ATTORNEY FOR APPELLANT:

STEVEN KNECHT
Lafayette, Indiana

ATTORNEY FOR APPELLEES:

GREGG S. THEOBALD
Lafayette, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN RE THE GUARDIANSHIP OF A.N.M.	)	
	)	
JEANNEA MADSEN,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 91A02-0705-CV-443
	)	
DEBORAH JONES and JIMMIE JONES,	)	
	)	
Appellees-Co-Guardians.	)	

APPEAL FROM THE WHITE CIRCUIT COURT
The Honorable Robert W. Thacker, Judge
Cause No. 91C01-0308-GU-9

October 12, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Petitioner, Jeannea Madsen (Madsen), appeals the trial court's denial of her petition to terminate Deborah and Jimmie Jones's (the Joneses) guardianship over her minor child, A.M.

We affirm.

ISSUES

Madsen raises two issues, which we restate as:

(1) Whether the trial court's findings are supported by the evidence; and

(2) Whether the trial court abused its discretion in denying Madsen's petition to terminate the guardianship.

FACTS AND PROCEDURAL HISTORY

We have previously considered an appeal of the trial court's first denial of Madsen's most recent petition to terminate the Joneses' guardianship over A.M. in an unpublished memorandum decision. *See In re Guardianship of A.N.M.*, No. 91A02-0606-CV-483, slip op., 862 N.E.2d 726 (Ind. Ct. App. 2007) (table). In that decision, we stated the relevant facts and procedural history as follows:

> A.M. was born in 1992 and is now fifteen years old. A.M.'s paternal grandparents, the Joneses, were appointed as temporary guardians of A.M. on August 12, 2003. They were appointed as A.M.'s permanent guardians on November 7, 2003, and A.M. has continued to live with them. However, Madsen has filed several petitions to modify or terminate the guardianship, all of which have been denied.
>
> On February 23, 2006, the Joneses submitted a report to the court, stating that, without their knowledge, A.M. had sold four Adderall tablets (her prescription medication) to students at her high school. As a result, she was expelled until January 2007, but the Joneses made sure that A.M. received

> outbound schooling during this time. A.M. pled guilty in juvenile court to Class A felony dealing in a schedule II controlled substance, and she was put on formal supervision for six months with the Clinton County Juvenile Probation Department. Upon learning of this incident, on February 28, 2006, Madsen filed the most recent petition to terminate the Joneses' guardianship. The trial court held a hearing on the petition on May 31, 2006.
>
> The Joneses presented evidence that they had ensured A.M. was attending an alcohol/drug education class and counseling, as well as taking on-line classes and classes through outbound education. They expressed concern that if the guardianship were to be terminated, Madsen would not ensure that A.M. attended school or counseling or that A.M. finished her orthodontic work, for which they have paid. The Joneses also worried that Madsen's boyfriend would belittle and demean A.M., as he has done in the past. The Joneses presented evidence that Madsen failed to keep A.M.'s medications locked up while she was visiting, in violation of A.M.'s probation. Additionally, they presented an e-mail that Madsen wrote to Deborah Jones on May 25, 2005, offering to make a cash settlement in return for giving up custody of A.M. [] Madsen, on the other hand, testified that if A.M. were returned to her, she would ensure that A.M. attended school, received counseling, and maintained a relationship with the Joneses.

Id., slip op. at 2-3. On appeal, we concluded that the trial court did not issue sufficiently detailed and specific findings, erroneously placed the burden of proof on Madsen, and remanded for further proceedings. *Id*., slip op. at 8.

Upon remand, the trial court reviewed the record of proceedings and made extensive findings. The trial court concluded that the Joneses have a burden to prove by clear and convincing evidence that the "guardianship is necessary, and in the child's best interest, and that the guardianship should continue to be open." (Appellant's App. p. 33). Regarding the relationship between A.M. and the Joneses, the trial court concluded there is a strong personal and emotional bond between the child and the co-guardians, which has strengthened during the guardianship, and concluded that the grandparents were best suited to deal with

the extraordinary needs of A.M. due to her attention deficit disorder. Additionally, the trial court made numerous findings which demonstrate the strained relationship between A.M. and Madsen, and Madsen's lack of day-to-day involvement with A.M. over the past years. Accordingly, the trial court concluded that it is in the best interests of A.M. that the Joneses remain as her co-guardians and denied Madsen's petition.

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

DISCUSSION AND DECISION

Madsen contends that the trial court committed reversible error when it most recently denied her petition to end guardianship. Specifically, Madsen argues that the trial court made findings that are not supported by the record. Further, Madsen argues that the bond between A.M. and the Joneses, A.M.'s paternal grandparents, is not unusual and should not be the reason to continue the guardianship. Finally, Madsen argues that the trial court erroneously considered whether the Joneses had overcome the presumption in favor of Madsen simultaneously with the best interests of A.M.

I. *Standard of Review*

In general, we review child custody determinations for an abuse of discretion, with a preference for granting latitude and deference to our trial courts in family law matters. *Webb v. Webb*, 868 N.E.2d 589, 592 (Ind. Ct. App. 2007). We will not reverse unless the trial court's decision is against the logic and effect of the facts and circumstances before it or the reasonable inferences drawn therefrom. *Id.*

Additionally, Madsen is appealing from a decision in which the trial court entered findings of fact and conclusions thereon pursuant to Ind. Trial Rule 52. Therefore, we must

first determine whether the evidence supports the findings and second, whether the findings in turn support the judgment. *Webb*, 868 N.E.2d at 592.

> The trial court's findings and conclusions will be set aside only if they are clearly erroneous, that is, if the record contains no facts or inferences supporting them. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. We neither reweigh the evidence or assess the credibility of witnesses, but consider only the evidence most favorable to the judgment.

Id.

II. *The Trial Court's Findings*

Madsen asserts that certain findings by the trial court are not supported by evidence in the record.[1] We note that the Joneses have not responded to any of Madsen's contentions that certain findings by the trial court are unsupported.

First, Madsen directs our attention to two related findings by the trial court: (1) that Madsen had little contact with A.M. after Madsen's divorce from A.M.'s father, and (2) that A.M. lived with the Joneses for extensive periods of time before the guardianship officially began. In searching the record, we have not found evidence which clearly support these findings. However, Madsen's own statement in the e-mail dated May 25, 2005, stated: "yes I know I wasn't there for you but you know what[,] you didn't care and never will[.] So[,] guess what[,] it goes both ways [because you were] fine without me [] then and you will be fine without us now[,] or however it turns out." (Appellant's App. p. 163). The date of this

[1] Madsen has not identified her separate arguments by headings as required by Ind. Appellate Rule 46(A)(8)(c), but rather has lumped all of her arguments together. The result of Madsen's briefing style has caused her assertions on this point to be found seven pages into her argument section beginning at the midpoint of a paragraph. We encourage counsel for Madsen to separate out arguments in accordance with the rules of Indiana Appellate Procedure.

e-mail, and the statement that is made, lend support to an inference that Madsen's lack of involvement with A.M. had begun prior to August 12, 2003, the date when the guardianship was initiated. Thus, we are not firmly convinced that a mistake has been made in finding the above facts; however, we will assume for sake of argument that these findings are not supported, and are therefore erroneous.

Nevertheless, in reviewing the record, we note that other findings made by the trial court sufficiently support its judgment. "To the extent that the judgment is based on erroneous findings, those findings are superfluous and are not fatal to the judgment if the remaining valid findings and conclusions support the judgment." *Huber v. Sering*, 867 N.E.2d 698, 706 (Ind. Ct. App. 2007). The trial court found there was a strong bond between the Joneses and A.M., which had strengthened during the term of the guardianship wherein the Joneses had acted as the primary caregivers for A.M. for approximately three years. Here, we conclude that any error on the part of the trial court in finding limited contact between Madsen and A.M. after Madsen's divorce from A.M.'s father, and A.M. staying with the Joneses prior to the guardianship is not fatal to the trial court's judgment.

Additionally, Madsen asserts some of the trial court's findings are not consistent with the comments made by the trial court at the hearing. Specifically, Madsen refers to the following findings: "that Madsen could not provide a suitable home; that only the Joneses could provide the attention needed by [A.M.]; and that [A.M.'s] future success and wellbeing would be seriously endangered by placement with Madsen," as being inconsistent with a specific dialogue from the trial court during a hearing on Madsen's petition. (Appellant's Br.

p. 15).[2] Regardless of whether the trial court has contradicted its previous statements during a hearing, our review of the trial court's findings is to determine whether the evidence supports those findings, not to determine whether the trial court has contradicted its own previous statements. *See Webb*, 868 N.E.2d at 592. Nonetheless, when reviewing the record, we find ample evidence to support these findings by the trial court.

III. *Termination of A.M.'s Guardianship*

The termination of guardianship statute provides specific instances upon which a guardianship should be terminated, and additionally requires a court to terminate a guardianship when "the guardianship is no longer necessary for any reason." Ind. Code § 29-3-12-1(c)(4). However, as we have previously stated: "our review of the case law in this area indicates that we generally have applied a more detailed test than might arguably be required by the plain language of the statute." *In re Guardianship of L.L.*, 745 N.E.2d 222, 227 (Ind. Ct. App. 2001).

To determine whether to terminate a guardianship, a court engages in a three-step process. *In re Paternity of Z.T.H.*, 839 N.E.2d 246, 251 (Ind. Ct. App. 2005). First, the court begins by acknowledging the strong presumption in all child custody cases that a child's best interests are ordinarily served by placement in the custody of a natural parent. *Id*. Second, the third party seeking to maintain the guardianship bears the burden of rebutting the presumption, and must do so by clear and cogent evidence. *In re M.K.*, 867 N.E.2d 271, 274 (Ind. Ct. App. 2007). "Evidence sufficient to rebut the presumption may, but need not

[2] Madsen does not direct us to where these findings are located in the trial court's Order as required by Ind. Appellate Rules 22(C) and 46(8)(a). All the same, upon review of the trial court's Order, we find that these

necessarily, consist of the parent's present unfitness, or past abandonment of the child 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*. Finally, if the presumption is rebutted, the court engages in a general best interests analysis. *In re Paternity of Z.T.H., 839 N.E.2d 251*.

A. *Parental Presumption*

We find that the trial court acknowledged the presumption in favor of Madsen. Additionally, we find that the trial court determined that the Joneses rebutted the presumption. Specifically, although not concisely articulated, the trial court determined that there was a past abandonment of the child 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.

Before we explain whether the trial court abused its discretion in making its determination that the Joneses rebutted the presumption, we will address Madsen's contention that the bond between the Joneses and A.M., who share the relationship of grandparents to granddaughter, is not unusual and should not serve as the basis for a determination of custody. Often times, third parties who are given custody of minor children will have some sort of relationship independent of the guardianship. *See In re Paternity of Z.T.H.*, 839 N.E.2d at 248 (finding that guardians were maternal grandparents); *In re Guardianship of L.L.*, 745 N.E.2d at 227 (finding that guardians were paternal grandparents); *In re Guardianship of B.H.*, 770 N.E.2d at 285 (finding guardian was a stepfather).

---

are accurate generalizations of some of the trial court's findings.

However, relationships between grandparent and grandchild, or stepparent and stepchild, or any similar relationship are not necessarily so powerful that removal of day-to-day custodial interaction would seriously endanger the happiness of the child. Thus, we conclude that the possible existence of an alternative basis for a relationship between the child and the guardian[s]--*i.e.* grandparent or stepparent--does not alter our consideration of whether that guardian has sufficiently rebutted the presumption in favor of the biological parent by showing the existence of bond so interwoven that to end custody would seriously mar and endanger the future happiness of the child.

In developing its determination that the Joneses rebutted the presumption in favor of Madsen, the trial court found that:

> Based on the evidence presented . . . there is a strong personal and emotional bond between the child and the co-guardians, which existed prior to the guardianship and which bond and attachment has strengthened during the term of the guardianship while the child has been living on a daily basis in the grandparents' home for approximately three years.

(Appellant's App. pp. 33-34). Additionally, the trial court found that the "child and the grandparents have fully integrated into each other's life and schedule." (Appellant's App. p. 34). "The single stabilizing influence in the child's life has been her grandparents as guardians and living in their home with the consistent structure and supervision they have provided." (Appellant's App. p. 34). "The child is fully immersed in the fabric of the grandparents' lives, and the grandparents for many years have consistently devoted their lives to the child." (Appellant's App. p. 35). "The child has her own room, an adequate home, a loving relationship with her grandparents who[m] she trusts and upon whom she can rely." (Appellant's App. pp. 35-36). Further, the trial court explained that it:

> [gave] due consideration to the presumption that the child should be in the custody of her natural mother. The [trial court] has consistently reviewed this case with the principle that the child should be reunified with the mother as soon as possible so long as not to be detrimental to the child's well being. This child's circumstances, personality, and character development require intense parenting concentration to such a high degree that the co-guardians currently demonstrate on a daily basis, and which capacity the natural mother has not demonstrated.

(Appellant's App. p. 36).

The trial court made these determinations based upon evidence that Madsen had only minimal involvement in A.M.'s life in the months prior to the evidentiary hearing on the petition to terminate guardianship. The trial court was presented testimony that Madsen had skirted involvement in A.M.'s drug and individual counseling mandated after her recent expulsion from school and legal troubles, cancelled scheduled visitations, and only called A.M. twice during a period of several months. There was abundant evidence that the Joneses had dutifully served the role of primary care giver for A.M. for at least the past three years. Further, there was evidence presented that the removal of A.M. from the Joneses would endanger her future happiness. As A.M. wrote in a letter to Madsen, "I'm still mad at you for trying to take me away from my home, and from the place where I am happy." (Appellant's App. p. 121). Thus, we find that the trial court has not abused its discretion and defer to its judgment that the Joneses have rebutted the presumption in favor giving custody to Madsen.

B. *Best Interests of the Child*

We must next determine whether the trial court appropriately determined that the Joneses having custody is in the best interests of the child. See *In re Paternity of Z.T.H.*, 839 N.E.2d at 251. As Madsen has pointed out, the trial court did not clearly separate its analysis

of the best interests of A.M. from its analysis of whether the Joneses had rebutted the presumption in favor of Madsen. Nevertheless, we find that the trial court's combined analysis repeatedly focused on the best interests of A.M. When reviewing the record we find evidence that the Joneses have shown by past actions that they are better suited to take care of A.M.'s medical and dental needs than Madsen. We also find evidence that, due to Madsen's work schedule, the Joneses are better suited to monitor A.M.'s behavior and education progress. Thus, we conclude that the trial court has not abused its discretion in determining that the best interests of A.M. are served by denying the petition to terminate guardianship.

CONCLUSION

For the foregoing reasons, we conclude that the trial court's findings supported by the evidence are sufficient to support its judgment, and the trial court did not abuse its discretion in denying the petition to terminate the guardianship.

Affirmed.

FRIEDLANDER, J., and SHARPNACK, J., concur.