**Guardianship and Third Party Custody**
2/11/22

In **In re A.E.R.**, 184 N.E.3d 629 (Ind. Ct. App. 2022), the Court found the trial court did not abuse its discretion by denying Mother's motion to transfer venue and appointing Grandparents as Child's guardians.

For most of Child's life, Mother and Child lived in a home across the street from the home where Father and Grandparents lived in Lake County. Father died, and in the months following his death Mother was twice arrested and charged for disorderly conduct, had an altercation with drug dealers involving a weapon, and was diagnosed with bipolar disorder during a hospital stint. Mother sent Child to live with her half-brother in Porter County. Grandparents then filed an emergency petition for temporary guardianship in Lake County where they lived. Two days later, Mother's half-brother filed a guardianship petition in Porter County that was granted, but then dismissed on Grandparents' motion. Mother filed a motion to dismiss or in the alternative, stay proceedings and transfer venue to Porter County. Grandparents filed a response arguing that Lake County was the proper venue because that was Child's residence and the Child had only been staying in Porter County for two weeks. Mother's half-brother filed a petition in Lake County for emergency guardianship with Mother's consent. The trial court denied Mother's motion to transfer venue, denied the half-brother's petition for guardianship, and granted temporary guardianship to Grandparents. At some point, the court appointed a GAL. Two months later, Grandparents filed their petition for permanent guardianship over the Child, to which Mother objected arguing that it was no longer necessary. The trial court issued findings of fact and conclusions thereon appointing Grandparents as the guardians and noting that the guardianship shall be reevaluated in one year. Mother appealed.

**The trial court did not abuse its discretion by denying Mother's motion to transfer venue. Id. at 637-38.** The Court found that Child's residence is in Lake County and that staying with Mother's half-brother for two weeks prior to the filing of the guardianship petition cannot constitute residency as contemplated by the guardianship statute. Specifically, Section 29-3-2-2(a)(1)(A) provides that the venue for the appointment of a guardian, if the alleged minor resides in Indiana, is "in the county where the alleged … minor resides[.]" Further, the minor's residence "shall be determined by actual presence rather than technical domicile." Ind. Code § 29-3-2-5. In a situation where, as here, guardianship proceedings have been initiated in more than one county, Section 29-3-2-2(b) sets forth the proper procedure. If proceedings are commenced in more than one (1) county, they shall be stayed except in the county where first commenced until final determination of the proper venue by the court in the county where first commenced. After proper venue has been determined, all proceedings in any county other than the county where jurisdiction has been finally determined to exist shall be dismissed. If the proper venue is finally determined to be in another county, the court shall transmit the original file to the proper county. The proceedings shall be commenced by the filing of a petition with the court, and the proceeding first commenced extends to all of the property of the minor or the incapacitated person unless otherwise ordered by the court.

**The trial court did not abuse its discretion by appointing Grandparents as Child's guardians. Id. at 638-41.** Mother challenged the trial court's conclusion that the guardianship is necessary as a means of providing care and support for Child. Grandparents first argued that Mother failed to present a cogent argument in her appellate brief because she "never specifically identifies which particular findings are not supported by the evidence," and therefore waived this issue. The Court found that although Mother did not refer to the specific trial court findings she challenged, it can readily determine the same. Unchallenged findings of fact are accepted as true. *Moriarty v. Moriarty*, 150 N.E.3d 616, 626 (Ind. Ct. App. 2020), *trans. denied*. As such, if the unchallenged findings are sufficient to support the judgment, the court will affirm. *See Kitchell v. Franklin*, 26 N.E.3d 1050, 1059 (Ind. Ct. App. 2015). The court found Mother's failure to engage in therapy recommendations, active criminal case, lack of evidence to show she is no longer associated with drugs and drug dealers, spotty employment history, and ongoing mental health issues with PTSD, anxiety, and bipolar disorder all support the trial court's ruling that guardianship is in the child's best interest.

**Grandparents are not entitled to appellate attorney's fees. Id. at 641.** Grandparents argued Mother's failure to follow the Rules of Appellate Procedure constitutes procedural bad faith justifying the award of appellate attorney's fees. Pursuant to Indiana Appellate Rule 66(E), the Court may award appellate attorney's fees "if the appeal, petition, or motion, or response, is frivolous or in bad faith. The Court found Mother's appellate rule violations did not indicate a flagrant disregard of the form and content requirements of the appellate rules or that her brief was written in a manner calculated to require the maximum expenditure of time by the opposing party and the Court. Accordingly, the Court denied Grandparents' request for appellate attorney's fees.