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## **Guardianship/Third Party Custody**

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In **In Re Paternity of V.M.**, 790 N.E.2d 1005 (Ind. Ct. App. 2003), the Court affirmed the trial court's denial of the father's petition to modify the permanent custody of his two children which had been previously placed with the maternal grandfather. The two children were born out of wedlock. About seven years previously, the mother and father had relinquished care and custody of them to the maternal grandfather. At that time, the father lacked fitness and willingness to parent the children, due in large part to his past drinking problems and criminal behavior. The father is now married, with a family, has quit drinking and using drugs, attends church regularly, has consistent visitation with the children, and pays child support to the maternal grandfather. The father did not dispute the conversion of a temporary custody order to a permanent one about a year before he filed this petition for custody of the children. The father filed this petition after the maternal grandfather moved with the children away from the town where the father also resided. The trial court denied the father's petition and he appealed that denial arguing that the trial court erred in denying his petition on the basis that doing so was in the best interests of the children.

**The Court held that the record supported the conclusion that the presumption in favor of the father having custody of the children was rebutted by evidence of the father's past unfitness, voluntary abandonment of the children, long acquiescence in the grandfather's custody, and other factors that would rebut the strong presumption in favor of the father, and that the best interests of the children were served by continued placement with the maternal grandparents.** *Id.* at 1009. The Court relied on the standard to be applied in custody disputes between a natural parent and a third party as articulated by the supreme court in **In re Guardianship of B.H.**, 770 N.E.2d 283, 287 (Ind. 2002), which states in part: "The issue is not merely the 'fault' of the natural parent. Rather, it is whether the important and strong presumption that a child's interests are best served by placement with the natural parent is clearly and convincingly overcome by evidence proving that the child's best interests are substantially and significantly served by placement with another person. This determination falls within the sound discretion of our trial courts, and their judgments must be afforded deferential review." *Id.* The Court noted that here, the trial court concluded that staying with the maternal grandparents was in the children's best interests, and it articulated specific reasons for its conclusion. **V.M.**, at 1008.