

THE LIMITS OF LEGAL CUSTODY

What Does Abuse of Discretion Look Like?



STATUTORY AUTHORITY

I.C. 31-17-2-17

(a) Except:

(1) as otherwise agreed by the parties in writing at the time of the custody order; and

(2) as provided in subsection (b);

the custodian may determine the child's upbringing, including the child's education, health care and religious training.

(b) If the court finds after motion by a non-custodial parent that, in the absence of a specific limitation on the custodian's authority, the child's

(1) physical health would be endangered, or

(2) emotional development would be significantly impaired;

the court may specifically limit the custodian's authority.



PARENTING TIME GUIDELINES

Section I. General Rules Applicable to Parenting Time

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D. Exchange of Information

1. School Records - “promptly provide”
2. School Activities - “promptly notify”
3. Health Information - “immediately notify . . . emergency”



WHAT IS NOT INCLUDED?

- The things that matter to children (?)
 - Sports/Extracurricular activities
 - Entertainment
 - Relationships
 - Discipline
 - Citizenship aka chores
 - Diet

Johnson v. Nation 615 N.E.2d 141 (Ind.Ct.App., 1993)

- Non-custodial mother sought a change of custody alleging Father's interference with her parenting time.
- Mother alleged that "Father asked the children to call their new step-mother 'mom'" and "Father attempted to impose his own rules concerning playground activities during Mother's visitation time."
- On Appeal: "[W]e cannot agree with the trial court's conclusion that Father's interference justified a modification of custody."



HEALTH CARE AND EDUCATION

Winkler v. Winkler, 689 N.E.2d 447 (Ind., 1997)

- Profoundly deaf parents of two children (one profoundly deaf the other near normal hearing with the use of hearing aids).
- Mother awarded legal custody.
- Mother places children as residential students in the Indiana School for the Deaf. The children resided at the school during the week and returned home on weekends.
- Father granted guidelines visitation.
- Trial Court awarded change of custody to Father, finding “the physical and emotional well-being and development is better addressed by custody being placed with [Father] and that over the last two years the children have been limited under [Mother’s] custody . . . with regard to their educational, social and emotional development such as to pose a real threat to the children's development”
- Trial court affirmed on appeal.

Winkler v. Winkler, 699 N.E.2d 657 (Ind., 1998)

- Justice Sullivan’s dissent from denial of transfer
- “While our dissolution statute entrusts the custodial parent with the authority to ‘determine the child’s upbringing,’ a trial court ‘may specifically limit’ this authority upon a finding that a child’s physical health would be endangered or mental development significantly impaired.”
- “Father contends that by refusing to allow the children to develop their sense of hearing, mother has prevented her children from developing [fully]. If that be so – and the trial court found it was – is the proper remedy under our statute a specific limitation on the mother’s authority . . . or does it constitute grounds for the more drastic remedy of change of custody to father . . . ?”
- “It appears to me that a strong argument can be made that our statute contemplates the former, less drastic, remedy”

Recommended reading: *Far From the Tree: Parents, Children and the Search for Identity*, Andrew Solomon (2012)

RELIGIOUS TRAINING

Overman v. Overman, 497 N.E.2d 618 (Ind.Ct. App., 1986):

“ . . . so long as the noncustodial parent’s visitation rights are not unreasonably interfered with, the custodial parent’s right to choose religious training should be paramount.”

Jones v. Jones, 832 N.E.2d 1057 (Ind.Ct.App. 2005)

- Parents, both practicing Wiccans, divorced. Joint legal custody awarded. Neither party sought to limit the authority of the other to determine the child’s religious training.
- However, the trial court, *sua sponte*, ruled “that the parents are directed to take such steps as are needed to shelter [the child] from involvement and observation of these non-mainstream religious beliefs and rituals.”
- Oooops. Abuse of discretion.
- No finding that the restriction on the parents’ authority to determine the child’s religious training would endanger or harm the child, physically or mentally.

Factors:

- Duration of instructional class/service.
- Offsetting time
- Place that religion plays in the life of the children
- The desire of the children to participate in religious activities when with non-custodial parent

Question: Relocation to follow religious community:

- Best interest of the child?
- Unreasonable interference with parenting time?

