

## RECENT DEVELOPMENTS IN INDIANA FAMILY LAW: OCTOBER 2016 TO SEPTEMBER 2017

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This Article considers notable developments in Indiana family law during the survey period of October 1, 2016 to September 30, 2017. The published appellate cases considered regard property division upon divorce, parenting time and visitation, child custody, child support, paternity and adoption, CHINS and the termination of parental rights, and jurisdiction and procedure.

### I. PROPERTY DIVISION

On property division matters arising during the survey period, an Indiana appellate court found that a husband was not entitled to credit for money he withdrew from a brokerage account that he could not prove he spent on marital expenses.<sup>1</sup> At the time of the divorce, the parties had significantly disparate incomes favoring the husband, and the husband withdrew \$470,000 from a brokerage account that he claimed was to cover marital expenses.<sup>2</sup> However, the husband was unable to account for \$93,000 of these funds, so the trial court awarded the wife 55% of the marital estate.<sup>3</sup> The trial court further denied the husband credit for the payments he made benefiting the family during the pending divorce proceedings.<sup>4</sup> The appellate court affirmed, finding sufficient evidence supporting the lower court's decision.<sup>5</sup>

In another case, an Indiana appellate court determined that a wife was entitled to actual investment accounts, and not merely their valuation at the time of dissolution.<sup>6</sup> When dividing the marital property, the trial court awarded the wife 55% of the assets, including her entitlement to the investment accounts.<sup>7</sup> The wife filed a subsequent motion with the trial court because the husband failed to distribute the investment accounts to her.<sup>8</sup> The husband argued that the valuation of the accounts had risen significantly since the dissolution and she was not entitled to that additional money.<sup>9</sup> The trial court agreed with the husband, determining that its previous judgment had awarded the wife the valuation of the accounts and not the accounts themselves, and awarded the wife a monetary

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1. Priore v. Priore, 65 N.E.3d 1065 (Ind. Ct. App. 2016).

2. *Id.* at 1071.

3. *Id.*

4. *Id.* at 1073.

5. *Id.*

6. Deen-Bacchus v. Bacchus, 71 N.E.3d 882 (Ind. Ct. App. 2017).

7. *Id.* at 883.

8. *Id.*

9. *Id.* at 884.

amount based on the value of the accounts at the time of the divorce.<sup>10</sup> The appellate court reversed, finding that the divorce order granted the wife the investment accounts themselves.<sup>11</sup>

In another case, the appellate court determined that a wife was not entitled to the value of stock options that did not vest until after the parties' final separation date.<sup>12</sup> The appellate court further held that the trial court had erred in its inconsistent treatment of stock options as an asset or income.<sup>13</sup>

An Indiana appellate court also reiterated that all marital property goes into the marital pot to determine equitable distribution during a dissolution.<sup>14</sup> In this case, the trial court had excluded the husband's entire pension from the marital estate, awarding it to the husband.<sup>15</sup> The appellate court overruled, finding that while a court may award a marital asset solely to one party, that asset must still be considered as part of marital property for purposes of determining the value of marital assets.<sup>16</sup>

In contrast, property is excluded from the marital estate when the parties had a prenuptial agreement specifying that the wife did not have an interest in the property.<sup>17</sup> In *Layne*, the appellate court affirmed that a valid prenuptial agreement covered the marital residence, despite the fact that the marriage did not take place until seven years after the prenuptial agreement.<sup>18</sup> The appellate court also found that the trial court did not err in awarding the wife \$91,000 to equalize the dissipation resulting from the \$182,000 payment that the husband made to his daughter just before formally separating from the wife.<sup>19</sup> The appellate court noted that "a trial court may compensate a spouse for pre-separation dissipation of marital assets as long as such compensation comes from marital assets in which the parties have a vested present interest at dissolution."<sup>20</sup>

In another case, an ex-husband had opened two tax-advantaged college savings accounts for a child during the parties' marriage.<sup>21</sup> At the time of divorce, the accounts remained the ex-husband's property and he added to them.<sup>22</sup> Several years later, the ex-wife filed a petition to compel the ex-husband to contribute toward their child's college education.<sup>23</sup> While he conceded a support obligation, the ex-husband appealed the trial court's decision to make the ex-wife a joint

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10. *Id.*

11. *Id.* at 885.

12. *Fischer v. Fischer*, 68 N.E.3d 603 (Ind. Ct. App. 2017).

13. *Id.* at 610.

14. *Quinn v. Quinn*, 62 N.E.3d 1212 (Ind. Ct. App. 2016).

15. *Id.* at 1218-19.

16. *Id.* at 1223.

17. *Layne v. Layne*, 77 N.E.3d 1254 (Ind. Ct. App. 2017).

18. *Id.* at 1258.

19. *Id.* at 1262, 1264.

20. *Id.* at 1264.

21. *Miller v. Brown*, 83 N.E.3d 1252 (Ind. Ct. App. 2017).

22. *Id.* at 1253.

23. *Id.*

owner of the savings.<sup>24</sup> The appellate court determined that the trial court could not order joint ownership of the accounts, but noted that the trial court did have the ability to set aside part of the ex-husband's property to ensure that he met his child support obligations.<sup>25</sup>

## II. PARENTING TIME & VISITATION

Regarding parenting time during the survey period, an Indiana appellate court found that a trial court erred in requiring the father to obtain the mother's consent before enrolling their children in an extracurricular activity during his parenting time.<sup>26</sup> In that case, the parties had significant difficulties co-parenting and the mother had sole legal custody of the children.<sup>27</sup> The appellate court found that it was within the father's right to enroll the children in appropriate extracurricular activities without the mother's consent when such activities did not infringe on the children's time with their mother.<sup>28</sup>

Regarding non-traditional work schedules, an Indiana appellate court remanded a case on parenting time to use the parties' current work schedules.<sup>29</sup> The parents were initially awarded relatively equal parenting time, but the mother's unconventional nursing schedule had created an unequal visitation allotment.<sup>30</sup> In setting forth the parenting time schedule, the trial court had allotted additional time to the father because of the mother's previous twelve-hour work shift that ended at 9 p.m.<sup>31</sup> However, her current work schedule ended at 6 p.m.<sup>32</sup> The appellate court noted that while still a twelve-hour shift, the difference between an end time of 9 p.m. and 6 p.m. was significant enough to remand.<sup>33</sup> The appellate court also found that the trial court had erred in allowing grandparents summer visitation over parental right-of-first refusal.<sup>34</sup>

In another case, the appellate court had to determine the visitation rights of extended paternal relatives after the divorced father committed suicide.<sup>35</sup> While the child's paternal grandmother received visitation rights, the trial court specified that other paternal relatives could also visit with the child during the grandmother's visitation time and could speak with the child during phone conversations with the grandmother.<sup>36</sup> Due to her contentious relationship with

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24. *Id.* at 1254.

25. *Id.* at 1256.

26. *J.W. v. M.W.*, 77 N.E.3d 1274 (Ind. Ct. App. 2017).

27. *Id.* at 1276.

28. *Id.* at 1280.

29. *D.G. v. S.G.*, 82 N.E.3d 342 (Ind. Ct. App. 2017).

30. *Id.* at 350.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *In re Visitation of G.S. v. M.S.*, 69 N.E.3d 500 (Ind. Ct. App. 2017).

36. *Id.* at 501.

those relatives, the mother objected.<sup>37</sup> The appellate court reversed the visitation with relatives other than the grandmother because they fell outside the scope of the Grandparent Visitation Act.<sup>38</sup>

In another unconventional visitation matter, an Indiana appellate court reversed the visitation rights of a mother's ex-boyfriend.<sup>39</sup> The mother and daughter had moved into the ex-boyfriend's home when the daughter was an infant.<sup>40</sup> The couple subsequently had a child together and separated several years later, never having married.<sup>41</sup> The appellate court found that the trial court had abused its discretion in awarding the ex-boyfriend visitation with the mother's daughter.<sup>42</sup> The ex-boyfriend did not present evidence sufficient to overcome the presumption that the mother's decision to terminate visitation with a non-parent was in the child's best interest.<sup>43</sup>

### III. CHILD CUSTODY

A notable child custody case arose during the survey period that focused on the impact of a vaccination disagreement on joint legal custody.<sup>44</sup> The parties entered into an Agreed Decree of Paternity wherein they shared joint legal custody of their child, requiring the mother to seek the father's input on major medical, religious, and educational decisions, and further requiring that the child be vaccinated if the child would otherwise be denied enrollment into school.<sup>45</sup> The child was not vaccinated at birth, but was required to be vaccinated to attend kindergarten unless the parents claimed a religious objection.<sup>46</sup> The father refused to sign the documents claiming the objection and the mother did so without his permission.<sup>47</sup> The situation was further complicated when the father had a subsequent infant that was unable to be vaccinated for health reasons; doctors recommended that the infant not be around unvaccinated individuals, including the parties' child.<sup>48</sup>

The father filed a motion for contempt and sought to modify legal custody solely related to medical decisions.<sup>49</sup> The appellate court found that the specific language of the parties' decree required vaccinations if the child's school did,

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37. *Id.*

38. *Id.* at 502.

39. *Brown v. Lunsford*, 63 N.E.3d 1057 (Ind. Ct. App. 2016).

40. *Id.* at 1058.

41. *Id.*

42. *Id.* at 1065.

43. *Id.*

44. *G.G.B.W. v. S.W.*, 80 N.E.3d 264 (Ind. Ct. App. 2017).

45. *Id.* at 267.

46. *Id.*

47. *Id.*

48. *Id.* at 268.

49. *Id.*

regardless of any possible statutory exemptions.<sup>50</sup> Accordingly, the trial court had abused its discretion in not finding the mother in contempt and in not modifying legal custody of medical decisions in favor of the father.<sup>51</sup>

#### IV. CHILD SUPPORT

Several notable child support issues arose during the survey period. One such issue emerged out of *Priore v. Priore*, discussed above in relation to property division.<sup>52</sup> In *Priore*, the father alleged that the trial court had abused its discretion in ordering the parents to pay for their daughter's graduate school.<sup>53</sup> At the time of the decision, the daughter was enrolled in a six-year physician assistant program, from which she would graduate with both bachelor's and master's degrees.<sup>54</sup> The appellate court agreed that the trial court had abused its discretion in extending the parents' child support obligation beyond the daughter's undergraduate education, and remanded to the trial court to amend the decree, limiting the support obligations to educational expenses related to the bachelor's degree.<sup>55</sup>

An Indiana appellate court also considered a child support case on Social Security Income ("SSI"), which does not constitute income for purposes of calculating child support.<sup>56</sup> In that case, the father asserted that the trial court erred in increasing his child support obligations after he became ineligible for Social Security Disability and began receiving SSI.<sup>57</sup> Although the father gave untimely notice of appeal, the appellate court agreed to hear the appeal given the extraordinarily compelling reason to restore his right to appeal.<sup>58</sup> The appellate court concluded that the modification clearly violated Indiana's Child Support Guidelines because SSI was intended to provide the recipient with the bare minimum needed to sustain himself.<sup>59</sup>

Another case considered imputed income in an instance of voluntary underemployment.<sup>60</sup> In the matter, the trial court found that the father was voluntarily underemployed given his decision to undergo part-time undergraduate studies and forgo full-time employment.<sup>61</sup> The trial court therefore imputed to him an income of \$600 per week.<sup>62</sup> Although the appellate court noted the great

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50. *Id.* at 270.

51. *Id.* at 270-271.

52. 65 N.E.3d 1065 (Ind. Ct. App. 2016).

53. *Id.* at 1075.

54. *Id.*

55. *Id.*

56. *Cannon v. Caldwell*, 74 N.E.3d 255 (Ind. Ct. App. 2017).

57. *Id.* at 256.

58. *Id.* at 258-59.

59. *Id.* at 259.

60. *Miller v. Miller*, 72 N.E.3d 952 (Ind. Ct. App. 2017).

61. *Id.* at 953.

62. *Id.* at 954.

latitude afforded to trial court decisions,<sup>63</sup> it remanded for failure to consider prevailing job opportunities and earning levels in the community.<sup>64</sup>

Finally, in a case regarding over twenty years of child support arrears, the question arose of retroactive modification and the impact of another person's *in loco parentis* status.<sup>65</sup> After a divorce, the father disappeared without notice and had no further contact with the mother or their two children.<sup>66</sup> The mother subsequently remarried and the children's stepfather began to act *in loco parentis*.<sup>67</sup> Twenty years after the divorce, the mother filed a motion to determine child support arrearage, and the trial court found arrears of approximately \$150,000.<sup>68</sup> The appellate court affirmed the trial court's denial of retroactive modification of the father's child support order, finding that no equitable or public policy exception applied.<sup>69</sup> The appellate court further found that while a person acting *in loco parentis* may incur support obligations in limited circumstances, he does not alleviate a biological parent from support obligations.<sup>70</sup>

#### V. PATERNITY & ADOPTION

Several significant paternity and adoption cases arose during the survey period. In one such paternity case, the appellate court affirmed the trial court's finding that a husband was equitably estopped from rebutting the presumption that he was not the child's father.<sup>71</sup> During their divorce proceeding, the parties stipulated that the child was not the husband's biological child.<sup>72</sup> However, the husband had decided to raise the child as his own and had done so for twelve years, having asked the wife not to tell the biological father of her pregnancy, seek support from him, or file a paternity action.<sup>73</sup> At the time of the divorce, the trial court ordered the husband to pay child support and the husband appealed.<sup>74</sup> The appellate court affirmed the lower court's decision, stating that equitable estoppel was appropriate because the child would otherwise suffer a significant loss of support.<sup>75</sup> The appellate court further relied on public policy principles that would not support leaving the child essentially fatherless.<sup>76</sup>

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63. *Id.*

64. *Id.* at 955-57.

65. *Elwood v. Parker*, 77 N.E.3d 835 (Ind. Ct. App. 2017).

66. *Id.* at 836.

67. *Id.* at 837.

68. *Id.*

69. *Id.* at 838.

70. *Id.*

71. *Sheetz v. Sheetz*, 63 N.E.3d 1077 (Ind. Ct. App. 2016).

72. *Id.* at 1079.

73. *Id.* at 1078.

74. *Id.* at 1079.

75. *Id.* at 1082-83.

76. *Id.* at 1083.

An Indiana appellate court also determined that a natural father convicted of molesting another child did not need to grant consent to a stepfather adoption.<sup>77</sup> During that adoption proceeding, the mother testified that the natural father molested her older child from a previous relationship with their child in the room.<sup>78</sup> He spent three years in prison and had a no contact order, so that at the time of the adoption proceeding, he had not seen the child in over four years.<sup>79</sup> He admitted that he had not sought reunification with the child, despite the divorce decree stating that he was required to request visitation after his release from prison.<sup>80</sup> He also did not attempt to support the child despite having a job.<sup>81</sup> The appellate court affirmed that his consent to the adoption was not statutorily required because there was clear and convincing evidence that he was unfit and it was in the child's best interest that the trial court dispensed with the consent requirement.<sup>82</sup>

Under different circumstances, a court of appeals found that a mother's consent to an adoption was not required.<sup>83</sup> In this case, the mother was the child's primary physical custodian for the first ten years of the child's life.<sup>84</sup> However, after a paternity proceeding, the parties modified custody so that they shared legal custody, with the father assuming primary physical custody and the mother being responsible for initiating visitation.<sup>85</sup> The mother initiated visitation with the child one time after the modification, a year after which the stepmother filed a petition for adoption.<sup>86</sup> The trial court ruled that the mother's consent for the adoption was not required, and the mother appealed.<sup>87</sup> The appellate court affirmed the trial court's decision, finding that the mother lacked significant contact with the child for the past year.<sup>88</sup> However, the Indiana Supreme Court reversed the trial court on the consent determination and remanded for further proceedings, noting that "the destructive tentacles of the substance abuse epidemic continue to reach every corner of our State."<sup>89</sup> The Indiana Supreme Court determined that the mother was justified in not communicating with her child during that one-year period given her struggles with addiction and her good-faith recovery efforts.<sup>90</sup>

Finally, during the survey period, the U.S. Supreme Court ruled that the Constitution required Arkansas to list both same-sex spouses on a child's birth

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77. *In re Adoption of D.M.*, 82 N.E.3d 354 (Ind. Ct. App. 2017).

78. *Id.* at 355-56.

79. *Id.* at 355.

80. *Id.* at 356-57.

81. *Id.*

82. *Id.* at 361.

83. *In re Adoption of E.B.F. v. D.F.*, 79 N.E.3d 394 (Ind. Ct. App. 2017).

84. *Id.* at 395.

85. *Id.*

86. *Id.* at 396.

87. *Id.*

88. *Id.* at 399-401.

89. *In re Adoption of E.B.F. v. D.F.* (Ind. Mar 23, 2018).

90. *Id.*

certificate.<sup>91</sup> The decision has implications for similar cases in Indiana.

#### VI. CHINS & THE TERMINATION OF PARENTAL RIGHTS

Indiana continues to experience heightened levels of CHINS cases, and a number of significant cases arose during the survey period related to CHINS and the termination of parental rights. For example, a mother appealed the termination of her parental rights on the grounds that the Department of Child Services (“DCS”) filed its termination petition prematurely because the child had been removed from her home for less than the statutorily required thirteen months.<sup>92</sup> In reality, DCS had filed its initial CHINS petition and had removed the child from the home in January 2014 after a meth lab explosion in the home.<sup>93</sup> However, when it became clear that the fact-finding hearing would not occur within the statutorily required 120-day period, DCS and the mother had agreed to dismiss the petition and refile it under a new number in May 2014.<sup>94</sup> The appellate court affirmed the trial court’s termination of parental rights, finding that the child’s removal occurred in January 2014 because the mother knowingly agreed to the refiling and knew that the child had been removed in January 2014.<sup>95</sup>

In a mother and father’s joint appeal of the termination of their parental rights, the appellate court affirmed the juvenile court’s decision to terminate the mother’s parental rights, but reversed and remanded as to the father, who was not under a dispositional decree for the statutorily required six-month minimum period.<sup>96</sup> The child was removed from the mother’s care shortly after birth because of the mother’s admitted drug use during pregnancy.<sup>97</sup> Parental rights were terminated approximately fifteen months later.<sup>98</sup> The father was in prison for all but three months of this time, and four months before terminating parental rights, the juvenile court acknowledged that the father’s dispositional hearing would not occur until his release from prison.<sup>99</sup> The appellate court therefore held that the juvenile court erred in terminating his parental rights.<sup>100</sup>

In another case, an appellate court rejected a mother’s argument that the trial court had erroneously terminated her parental rights. The trial court had found that DCS was not required to undertake reasonable efforts to reunite the mother with four of her minor children.<sup>101</sup> While the appellate court acknowledged that

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91. *Pavan v. Smith*, 137 S. Ct. 2075 (2017).

92. *In re L.R.*, 79 N.E.3d 985 (Ind. Ct. App. 2017).

93. *Id.* at 986-87.

94. *Id.* at 987.

95. *Id.* at 989.

96. *In re G.M.*, 71 N.E.3d 898 (Ind. Ct. App. 2017).

97. *Id.* at 901.

98. *Id.* at 901-02.

99. *Id.* at 903.

100. *Id.* at 904.

101. *S.G. v. Ind. Dep’t of Child Services (In re S.G.)*, 67 N.E.3d 1138 (Ind. Ct. App. 2017).



generally DCS is required to undertake such reasonable efforts, it noted that such efforts are not required under the No Reasonable Efforts Statute when the mother's parental rights to previous children had been involuntarily terminated.<sup>102</sup> In this instance, the mother's parental rights to several children were terminated because of physical abuse and neglect.<sup>103</sup> The appellate court affirmed the trial court's decision to terminate the mother's parental rights again in this case, finding that the state had a compelling interest in preventing the children from additional physical and emotional harm, sufficient to satisfy the requirements of the No Reasonable Efforts Statute.<sup>104</sup> The court further denied mother's contention that the No Reasonable Efforts Statute was unconstitutional and void for vagueness.<sup>105</sup>

An appellate court also reversed a trial court's decision to terminate a mother's parental rights when the mother would return to living with the child and husband after prison.<sup>106</sup> Prior to her incarceration, the mother lived with her husband and their biological child, as well as a child she had from a previous relationship.<sup>107</sup> The older child had no relationship with her biological father and was raised by her mother and stepfather.<sup>108</sup> Both parents desired to raise the two children, but despite testimony from the children's foster mother that the two children were closely bonded, the court terminated the mother's parental rights to both children while she was incarcerated and returned the younger child to the father's custody.<sup>109</sup> The appellate court reversed, stating that the trial court erred in terminating the mother's parental rights when DCS did not provide clear and convincing evidence that it was in the older child's best interests to be separated from the younger child.<sup>110</sup> Further, the mother should not have her parental rights terminated when the trial court was aware that she would return to living with the child after her incarceration.<sup>111</sup>

In another case, the appellate court reversed and remanded the trial court's decision to terminate parental rights based partly on inadmissible hearsay.<sup>112</sup> At the termination hearing, the Guardian ad Litem ("GAL") testified regarding the child's opinion, and the father appealed this testimony as inadmissible hearsay.<sup>113</sup> The appellate court agreed, noting that while the GAL was "the voice of the children," there was no statutory exception to hearsay rules for a GAL.<sup>114</sup>

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102. *Id.* at 1144.

103. *Id.* at 1140.

104. *Id.* at 1146.

105. *Id.* at 1147.

106. *In re A.W.*, 62 N.E.3d 1267 (Ind. Ct. App. 2016).

107. *Id.* at 1270.

108. *Id.*

109. *Id.* at 1273.

110. *Id.* at 1275.

111. *Id.* at 1274-75.

112. *In re O.G.*, 65 N.E.3d 1080 (Ind. Ct. App. 2016).

113. *Id.* at 1088.

114. *Id.*

Finally, an Indiana appellate court ruled that a mother's admission to a child being a child in need of services ("CHINS") was not binding on the father.<sup>115</sup> In the case, the father was in prison at the time of the fact-finding hearing, when the mother admitted that the child was a CHINS.<sup>116</sup> The appellate court determined that one parent's admission that a child is a CHINS is not automatically sufficient to support a CHINS adjudication, and in this instance, DCS had not met its burden of proving that the child was a CHINS.<sup>117</sup>

#### VII. JURISDICTION & PROCEDURE

In the surveyed period, numerous cases arose addressing jurisdiction and procedure. Two decisions specifically discussed jurisdictional issues at the trial court. In one of these cases, a wife appealed the trial court's decision to dismiss her divorce proceeding for lack of jurisdiction after the death of the husband.<sup>118</sup> The parties married and lived together for approximately one year in the late 1960's, having no children before moving to separate homes and starting separate lives.<sup>119</sup> The wife filed for dissolution of the marriage in 2015, five years after the husband showed signs of dementia.<sup>120</sup> At issue was the wife's desire to gain access to a trust.<sup>121</sup> The trial court dismissed the case one month later, upon the death of the husband, and the wife appealed.<sup>122</sup> The appellate court affirmed that decision, finding that no equitable or legal exception overcame the rule that a court loses jurisdiction of a dissolution upon the death of one of the parties.<sup>123</sup>

In contrast, an appellate court found that a trial court has jurisdiction over a subsequent proceeding regarding retirement benefits awarded during a dissolution, even after the death of one of the parties.<sup>124</sup> In this case, the trial court stated that it did not have jurisdiction over an emergency motion to enforce a restraining order protecting the ex-husband's pension and retirement benefits, filed by the ex-wife after the death of the ex-husband.<sup>125</sup> However, the appellate court determined that the ex-husband's death did not impact the court's jurisdiction given that the dissolution of the marriage had already occurred.<sup>126</sup>

There were also numerous procedural cases of note during the survey period. In one such case, the appellate court determined that the trial court abused its discretion in granting a mother's motion to correct error because the trial court

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115. *In re D.P.*, 72 N.E.3d 976 (Ind. Ct. App. 2017).

116. *Id.* at 980.

117. *Id.* at 981.

118. *Riggs v. Riggs*, 77 N.E.3d 792 (Ind. Ct. App. 2017).

119. *Id.* at 793.

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.* at 799.

124. *Edwards v. Edwards*, 80 N.E.3d 939 (Ind. Ct. App. 2017).

125. *Id.* at 941.

126. *Id.* at 944-45.

offered no reason for granting the motion.<sup>127</sup> After the father successfully petitioned the court to modify custody of the child, the mother filed her motion, which the trial court then granted, thereby denying father's petition.<sup>128</sup> Noting that the trial court granted the mother's motion with no explanation and without a brief from the mother to provide such explanation, the appellate court reversed and remanded.<sup>129</sup>

A standing issue came before an appellate court when a trial court dismissed a petition for a protective order filed by a paternal grandmother on behalf of her grandson.<sup>130</sup> The paternal grandmother had legal visitation rights with her grandson since the death of her son, who was the child's father.<sup>131</sup> When the child was sixteen, a physical altercation occurred between the grandmother and mother, during which the child attempted to intervene.<sup>132</sup> The mother was subsequently charged with battery against the grandmother and child.<sup>133</sup> Although DCS chose not to file a CHINS petition after its investigation, the grandmother kept the child in her custody and filed for a protective order against the mother.<sup>134</sup> The trial court eventually dismissed the protective order, finding that the grandmother did not have standing to file the motion because she was not the parent, guardian, or otherwise legal representative of the child.<sup>135</sup> On appeal, the grandmother argued that she was a representative for the child and that the trial court had erred in applying the statutory definition of representative for medical matters, not for protective order matters.<sup>136</sup> The appellate court affirmed the trial court's decision, determining that in the absence of a statutory definition for representative as it relates to protective orders, the trial court could use the medical context as guidance.<sup>137</sup>

In another case, the appellate court dismissed a mother's attempt to appeal a CHINS permanency planning hearing order, finding that it was not a final appealable order.<sup>138</sup> The mother sought to appeal the order that changed the DCS plan from reunification to termination.<sup>139</sup> The appellate court rejected the mother's contention that the order was a final appealable order.<sup>140</sup> No evidence supported her assertion and the court subsequently dismissed the appeal.<sup>141</sup>

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127. *Riggen v. Riggen*, 71 N.E.3d 420 (Ind. Ct. App. 2017).

128. *Id.* at 421.

129. *Id.* at 422-23.

130. *C.H. v. A.R.*, 72 N.E.3d 996 (Ind. Ct. App. 2017).

131. *Id.* at 998.

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.* at 999.

136. *Id.* at 1002.

137. *Id.*

138. *In re Tr.S.*, 63 N.E.3d 1065 (Ind. Ct. App. 2016).

139. *Id.* at 1067.

140. *Id.* at 1068-69.

141. *Id.*

In a final procedural matter, an appellate court found that a mother did not knowingly and voluntarily waive her right to counsel at an adoption consent hearing.<sup>142</sup> At the hearing, the mother appeared without counsel, informing the court that her attorney had quit because she could not pay him.<sup>143</sup> She requested new counsel be appointed.<sup>144</sup> The trial court found that she had sufficient income to hire an attorney and proceeded with the hearing without appointing counsel.<sup>145</sup> After the stepmother rested her case, the trial court asked the mother numerous questions, until the stepmother objected that the trial court appeared to be acting as an advocate for the mother, at which point the court appointed counsel for the mother.<sup>146</sup> When the court reconvened days later with the mother's newly appointed counsel, the court stated that the hearing would continue.<sup>147</sup> The court ultimately found that the mother's consent was not required for the adoption.<sup>148</sup> On appeal, the mother argued that the trial court had committed reversible error by not appointing her counsel until after the stepmother rested her case.<sup>149</sup> The appellate court reversed and remanded because the mother had not voluntarily waived her right to counsel.<sup>150</sup> On the contrary, she had asked the trial court to appoint counsel for her.<sup>151</sup>

In sum, during the survey period of October 1, 2016 to September 30, 2017, the work of the Indiana courts covered various family law topics, ranging from property division to jurisdictional issues. Further clarification in the field will continue in future survey periods.

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142. *In re Adoption of C.J.*, 71 N.E.3d 436 (Ind. Ct. App. 2017).

143. *Id.* at 440.

144. *Id.*

145. *Id.*

146. *Id.* 440-41.

147. *Id.*

148. *Id.*

149. *Id.* at 442-43.

150. *Id.* at 444.

151. *Id.* at 443-44.