-wife appealed the trial court's custody order and the Indiana Court of Appeals remanded the trial court's order, which resulted in the trial court awarding custody of the child to Mr. Lefebvre's ex-wife. Mr. Lefebvre told the Committee that he has spent approximately \$150,000 on his custody battle. Mr. Lefebvre also stated that he believes the appellate court acted inappropriately because it reweighed the evidence that the trial court previously considered.

Laura Berry - Ms. Berry, of the Indiana Coalition Against Domestic Violence, presented two documents to the Committee; a position paper regarding custody and visitation (Exhibit 6) and "Why a Presumption of Joint Custody is Dangerous for Survivors (Exhibit 7). Ms. Berry stated to the Committee that there should not be a presumption of joint custody for families in which violence exists.

Next Meeting

Representative Summers announced the Committee's next meeting will be October 15, 2008, at 1:30 P.M. in Room 404 of the Statehouse.