Guardianship

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In **Hinkley v. Chapman**, 817 N.E.2d 1288 (Ind. Ct. App. 2004), the Court affirmed the trial court's judgment granting permanent guardianship of the minor child to the child's adult half-sister and the half sister's husband. The child had resided with his Mother from birth and had been home schooled by her since kindergarten. In June 2002, the child was diagnosed with a speech impediment, i.e., an articulation disorder, which makes him difficult to understand. When the child was nine years old, his adult half-sister became concerned that the child was unable to communicate effectively and was not receiving an adequate education. She and her husband filed a petition seeking guardianship over the child. The trial court ordered a psychological evaluation of the child. The psychologist who performed the evaluation concluded that the child is "an individual with an average intellectual ability who simply [has not been] taught the information that would be appropriate for [his] age." The appointed guardian ad litem, who reviewed the psychological evaluation, as well as other information, testified that because of the child's educational deficiency it was in his best interests to be placed with the half-sister and her husband. The trial court concluded that the half-sister and her husband should be appointed co-guardians over the child. On appeal, the Mother contended that the trial court failed to enter a finding that the appointment of a guardian for the child was necessary, and that even assuming the trial court implicitly found that the appointment was necessary, that finding was erroneous because the trial court "had other less invasive means to address its concerns about the child's education."

Although the trial court did not make a specific finding that the guardianship appointment was "necessary as a means of providing care and supervision of the physical person or property of the … minor," such a finding was implicit in the trial court's extensive findings in support of its conclusion that the appointment was in the child's best interests. Thus, the statutory requirement for such a finding of necessity was met. E.N. ex rel. Nesbitt v. Rising Sun-Ohio County Community School Corp., 720 N.E.2d 447, 452 (Ind. Ct. App. 1999). In this regard, the trial court found that: (1) although the child was ten years old he was reading at a first grade level and performing mathematics at a third grade level; and (2) the child's educational deficiencies were not the result of a mental impairment, which thwarted his ability to learn, but inadequate home-schooling, which deprived him of the opportunity to learn. Hinkley at 1291.

A trial court is not required to consider less intrusive means before it finds the guardianship appointment is necessary. Id. at 1293. The Court distinguished E.N and stated that the Mother's reliance on it in this regard was misplaced. Id. at 1291-92. The Mother's reliance on IC 29-3-5-3(c)(2) was also found to be misplaced. The Court pointed out that subsection (c)(2) does not contain any language specifically requiring a trial court to consider less intrusive actions prior to appointing a guardian and that the trial court's powers under subsection (c) are discretionary. E.N., at 451.

The trial court could have concluded that its judgment was established by clear and convincing evidence, and, therefore, the trial court did not abuse its discretion in appointing the guardians. Hinkley at 1294. The trial court concluded that the half-sister and her husband had met their burden of overcoming the strong presumption that a child's best interests are served by remaining with the natural parent with clear and convincing evidence showing that the child's best interests are substantially and significantly served by placement with the half-sister and her husband. The trial court based its conclusions on its findings: (1) that the child, although ten years old, was reading at a first grade level and performing mathematics at a third grade level; (2) citing the psychological evaluation, that the child's developmental lag was not the result of a learning disability, but the Mother's failure to educate him using age-appropriate materials; (3) that the Mother's recent attempts to seek help for the child were driven by the decision of the half-sister and her husband to intervene; (4) that the Mother's intention to enroll the child in public school in the future was insincere; and (5) that the half-sister and her husband have "legitimate concern for" the child. Id. at 1293-94.