

STATEMENT OF THE CASE

Appellant-Respondent, Robyn Hayden (Mother), appeals the trial court's Order awarding guardianship over the minor child, D.H., to Jeff (Uncle) and Sherry (Aunt) Frame (collectively, the Frames).

We affirm.

ISSUE

Mother raises one issue on appeal which we restate as follows: Whether the trial court abused its discretion by granting guardianship over D.H. to the Frames.

FACTS AND PROCEDURAL HISTORY

D.H., born on June 16, 1992, is the son of Mother and Chris Hayden (Father). Father passed away on March 17, 2004. At some point prior to March of 2004, Mother and Father divorced. As part of the Decree of Dissolution, the Frames, the paternal Aunt and Uncle, were awarded standard visitation rights with D.H..

On July 5, 2006, at D.H.'s request, the Frames filed a Petition for Appointment of Guardian of a Minor Child. The trial court conducted hearings on the petition on October 12, 2006, October 18, 2006, and December 12, 2006. On January 4, 2007, the trial court issued its findings of fact and conclusions of law appointing the Frames as guardians of D.H. The trial court's Order states, in pertinent part:

FINDINGS OF FACT

* * *

11. [D.H.] had been living, for the year preceding the filing of the petition for guardianship, with [Uncle] and [Aunt], his paternal aunt and uncle. A calendar, created by the Frames and [D.H.], was presented which shows the

dates that [D.H.] was with Uncle or Aunt from November 2005 through August 2006.

12. [Uncle] and [Aunt] have assumed responsibility and care for [D.H.], including, but not limited to: (1) taking him to the hospital for surgery and caring for him after surgery, (2) enrolling him in sports and attending his baseball games, (3) assisting him with his homework, (4) providing him with food and shelter, and (5) providing love, structure and discipline for him.

13. According to [D.H.], for the majority of his life, he has lived somewhere other than with his Mother. He has lived with the Frames and with his [maternal] grandmother, [].

14. [D.H.] desires to live with [Uncle] and [Aunt] because he wants consistency and stability in his life.

15. [Mother] admitted that [D.H.] is very close to [Uncle], [Aunt], and [their son. L.F.].

16. [D.H.] has concerns about his Mother's drug and alcohol use.

17. [Mother] denied drug and alcohol use, including prior treatment for the same. However, [Mother] has been court ordered previously to attend drug and alcohol counseling.

18. [Mother] stated that she hardly ever drinks and has only been intoxicated one time. However, [Mother] has prior criminal convictions which resulted in her being ordered into alcohol treatment programs.

19. [Mother] has recently moved back into her mother's residence.

20. [Mother] admitted that when [D.H.] comes to her mother's home, he spends most of the time in his room with the door shut.

21. [Mother] admitted that she has difficulty communicating with [D.H.].

22. [Mother] did not attend any of the minor child's baseball games during the summer of 2006.

23. [Mother] has been unemployed for approximately two (2) years. Her only source of income is [D.H.'s] social security benefits.

24. [Mother] takes prescription pain medications for a prior injury.
25. [Mother] stated that [D.H.] only went to the Frames on average of one (1) time per week over the past year. However the bus driver and the Frames' neighbor [] both placed him at the Frame residence significantly more than one (1) time per week. [Mother's] testimony is not credible.
26. According to [Mother], [D.H.] rarely rode the school bus to the Frame residence. [Mother] testified that, during the 2005-2006 school year, she picked [D.H.] up from school on average five (5) times per week. However, the school bus driver, [], testified that she drove [D.H.] on the school bus to the Frame's residence in Roanoke a minimum of three (3) times and sometimes five (5) times per week. Again, [Mother's] testimony is not credible.
27. Diane Sills, [Mother's] mother, testified that in 2005 [D.H.] lived with her. According to [Mother's] own testimony, during that time, [Mother] was living with her boyfriend, Craig Hill. Thus, even assuming that Diane Sills' testimony is credible, [D.H.] was still living someplace other than with his Mother.
28. Craig Hill, [Mother's] live-in boyfriend, testified that [D.H.] only lived with him and [Mother] fifty percent (50%) of the time from 2002 until 2006.
29. It is clear that [Mother] has allowed her son to reside with other family members, whether it be Diane Sills or the Frames, rather than raising her son herself. The child is bounced around between different peoples homes.
30. Stability is best for any child.
31. During the pendency of this matter, while in [Mother's] care, [D.H.] was allowed to miss school on at least two (2) occasions. On one of those dates, he was allowed to go to a friend's house to visit and on the other to go to a football game.

CONCLUSIONS OF LAW

1. The [c]ourt finds that [Uncle] and [Aunt] are suitable and proper persons to be guardians over [D.H.].
2. The trial court is aware that the standard in guardianship, when custody is being requested by a party other than the natural parent, is that the [c]ourt

be satisfied by clear and convincing evidence that the best interest of the child require a placement with someone other than the natural parent. *In Re the Guardianship of B.H. and S.H., minor children*, 770 N.E.2d 283 (Ind. 2002).

3. In determining whether or not it is in [D.H.'s] best interest to be placed with [the Frames], the [c]ourt looks at the following factors: (1) the parent's fitness or unfitness, (2) whether the natural parent[] acquiesces [to] the minor child living with another person, (3) whether or not a strong emotional bond has formed between the child and the proposed guardians, and (4) any other factors which would indicate that it is in [D.H.'s] best interest to be placed with someone other than his [M]other. *In Re the Guardianship of B.H. and S.H.*, [770 N.E.2d] at 287.

4. The [c]ourt notes, as the case law clearly indicates in guardianship matters, that the issue is not merely the fault of [M]other. "Rather, it is whether the important and strong presumption that a child's best 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." *In Re the Guardianship of B.H. and S.H.*, [770 N.E.2d] at 287.

5. Having applied these standards, the [c]ourt finds that the Frames have rebutted the presumption in favor of a natural parent and that it is in [D.H.'s] best interest to be placed with [Uncle] and [Aunt] for the foregoing reasons:

- a. [Uncle] and [Aunt] can provide the stability and structure necessary for [D.H.] to succeed in life.
- b. [Mother] acquiesced in allowing [D.H.] to reside with [Uncle] and [Aunt] as illustrated by the testimony of the Frames, [D.H.], [the] bus driver [], and [the Frames' neighbor].
- c. [D.H.] has formed a very strong bond with [Uncle] and [Aunt] and their son [L.F.].
- d. [Mother] and [D.H.] cannot communicate with one another, as both acknowledged.
- e. [D.H.] has concerns regarding his [M]other's drug and alcohol use.

- f. The conflicting testimony presented leads the [c]ourt to believe that [Mother's] testimony is not credible.
- g. The Frames place importance on [D.H.'s] education.
- h. [Mother] is unemployed and has no income other than the social security benefits received for [D.H.].
- i. [Mother] is not a fit parent. She has allowed others to raise, parent, and support [D.H.] while she has continued to receive social security benefits on his behalf.
- j. [D.H.] consents to guardianship.

(Appellant's App. pp. 6-11).

Mother now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Standard of Review

The determination of guardianship falls within the sound discretion of our trial courts and their judgments must be afforded deferential review. *Hinkley v. Chapman*, 817 N.E.2d 1288, 1293 (Ind. Ct. App. 2004). Because a trial court is required to enter findings, we will reverse the trial court's judgment when there is no evidence to support the findings or the findings do not support the judgment. *Id.* Upon appeal, we consider only the evidence favorable to the judgment. *Id.* "[A]n appellate court may not impose its own view as to whether the evidence is clear and convincing but must determine, by considering only the probative evidence and reasonable inferences supporting the judgment and without weighing evidence or assessing witness credibility, whether a reasonable trier of fact could conclude that the judgment was established by clear and convincing evidence. *Id.*

II. *Award of Guardianship to Aunt and Uncle*

Mother's contention upon appeal is two-fold. She first contends that the trial court failed to enter a finding that the appointment of a guardian for D.H. was necessary. Additionally, she challenges the trial court's ultimate decision to appoint the Frames as guardians because it failed to establish sufficient findings supporting their appointment.

A. *Necessity*

The guardianship statute provides for the appointment of guardians for minors. *See* Ind. Code § 29-3-5-1(a). However, before a court is required to appoint a guardian for a minor, a court must find that the appointment is "necessary as a means of providing care and supervision of the physical person or property of the . . . minor." I.C. § 29-3-5-3(a)(2). Necessary means "[a]bsolutely essential" or "[n]eeded to achieve a certain result or effect. *E.N. ex rel. Nesbitt v. Rising Sun-Ohio County Community School Corp.*, 720 N.E.2d 447, 452 (Ind. Ct. App. 1999), *trans. denied*. However, a trial court's failure to include a specific finding on necessity will not be grounds for reversal if it is implicit in the trial court's evidentiary findings. *Id.*

Here, the trial court did not specifically find that the appointment of a guardian for D.H. was necessary. Nevertheless, the trial court entered extensive findings in support of its ultimate conclusion that appointment of a guardian was in D.H.'s best interests, a standard implicit within subsection (a) of the guardianship statute. *Id.* at 451. For instance, the trial court found that as D.H. spends the majority of his time at the Frames' residence, his Aunt and Uncle have assumed responsibility and care for D.H.'s educational and medical needs. As a result, even Mother conceded that D.H. is very

close to the Frame family, especially their son, L.F. While the Frames appear to be concerned about D.H.'s academic success, the trial court entered findings that Mother allows her son to miss school. Even when D.H. spends time with Mother at her residence, she admits that she has difficulty communicating with him and that he spends most of the time in his room with the door shut. Accordingly, we will not reverse the trial court's determination for the absence of a specific finding.

B. *Sufficiency*

Next, we focus on Mother's second contention: whether the trial court's findings are sufficient to appoint the Frames as D.H.'s guardians. Initially, we note that a third party seeking guardianship over a minor must overcome the strong presumption that a child's best interests are served by remaining with the natural parent with clear and convincing evidence showing that the child's best interests are substantially and significantly served by placement with the third party. *In Re Guardianship of B.H.*, 770 N.E.2d 283, 287 (Ind. 2002), *reh'g denied*. Thus, the trial court must be convinced that placement with a person other than the natural parent represents a substantial and significant advantage to the child. *In Re Guardianship of J.K.*, 862 N.E.2d 686, 691 (Ind. Ct. App. 2007). The presumption will not be overcome merely because "a third party could provide the better things in life for the child." *Hendrickson v. Binkley*, 316 N.E.2d 376, 381 (Ind. 1974). In a proceeding to determine whether to place a child with a person other than the natural parent, evidence establishing the natural parent's unfitness or acquiescence, or demonstrating that a strong emotional bond has formed between the

child and the third person, would of course be important but the trial court is not limited to these criteria. *J.K.*, 862 N.E.2d at 691.

Here, testimony presented at the hearing reveals that D.H. is supportive of the guardianship petition filed by the Frames as he desires a stable home environment. In this light, the evidence reflects that the majority of the time, D.H. is bounced around between his grandmother's house, the Frames' residence, and Mother's boyfriend's house. Furthermore, as we stated before, even when D.H. spends time with Mother, communication problems are rife and he is mostly left to his own devices without any parental supervision. As a result, even Mother conceded that her son has formed a strong bond with the Frames and their son. The Frames, in their role of D.H.'s main care-takers, have assumed responsibility for his education and medical needs. When D.H. was scheduled for surgery, the Frames took him to the hospital and provided him with aftercare in their house even though Mother was present in the hospital. The Frames assist him with his homework and generally want him to do well in school. They have enrolled him in extra-curricular activities and, unlike Mother, attend his baseball games. The record supports that, on the other hand, Mother does not provide him with the necessary supervision. While staying with Mother, D.H. was allowed to visit a friend and go to a football game which both resulted in missing school the next day.

Furthermore, evidence at trial shows that D.H. is concerned about his Mother's drug and alcohol use. Even though denied by Mother, the trial court determined that her testimony was not credible and that she previously had been court ordered to attend drug and alcohol counseling. D.H. further testified that at times Mother falls asleep with a

burning cigarette in her hand. He stated that his Mother “doesn’t care where [he] go[es] . . .” (Transcript p. 98). He clarified that he does not want to reside with Mother “because of all the smoking and fighting and . . . I don’t know. She can’t support herself and I get yelled at a lot.” (Tr. p. 102). In sum, the trial court determined that Mother has allowed others to raise, parent, and support D.H. while she has continued to receive social security benefits on his behalf.

Mindful of our deferential standard of review, we conclude that the Frames have overcome the parental presumption by presenting clear and convincing evidence that D.H.’s best interests are substantially and significantly served by appointing them as guardians. *See B.H.*, 770 N.E.2d at 287. It is clear that Mother has acquiesced in the Frames assuming the parental role in the upbringing of D.H. *See J.K.*, 862 N.E.2d at 691. Moreover, because of the significant amount of time spent with the Frames, a strong emotional bond has formed between the Frame family and D.H. *See id.* Accordingly, we affirm the trial court’s Order.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not abuse its discretion by appointing the Frames as guardians over the minor child, D.H.

Affirmed.

NAJAM, J., and BARNES, J., concur.