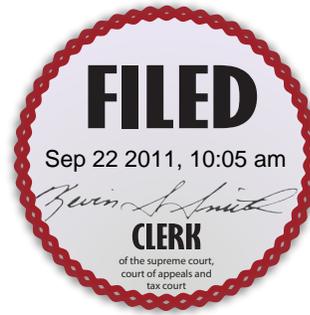


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

CAROL CURRAN,

Appellant-Respondent,

vs.

RHONDA CURRAN-WERT,

Appellee-Petitioner.

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No. 30A04-1101-GU-19

APPEAL FROM THE HANCOCK CIRCUIT COURT
The Honorable Terry K. Snow, Judge
Cause No. 30C01-8801-GU-19

September 22, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Carol Curran (Mother), the mother and former guardian of Rhonda Curran-Wert (Daughter), appeals from the trial court's order terminating the guardianship. Mother presents the following issues for our review:

1. Do the findings of fact support the trial court's decision to terminate the guardianship?
2. Was Mother entitled to notice and the opportunity to be heard on a petition for attorney fees after the termination of the guardianship?

We affirm.

Daughter was involved in an automobile accident when she was sixteen years old. Due to the severity and nature of her injuries she was adjudicated an adult incompetent on June 27, 1988, and a guardianship was established with Mother named as guardian. Daughter was forty-one years old as of the date the most recent petition for termination of the guardianship was filed. The trial court held evidentiary hearings on September 20, 2010, and December 14, 2010, before issuing findings of fact and conclusions thereon terminating the guardianship. Mother now appeals.

1.

Mother appeals from the trial court's order terminating the guardianship and challenges the sufficiency of the trial court's findings. We note at the outset that the findings of fact used by Mother in her brief to challenge the termination of the guardianship are from the trial court's findings of fact and conclusions thereon continuing the guardianship in 2003. This appeal is from the trial court's January 18, 2011 order, which includes separate findings of fact and conclusions thereon. Because the time for appealing the trial court's 2003

decision has long since passed, we limit our review to the findings of fact and conclusions thereon from the trial court's January 18, 2011 order.

All findings and orders of the trial court in guardianship proceedings are within the trial court's discretion. Ind. Code Ann. § 29-3-2-4 (West, Westlaw current through 2011 1st Reg. Sess). Thus, we review those findings under an abuse of discretion standard. *In re Guardianship of J.K.*, 862 N.E.2d 686 (Ind. Ct. App. 2007). In determining whether the trial court abused its discretion, we review the trial court's findings of fact and conclusions thereon, and may not set aside the findings or judgment unless they are clearly erroneous. *Id.* We consider first whether the evidence supports the factual findings and then, second, whether the findings support the judgment. *Id.* Findings are clearly erroneous when the record is devoid of fact to support them directly or inferentially. *Id.* A judgment is clearly erroneous if it relies on an incorrect legal standard. Our review of the findings of fact is deferential in light of the trial court's ability to assess the credibility of witnesses, while our review of the conclusions of law is not deferential. *Id.* We do not reweigh the evidence nor do we reassess the credibility of witnesses, but rather, consider the evidence most favorable to the judgment and all reasonable inferences drawn in favor of the judgment. *Id.*

It its order, the trial court found that since the trial court's last review of Daughter's guardianship, she has been married for over six years and that she has been involved in the operation of her own horse racing business. Operation of that business includes the care and feeding of the horses, ordering and purchasing equipment, and arranging for their veterinary needs. She performs those functions without assistance, but with the guidance of a mentor,

who is her employer and partner in the business. Daughter has become a groom and has resolved issues relating to being a groomsman on her own.

Further, the trial court found that Daughter has maintained a checking account and handles it appropriately, but with an occasional dishonored instrument that subsequently is honored. Daughter makes all decisions regarding her healthcare including making appointments, attending those appointments, obtaining medication, and taking the medication, all without assistance or problems. Daughter performs household chores at her residence including cleaning, cooking, and grocery shopping. Daughter also has obtained a driver's license.

Daughter's relationship with Mother since 2003 has become strained and causes emotional distress to both parties. Daughter's spouse signed a prenuptial agreement, which adequately protects Daughter's assets in large part secured in a compromise of Daughter's tort claim arising from her automobile accident. The trial court found that Mother had failed to encourage Daughter to be self-reliant and independent, and that Mother's handling of the guardianship was not without a few errors.

Daughter submitted to examination and testing in February 2011, which indicated that Daughter is able to use logic and reasoning in reaching decisions related to her personal and professional finances, and is able to plan for future financial success. Daughter's psychological health has suffered from the continuation of the guardianship, and she suffers from an adjustment disorder with mixed anxiety and depression. Mother acknowledged that her relationship with Daughter had deteriorated and that they saw one another only when required.

These findings led the trial court to conclude that Daughter was no longer incapacitated, was not developmentally disabled, and that it was no longer necessary for Daughter to be protected by the guardianship. Our review of the record leads us to conclude that the trial court correctly concluded that it was necessary to terminate the guardianship.

I.C. § 29-3-12-1(c) (West, Westlaw current through 2011 1st Reg. Sess.) provides in pertinent part that a trial court may terminate any guardianship if the guardianship is no longer necessary for any other reason. Here, it was evident that Daughter had made significant strides since the trial court's last review of the need for the guardianship in 2003.

Furthermore, we have found no cases that support Mother's position regarding *res judicata*. The trial court's 2003 findings and conclusions regarding the petition to terminate the guardianship then before it did not preclude further review of the need for the guardianship. This was an ongoing guardianship and the facts before the trial court in 2003 vastly differed from those before it in 2010-11. The trial court did not abuse its discretion by finding and concluding that Daughter was no longer incapacitated and no longer needed the protection of the guardianship.

2.

Mother also challenges the trial court's subsequent award of attorney fees to Daughter's attorney without a hearing. She claims that she was entitled to notice and an opportunity to be heard on the issue.

I.C. § 29-3-12-5 (West, Westlaw current through 2011 1st Reg. Sess.) provides that the authority and responsibility of the guardian terminate upon the termination of the guardianship. In the trial court's January 18, 2011 order, it ordered Mother to file a final

accounting within thirty days of the order and to surrender to Daughter's attorney all funds and documentation related to real estate owned or managed by the guardianship on behalf of Daughter. The petition for attorney fees was submitted on February 8, 2011 and was granted by the trial court without a hearing. The guardianship by that time had terminated and Mother had no more authority or responsibility in relation to the guardianship. We conclude that there was no error here as Mother was not entitled to notice or the opportunity to be heard.

Judgment affirmed.

DARDEN, J., and VAIDIK, J., concur.