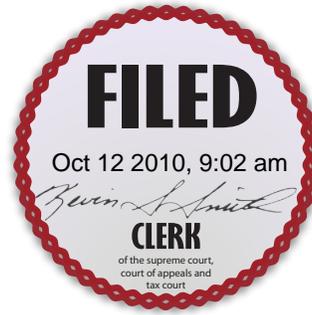


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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE THE GUARDIANSHIP OF A.M.N.,)
)
M.N. AND E.N.,)
)
Appellants,)
)
vs.)
)
B.C.,)
)
Appellee.)

No. 39A01-1001-GU-73

APPEAL FROM THE JEFFERSON CIRCUIT COURT
The Honorable Ted R. Todd, Judge
Cause No. 39C01-0603-GU-10

October 12, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BARNES, Judge

Case Summary

M.N. and E.N. (collectively “Grandparents”) appeal the trial court’s grant of a petition to terminate guardianship of A.M.N. filed by B.N. (“Mother”). We affirm.

Issue

Grandparents raise three issues, which we consolidate and restate as whether the trial court properly granted Mother’s petition to terminate guardianship.

Facts

A.M.N. was born to Mother on August 4, 2005. On March 8, 2006, Grandparents, Mother’s parents, filed a petition for guardianship of A.M.N. Mother consented to the guardianship because she “didn’t have a steady home at the time” and did not have a fixed income. Tr. p. 4. The guardianship was granted on May 3, 2006. Mother visited A.M.N. once or twice a week during the guardianship. In May 2006, Mother applied for, and received, Social Security disability payments for her chronic back pain and her inability to read and write. A.M.N. receives a portion of those payments.

Mother filed a petition to terminate the guardianship on December 8, 2008. A hearing was held on July 30, 2009, and all parties were present. At the hearing Mother testified that she could give A.M.N. a stable home and that she had steady income from the Social Security disability payments. Mother had lived in an apartment with another woman for the previous six months, but she was getting ready to move in with her ex-husband. Mother stated that she is able to cook, clean, and pay her bills on her own. She further testified that while married to her ex-husband she took care of his three-year-old

son. On November 30, 2009, the trial court terminated the guardianship and entered findings sua sponte that Mother's situation had changed considerably since the guardianship was granted. Specifically, the trial court stated Mother "is now married and living with her husband who has a three year old son." Appellant's App. pp. 41-42. Grandparents subsequently filed a motion for stay, request for reconsideration, and motion to correct error. All requests were denied by the trial court on December 21, 2009. Grandparents now appeal.

Analysis

The statutory standard for terminating a guardianship is provided in Indiana Code Section 29-3-12-1(c). Under this statute, a guardianship may be terminated whenever it is no longer necessary. Ind. Code § 29-3-12-1(c)(4). Indiana courts, however "have generally applied a more detailed test than required by the plain language of the [guardianship] statute." Roydes v. Cappy, 762 N.E.2d 1268, 1274 (Ind. Ct. App. 2002). Instead, a standard similar to the one used in child custody modifications, which takes into account parental rights and the best interests of the child, is applied. Id.

There is a two-part test to determine whether a guardianship of a child held by a third party should be terminated in favor of a natural parent. First, a parent wishing to terminate a guardianship has the burden to show that doing so is in the child's best interest and there is a substantial change in one or more of the child custody factors. See K.I. ex rel J.I. v. J.H., 903 N.E.2d 453, 460 (Ind. 2009) (citing I.C. § 31-14-13-6). There is a "strong presumption that a child's interests are best served by placement with the

natural parent.” In re Guardianship of B.H., 770 N.E.2d 283, 287 (Ind. 2002). This means that while the burden on the natural parent certainly exists, “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.” J.H., 903 N.E.2d at 460.

Once a natural parent overcomes this minimal burden, the burden shifts to the third party to show that the “best interests [of the child] are substantially and significantly served by placement with” the third party. B.H., 770 N.E.2d at 287. This prong can be satisfied by proving, with clear and convincing evidence, unfitness on the part of a parent, long acquiescence in the third party’s custody, or “voluntary relinquishment such that the affections of the child and third party have become so interwoven that to sever them would seriously mar and endanger the future happiness of the child.” Id. at 286 (quoting Hendrickson v. Binkley, 316 N.E.2d 376, 380 (Ind. Ct. App. 1974), cert. denied). A trial court, however, is not limited to these three factors when determining whether the presumption in favor of the natural parent has been overcome. J.H., 903 N.E.2d at 459. If the third party fails to carry its burden, custody will be granted to the natural parent. Id. at 461.

We also note that we review custody modifications for abuse of discretion with a “preference for granting latitude and deference to our trial judges in family law matters.” Kirk v. Kirk, 770 N.E.2d 304, 307 (Ind. 2002). When the trial court enters findings sua sponte, the specific findings control only as to the issues they cover, while a general judgment standard applies to any issue upon which the court has not found. Julie C. v.

Andrew C., 924 N.E.2d 1249, 1255 (Ind. Ct. App. 2010). The specific findings will not be set aside unless they are clearly erroneous, and we will affirm a general judgment on any legal theory supported by the evidence. Id. A finding is clearly erroneous when we cannot find facts or draw inferences that support it. Id. at 1255-56. In reviewing the trial court's findings, we do not reweigh the evidence or judge a witness's credibility. Id. at 1256. We consider only the evidence and draw reasonable inferences therefrom that support the findings. Id.

In J.H., the Indiana Supreme Court upheld the trial court's termination of the grandparent's guardianship in favor of the natural father. J.H., 903 N.E.2d at 461. There, the father had never had custody of the child. In fact, a paternity test did not establish that the father was the biological father until the child was almost three years old. Id. at 455. The father consented to the grandparent's guardianship until the child was about five years old. At that time, the father petitioned to terminate the guardianship because he had "obtained . . . more secure employment and [was] in a better position to provide for himself and his minor child." Id. at 456. The court found that the father had met his minimal burden under the child modification statute. Id. at 460. Next, the court determined that the grandparents had not met their burden in overcoming the parental presumption in favor of the father. Id. at 459. The court affirmed trial court's judgment awarding custody to the father. Id. at 461.

Here, Mother met her initial burden of showing that modification was in the best interest of A.M.N. and that one of the factors under the child custody statute had

substantially changed. In 2006, Mother consented to the appointment of Grandparents as A.M.N.'s guardians. At that time, Mother did not have steady income or a stable home. By December 2008, when Mother petitioned to have the guardianship terminated, that situation had changed. She had steady income of Social Security disability benefits and also was about to move into her ex-husband's house. Mother believed it was in the best interest of A.M.N. if the child resided with her. This evidence, much like the evidence presented in J.H., shows a substantial change in "the wishes of the child's parents" and satisfies Mother's burden under the child custody statute. See I.C. § 31-14-13-2(2).

We turn next to the determination of whether Grandparents overcame the parental presumption in favor of Mother through a showing of unfitness, long acquiescence, a strong bond between Grandparents and child, or any other relevant factor. We find there was sufficient evidence before the trial court to determine that Grandparents did not meet their burden.

There was ample evidence in the record to show that Mother was a fit parent. Mother testified that she visited A.M.N. on a regular basis. Mother was planning on moving in with her ex-husband and his three-year-old son. She often watched the son and was left alone with him. Mother cooks her own meals and takes care of the house. She has a steady stream of income. Grandparents argue that Mother does not properly supervise A.M.N., who is described as a very active child. In order to prove parental unfitness, however, it is not sufficient for Grandparents to simply show that they can provide "better things in life for the child." Binkley, 316 N.E.2d at 381.

There was also evidence to support a finding that there was not a long acquiescence in the Grandparent's custody. The child in J.H. was in the custody of the grandparents for over five years. There, the court did not find that the long acquiescence factor had been met by the grandparents since the father had constant contact with the child. J.H., 903 N.E.2d at 461. Here, the child was in the Grandparents' custody for two and one half years. Mother visited the child at least once a week during that time. We find there was insufficient evidence presented to show a long acquiescence and that Mother continued to evidence interest in the child.

Grandparents also failed to prove that the "affections of the child and third party have become so interwoven that to sever them would seriously mar and endanger the future happiness of the child." B.H., 770 N.E.2d at 286 (quoting Binkley, 316 N.E.2d at 380). Grandparents argue that there was a bond between them and A.M.N. Appellant's Br. p. 7. There is no evidence, however, showing that severing their relationship would "seriously mar or endanger the future happiness" of A.M.N. Id.

Grandparents did not provide any evidence nor did they argue on appeal that any other factor was met that would overcome the presumption in favor of Mother. Therefore, we conclude that the trial court did not abuse its discretion in terminating the guardianship.

Grandparents also argue that the trial court erred by finding that Mother "is now married and living with her husband." Tr. p. 42. At the time of the hearing, Mother was

divorced and about to move back in with her ex-husband. Thus, this finding is clearly erroneous. The trial court's mistake, however, is not fatal to its judgment.

There was ample evidence in the trial court's record to support the its determination that the guardianship be terminated. Even though one of the trial court's sua sponte findings was not supported by the evidence, we can affirm the trial court's general judgment as to any issue for which the trial court has not made a specific finding. There was sufficient evidence in the record to support a finding that Grandparents had not overcome the presumption in favor of Mother. We affirm the trial court's general judgment on this basis.

Conclusion

The trial court did not abuse its discretion in terminating the guardianship in favor of Mother. We affirm.

Affirmed.

FRIEDLANDER, J., and CRONE, J., concur.