

Children's Law Center of Indiana



Guardianship/Third Party Custody

12/10/12

In **In Re Guardianship of L.R.T.**, 979 N.E.2d 688 (Ind. Ct. App. 2012) (Riley, J. dissenting), the Court affirmed the trial court's order terminating the guardianship of two children upon the motion of the children's Mother. Mother, the granddaughter of Guardians, gave birth to the older child in 2004 and gave birth to the younger child, who was diagnosed with Downs Syndrome, in 2006. The younger child is high-functioning but has significant delays in verbal communication. The father of the older child has not been involved in the child's life, but Mother married the younger child's Father. Mother and Father had difficulty maintaining a residence and employment sufficient to support the children and Father's child from another relationship, who lived with Father's mother. After some lengthy visits, the children came to live with Guardians in September 2007. The guardianship was formalized in November 2007, so that Guardians could obtain medical insurance benefits for the children. The children thrived in Guardians' care. On November 9, 2011, Mother filed a motion to terminate the guardianship. The Guardians objected to the proposed termination. The trial court heard evidence on the contested termination at hearings conducted on July 5 and 19, 2012. On July 31, 2012, the trial court granted Mother's petition and ordered that custody of the children be transferred immediately. The trial court specifically found that Guardians had provided exemplary care for the children, but also found that Mother and Father were currently able to provide for the children's needs. Guardians appealed and sought an emergency stay of the order. The Court granted the stay and ordered the appellate filings to be expedited.

The Court affirmed the termination of the guardianship, stating that, in a custody dispute between a parent and a third party, even where the parent seeks to re-obtain custody, the burden of proof is always upon the third party. *Id.* at 691. The Court cited IC 29-3-12-1(c)(4), which provides that the trial court may terminate any guardianship when the guardianship is no longer necessary. *Id.* at 689. Guardians claimed that continuation of the guardianship was necessary because of the younger child's special needs and his parents' alleged continuation of financial instability. The Court employed a two-tiered standard of review; first determining whether the evidence supported the findings and then considering whether the findings supported the judgment. *Id.* The Court considered only the evidence that supported the trial court's judgment together with all reasonable inferences to be drawn therefrom. *Id.*, citing **In Re M.B. and P.B.**, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*.

Guardians contended that they are de facto custodians and that the trial court failed to employ the legal standard applicable to the established facts in this context. Guardians maintained that the parents should bear the burden of showing that the children's best interests are served by a custody modification. The Court quoted extensively from In Re K.I., 903 N.E.2d 453 (Ind. 2009), in which the Indiana Supreme Court described in detail the legal framework applicable to custody disputes between a natural parent and a third party. L.R.T. at 690-91. The Court noted that a "burden-shifting regime" placing the third party and the parent on a level playing field had been specifically rejected by the Supreme Court, as this would be inconsistent with long-standing State precedent. K.I. at 460. L.R.T. at 690-691. The Court further said that, although the party seeking a change of custody must persuade the trial court that modification is in the child's best interests and there is a substantial change in one of the custody factors listed at IC 31-14-13-6, "these are modest requirements where the party seeking to modify custody is the natural parent of a child who is in the custody of a third party." K.I. at 460. L.R.T. at 691. The Court quoted K.I. at 461, stating that: (1) the "parent comes to the table with a strong presumption"; (2) the burden imposed by the statutory requirements is "minimal"; (3) when the parent meets this "minimal burden," the third party must prove by clear and convincing evidence that the child's best interests are substantially and significantly served by placement with another person; (4) if the third party carries the burden, custody of the child remains in the third party; (5) "[o]therwise, custody must be modified in favor of the child's natural parent." L.R.T. at 691. The Court opined that Guardians cannot prevail upon their suggestion that the trial court should have disregarded a parental presumption because Guardians have provided long-term care for the children. Id.