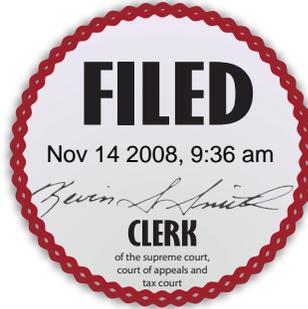


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEYS FOR APPELLANT:

APPELLEE PRO SE:

DEBORAH M. AGARD
LEAH S. CANNON
Indianapolis, Indiana

SALLY HOUZANME
Tell City, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

ULRICH HOUZANME,
Appellant-Plaintiff,

vs.

SALLY HOUZANME,
Appellee-Defendant.

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No. 49A02-0802-CV-131

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patrick L. McCarty, Judge
Cause No. 49D03-0605-DR-19580

November 14, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Ulrich Houzanme appeals the trial court's modifications of parenting time and child support. We remand.

Issue

Ulrich raises multiple issues on appeal, but we find only one dispositive: whether the trial court provided sufficient explanation for its modification of parenting time.

Facts

The trial court dissolved Ulrich and Sally Houzanme's marriage on March 12, 2007. The order granted legal and physical custody of then two-year-old J.H. to Sally. Ulrich was granted parenting time in accordance with the Indiana Parenting Time Guidelines. Sally resides in Tell City and Ulrich lives approximately three hours away in Indianapolis. Sally and Ulrich were to share equally the costs of transportation for parenting time. Ulrich received a \$21 credit for travel costs on his weekly child support payments.

On October 15, 2007, Ulrich filed a petition for contempt, alleging that Sally failed to comply with the trial court's order on parenting time. Sally filed a petition for contempt on November 8, 2007, alleging that Ulrich failed to share the costs of transportation and failed to deposit money in J.H.'s college account as agreed. Sally also filed a petition for modification requesting that the trial court set a specific meeting place to exchange J.H., eliminate Ulrich's mid-week parenting time, and abolish Ulrich's child support credit for travel costs.

At the hearing on December 5, 2007, Ulrich appeared pro se.¹ Sally testified that it was not feasible to meet Ulrich in Henryville, the halfway point between Indianapolis and Tell City, in the middle of the week, considering her work schedule and J.H.'s bedtime. She also said the rising price of gasoline made her financially unable to meet each week. She testified that Ulrich had not exercised mid-week parenting since the trial court's original order. Ulrich was unwilling to exercise his mid-week parenting time in Tell City and insisted on having a four-hour visit or an overnight visit in Henryville.

The trial court issued an order on December 21, 2007. It ordered that Ulrich have overnight parenting time alternating weekends and every fourth Wednesday of the month. For the weekend sessions, the trial court ordered the parents to meet and exchange J.H. in Henryville, but for the mid-week parenting time Ulrich must pick up and drop off J.H. at Sally's home in Tell City. The trial court increased Ulrich's child support obligation to \$85 per week, from the previous \$75. This appeal followed.

Analysis

Ulrich contends that the trial court abused its discretion by modifying the parenting time in a way that deviated from the Parenting Time Guidelines. He argues this deviation is problematic for two reasons: the trial court did not offer a written explanation for its deviation and the trial court did not provide findings that the restriction on Ulrich's parenting time was in J.H.'s best interest and that Ulrich's visitation might endanger J.H.

¹ No transcript was made of this hearing. Instead, the parties rely on a Certified Statement of the Evidence, approved by the trial court on July 23, 2008.

We review parenting time modifications for an abuse of discretion, with a “preference for granting latitude and deference to our trial judges in family law matters.” Kirk v. Kirk, 770 N.E.2d 304, 307 (Ind. 2002). Indiana Code Section 31-17-4-2 instructs that a trial court may modify parenting time “whenever modification would serve the best interests of the child.”

The Parenting Time Guidelines provide that “any deviation from these Guidelines either by the parties or the court must be accompanied by a written explanation indicating why the deviation is necessary or appropriate in the case.” Ind. Parenting Time Guidelines, Scope of Application § 2. The Parenting Time Guidelines recommend for a child of J.H.’s age that parenting time be alternating weekends, one evening per week for a period up to four hours, and all scheduled holidays. They also provide that the non-custodial parent shall have extended parenting time up to four non-consecutive weeks for a weeklong stay. Parenting Time G. § II.B. The trial court modified the mid-week visit to be only once a month, but overnight. No explicit provisions were made for holiday or extended parenting time.

In deviating from the Parenting Time Guidelines, the trial court issued a brief order stating:

1. That the Father shall have parenting time from 7:00 p.m. on Friday to 7:00 p.m. on Sunday, every other weekend. The exchange shall take place in Henryville, Indiana.
2. That Father shall have overnight parenting time with the child every fourth Wednesday of the month, with Father picking up the child at Mother’s home at 7:00

p.m. and returning the child to Mother's home at 7:00 a.m.

3. That Father's child support is modified to \$85.00 per week.

App. p. 6.

This order lacks any explanation for the deviation, and as such, we are unable to appropriately review the order. We must remand to the trial court to either enter an order that mirrors the Parenting Time Guidelines or provides an explanation for the deviation. See Haley v. Haley, 771 N.E.2d 743, 752 (Ind. Ct. App. 2002) (remanding a cause where the trial court provided no explanation for its deviation from the Guidelines).

Because the modification of child support seems to be linked with the changing travel costs of the parenting time, we cannot appropriately review the child support modification at this time. We remind the trial court that Indiana Code Section 31-16-8-1 provides that a child support order may only be modified:

(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 set.

We suggest the trial court include an explanation and calculation of modified child support, if any.

Conclusion

In modifying parenting time, the trial court deviated from the Parenting Time Guidelines without written explanation. We remand for a more specific order.

Remanded.

FRIEDLANDER, J., and DARDEN, J., concur.