


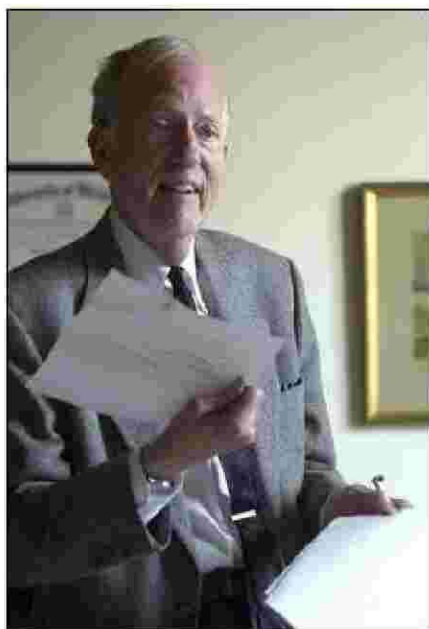
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Judges in custody cases consider parent's availability, time Question judge must answer is what's in best interest of youngster, expert says.



Means

By PABLO ROS
Tribune Staff Writer

SOUTH BEND -- In a recent case in St. Joseph Superior Court, a judge gave custody of a 5-year-old girl to her father in part because the mother had what the judge considered a more demanding, time-consuming job than the father.

Other things being equal, judges give custody of a child to the parent who has more time available to spend with the child, regardless of the age of the child or whether or not the other parent has the better-paying job, according to a legal expert with the American Bar Association.

In making a ruling, a judge tries to answer the question, "What is in the child's best interest?" Ronald W. Nelson, a Kansas lawyer and chair of the ABA Family Law Section Custody Committee, said in a phone interview.

The mother, Julie A. Ratliff, who had just received a master's degree in business administration from the University of Notre Dame, is now an employee of a large corporation in Ohio. The father is a career schoolteacher.

Ratliff told The Tribune she did not understand what standard the judge, William T. Means, used to conclude that she had the more time-consuming job.

When asked how he generally made those decisions, Means said, "I think you have to measure what you believe will be the maximum time that each parent can spend working for the welfare of the child" based on personal experience.

He also said that how much money each parent makes is not a "paramount consideration" in deciding custody, "particularly when you have two good parents." He said he could not comment on this specific case until it's closed.

Means' custody ruling and an appeals court decision upholding it led a relative of Julie Ratliff's to contact The Tribune claiming that the judge was biased against career women.

Another legal expert contacted for this story did not return calls for comment. Another said he did not feel comfortable commenting because custody cases are especially subjective.

Nelson said a judge's decision in a custody case is typically based on a lot of factors besides the parents' jobs. He said such decisions are "purely subjective" and "absolutely more" subjective than those in criminal cases.

In evaluating a judge's decision, a court of appeals would follow two basic standards, Nelson said: whether the judge made a legal error, and whether there was an "abuse of discretion" on the part of the judge.

Nelson said that in custody cases, parents often argue that they are better suited to have custody of a child because they have the higher-paying job. But that doesn't mean they are more likely to meet the best interests of the child, he said.

Having a better job, Nelson explained, "really doesn't have anything to do with who is the person that is more available or can be with the child more."

The age of the child might be taken into consideration by a judge in weighing the parents' jobs, Nelson said, "but not necessarily and not substantially."

Also, Nelson clarified, in ruling on a custody case, a judge isn't supposed to decide who is the better parent but who would have more available time to spend with the child, because availability of time is a prerequisite of hands-on care.

Means said that in the Ratliff case, both parents are "very capable people."

A parent's availability to a child is only one of "a lot of other things that go into a judge's determination" of a custody case, Nelson said. He said every state has additional "statutory factors" that judges rely on in making their decisions.

Citing case law, the Indiana Court of Appeals that reviewed the Ratliff case prefaced its comments by noting that it reviews custody modifications for an abuse of discretion "with a preference for granting latitude and deference to our trial judges in family law matters." It also said the "burden of demonstrating that an existing child custody arrangement should be modified rests with the party seeking the modification."

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