



## **Guardianship and Third-Party Custody**

1/10/22

In ***In re Paternity of J.S. (G.S. Jr. v. H.L.)***, 181 N.E.3d 1040 (Ind. Ct. App. 2022), the Court held that the trial court did not abuse its discretion when it determined that the de facto custodian rebutted the presumption that custody should be with a natural parent and that custody with the de facto custodian was in the child's best interests.

Mother and Stepfather were married and had a child together before they divorced. Mother then moved in with Father and they had a child who is the subject of this case. When Mother and Father broke up, Stepfather and Mother reconciled, and Stepfather became a de facto parent for the child. Father exercised no parenting time and had no contact with Mother or Child from 2014 through 2019. After a DCS investigation on Mother's drug use, Mother agreed that Stepfather would retain custody of Child as part of an informal adjustment. Stepfather provided for the Child's housing, food, clothing, medical expenses, and educational needs and neither Mother nor Father provided any financial assistance from 2017 onward. Ultimately at the final custody hearing, Mother and Father were awarded unsupervised parenting time while Child remained in Stepfather's physical and legal custody. Father appealed.

**The trial court properly found that to remove the child from Stepfather would harm the child, due to Father's long acquiescence and voluntary relinquishment of the child. *Id.* at 1044.** The Court noted the trial court's findings about Father's failure to exercise parenting time, the child living with Stepfather away from either parent, Father's voluntary removal of himself from the child's life led to Stepfather being the de facto custodian, that the lives and affections of the child and Stepfather were completely interwoven, and there was a strong emotional bond between the two and to remove it would harm the child.

**The evidence is sufficient to support by clear and convincing evidence that custody with Stepfather is in the child's best interests. *Id.* at 1044-1045.** Evidence must be shown by clear and convincing evidence that custody of a child with a non-natural parent is in the best interests of a child, and the evidence must show that custody with a non-natural parent is a "substantial and significant advantage to the child." However, mere evidence showing the non-natural parent can provide "better things" is not sufficient to overcome the presumption. Here, the de facto custodian met this burden as he was able to show that he had maintained care of the child's housing, food, clothing, medical care, and educational needs for almost ten years. During this time, Father had no contact with the Child, which is a significant portion of the Child's life; and did not provide any financial assistance during this time. Mother, who wanted the child to remain with the de facto custodian, only exercised weekend visitations with the Child and provided no financial assistance for the care of the Child. IC 31-14-13-2 provides factors in determining a child's best interests in a custody matter, and 2.5(b) specifically outlines the factors when a child has been cared for by a de facto custodian. Since the trial court's order mentioned several of these statutory factors (child's age, adjustment to home and community, interrelationships with the parties and siblings, wishes of the parties, circumstances surrounding the placement of the

child with the de facto custodian, and de factor custodian's history of care for the child), the trial court's analysis of the best interests of the Child was appropriate.