



CASA/GAL

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In **Carrasco v. Grubb**, 824 N.E.2d 705 (Ind. Ct. App. 2005), the Court affirmed the trial court's custody order granting a permanent change of child custody to Father where a guardian ad litem filed a report and recommended such a change. During the dissolution proceedings, Mother requested, and the trial court appointed a guardian ad litem for the two children. The GAL filed a report finding that "the children were suffering deeply as a result of their parents' conflict." As a result of this report, Mother and Father entered into an agreement settling the dissolution matters. The trial court then entered a final agreed order in December 2002, granting Mother sole physical custody of both children. Shortly thereafter, Mother began experiencing severe difficulties with regard to the behavior of one of the children. Mother contacted the GAL for assistance because she was under the belief that Father was encouraging the child in question to act and talk in an incorrigible way. Upon further investigation, the GAL filed a report recommending that sole custody of the child in question be changed to Father. In a September 2003, the parties agreed to a temporary change of custody of the child in question to the father. About one month later, Mother moved to strike the GAL's report as unauthorized and inappropriate under the relevant Indiana statutes and sought to repudiate her prior agreement to the temporary change in custody. The trial court struck these motions as well as several others that had been filed and quashed Mother's subpoenas when she sought to depose the GAL and her attorney. The Mother filed a motion to correct error which was set for hearing. But before that hearing could be held, Mother filed a Notice of Appeal with regard to the September 2003 Agreed Temporary Custody Order. The trial court then denied Mother's motion to correct error, and the appellate court determined that the Agreed Temporary Custody Order was "not a final appealable order." The appeal was dismissed and the trial court ordered Mother to pay \$1600 in attorney's fees to Father's counsel. Thereafter, the trial court entered an order making permanent the change in custody of the child in question to Father and found that the GAL had acted within her authority at all times and that she was an appropriate party to the proceedings. Mother appealed.

A GAL's responsibilities are not dependent upon the stage of the proceedings, and in seeking a change of custody of one of the children, the GAL properly participated in the proceedings and was acting in the child's best interests. *Id.* at 710-11. The Court noted that (1) I.C. 31-15-6-4 provides that a GAL is required to serve until excused by the trial court. See also Deasy-Leas v. Leas, 693 N.E.2d 90, 93 (Ind. Ct. App. 1998); (2) I.C. 31-15-6-1 provides that in a dissolution action, a GAL may be appointed by the

court “at any time;” (3) in accordance with I.C. 31-15-6-8, the trial court may order a GAL “to exercise continuing supervision over the child to assure that the custodial or visitation terms of an order entered by the court ... are carried out as required by the court;” and (4) once the GAL is appointed his or her role defined in I.C. 31-15-6-3, and further explained in I.C. 31-9-2-50, is to represent and protect the best interest of a child, and to provide the child with services requested by the court, including “researching, examining, advocating, facilitating and monitoring the child’s situation.” *Id.* at 709. The Court further noted that in Deasy-Leas, it had determined that “the guardian is a party to the proceedings and is subject to examination and cross examination,” and accordingly the GAL is permitted “to present evidence regarding the supervision of the action or any investigation and report that the court requires of the guardian ad litem or court appointed special advocate.” I.C. 31-15-6-7(1). Additionally, the Court held that, when the Mother refused to sign the change of custody agreement to which she had previously agreed, the GAL had the authority to request a hearing in light of I.C. 31-15-6-7 which provides that a GAL shall continue to supervise the situation “to assure that the custodial or visitation terms of an order ... are carried out....” *Id.* at 710.

The Court rejected the Mother’s argument that the GAL was simply attempting to relitigate the trial court’s award of custody. The Court noted that I.C. 31-17-2-21 permits a trial court to modify a child custody order if modification is in the best interest of the child and there has been a substantial change in one or more of the factors listed in I.C. 31-17-2-8, and that I.C. 31-17-4-2 authorizes the trial court to modify parenting time if the best interests of the child are served. See also Scott v. Kell, 134 N.E.2d 828, 831 (Ind. Ct. App. 1956) (where the Court held that during the minority of children their custody is always in issue without regard to formal pleadings). The Court stated that the substantial change that justified the trial court’s modification of the custody order was the child’s worsening behavior as exemplified in the Mother’s testimony that she feared for her and her other child’s safety as a result of the violent outbursts of the child whose custody was at issue and the evidence that the child was academically and emotionally doing significantly better after he went to reside with the Father. *Id.* at 710-11.

The evidence and argument offered by Mother in her attempt to repudiate the temporary agreement she entered into regarding change of custody, failed to meet the standard necessary to establish duress or coercion. A settlement agreement in a dissolution case involving child custody and visitation will be upheld unless there is evidence that the execution of the agreement was procured through fraud, misrepresentation, coercion, duress, or lack of full disclosure. Reno v. Haler, 734 N.E.2d 1095, 1101 (Ind. Ct. App. 2000), trans. denied. Further, in order to avoid a contract on the basis of duress, “there must be an actual or threatened violence of restraint of a man’s person contrary to law, to compel him to enter into a contract or discharge one.” In re Paternity of K.R.H., 784 N.E.2d 985, 990 (Ind. Ct. App. 2003). Mother asserted that she was coerced into accepting the agreement, only because the trial court had threatened to place both of her children in foster care. *Id.* at 711.

It was reasonable for the trial court to have concluded that it was in the children’s best interests to split the custody arrangement and grant permanent custody of the

child whose custody was at issue to the Father, particularly in light of the fact that the child's relationship with Mother threatened the physical and emotional safety of her and the other child. *Id.* at 713. In making this finding, the Court referred to the following evidence: (1) the child in question had become abusive toward Mother and Mother was fearful for her and the other child's safety; (2) the child's therapist for three months observed that the child had verbally and physically attacked Mother and was concerned that the child's "downward spiral could lead to yet another admittance to Bloomington Hospital for stress and anxiety related issues;" (3) there had been a substantial deterioration in the child's relationship with his sibling, and Mother had developed an inability to control the child's behavior that threatened the children's physical and emotional safety; (4) since the temporary change of custody to Father, the child became a member of the school honor roll for the first time, and the child's psychiatrist recommended that he no longer needed to take psychotropic medication or undergo counseling; and (5) Mother acknowledged that the child had done better during her extended parenting time over the summer. *Id.* at 712-13.

The Court also held that Mother was not denied a hearing as she claimed and that the trial court did not err in ordering the Mother to pay Father his attorney's fees. *Id.* at 711-12.