Guardianship/Third Party Custody

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In **In Re Guardianship of R.M.M.**, 901 N.E.2d 586 (Ind. Ct. App. 2009), the Court reversed and remanded the trial court's denial of Father's petition to modify his weekly child support obligation. Father is incarcerated. On July 25, 2006, when both Father and Mother were incarcerated, the five-year old child's great uncle and aunt were awarded guardianship, and the trial court ordered each parent to pay $15 per week child support. A month later, the guardians filed a petition to modify the support order, which resulted in the trial court, on January 18, 2007, modifying the order so that each parent was to pay $67 per week. The trial court found that the parents were "each imputed to have a weekly gross income of $210." On August 17, 2007, Father filed a pro-se petition to modify child support, which the trial court denied March 30, 2008. After denial of his motion to correct error, Father appealed.

The Court held that Father had established prima facie error here and the denial of his motion to modify child support was an abuse of discretion. Id. at 590. The Court opined: (1) in Lambert v. Lambert, 861 N.E.2d 1176, 1180 (Ind. 2007), issued February 22, 2007, the Indiana Supreme Court noted that "to the extent that an order fails to take into account the real financial capacity of a jailed parent, the system fails the child by making it statistically more likely that the child will be deprived of adequate support over the long term;" and (2) $67 per week is not within the recommended range of the Child Support Guidelines for those with an income of less than $100 per week, which "provide for case-by-case determination ... normally within the range of $25-$50 weekly. R.M.M. at 590. The Court found that, here, the development in Indiana child support law that made the terms of Father's support order unreasonable satisfied the "substantial change in circumstances" requirement which must be met before a child support obligation can be modified, as set forth in IC 31-14-11-8(1). The Court opined that, in Lambert at 1177, 1180, the supreme court (1) held that, when determining support orders, "courts should not impute potential income to an imprisoned parent based on pre-incarceration wages or other employment-related income, but should rather calculate support based on the actual income and assets available to the parent;" (2) emphasized that incarceration does not relieve parents of their child support obligations; and (3) was careful to distinguish Lambert's situation, where determination of an initial support order was being made, from situations which involved determining whether incarceration justified the reduction of an existing support order. R.M.M. at 589. The Court noted that, here, (1) Father was not attempting to reduce an existing child support order after being incarcerated; (2) Father was incarcerated at the time of the calculation of the initial order, had his support increased while incarcerated, and has been incarcerated throughout the entire course of this litigation; (3) Father's support obligation is not based on the actual income and assets available to him as Lambert instructs child support obligations should be; (4) Father presented evidence that he was earning approximately $6 per month; (5) no facts in the record indicate Father had any additional available assets; (6) the evidence before the trial court indicated that the previous child support

obligation of $15 per week was more appropriate than the $67 subsequently ordered, especially considering the <u>Lambert</u> decision; and (7) Father is not attempting to avoid his child support obligations and candidly admitted his willingness to pay a lesser amount. <u>R.M.M.</u> at 589-90. The Court reversed and remanded the case to the trial court, (1) recommending further fact finding proceedings regarding Father's current actual earnings and assets with modification of his child support obligation in line with those findings; and (2) stating that any modification would only be retroactive to the date Father's petition was filed. <u>Id</u>. at 590.