

Children's Law Center of Indiana



Guardianship

03/12/07

In **In Re Guardianship of J.K.**, 862 N.E.2d 686 (Ind. Ct. App. 2007), the Court affirmed the termination of the guardianship of the child. The child was born May 29, 2001. The maternal grandparents (the guardians) filed a petition for appointment of guardian over the child on April 15, 2005. The child had lived with the guardians for all but two months of her life. The guardians alleged that the parents had substance abuse problems, were not regularly employed, threatened to commit suicide, had criminal histories, and had pending criminal investigations against them. After a hearing, the trial granted the petition for appointment of guardianship over the child. On March 22, 2006, the mother filed with the trial court to terminate the guardianship. The evidence produced at the hearing revealed some changes since the initial guardianship hearing: (1) the mother was now working and nearing the end of probation; (2) the father had qualified for some type of disability and was receiving payments; (3) the parents now had their own apartment; (4) the parents' divorce proceedings had been dismissed; (5) the criminal cases and protective order against father were dismissed; and (6) no evidence of drug abuse was presented. On the other hand: (1) the parents were behind in their rent payments; (2) they could not afford a telephone; (3) they had been threatened and the father had been assaulted by a person involved in the prior criminal cases; and (4) the mother had lied to the welfare department to improperly receive benefits, and it was unknown if criminal charges would be filed as a result. After a hearing, the trial court granted the termination of the guardianship. The trial court denied the guardians' motion to correct error. The guardians appealed.

The trial court's termination of the guardianship was not clearly erroneous, where (1) the trial court concluded that the circumstances warranting the guardianship had changed and the guardianship should now be terminated; (2) the Court held it could not say that the guardians proved by clear and convincing evidence that the guardianship should continue; (3) the evidence of the current fitness of the parents was conflicting; and (4) the Court could not reweigh the evidence and judge the witnesses' credibility. *Id.* at 693. The guardians challenged the propriety of the trial court placing the burden of proof on them. *Id.* at 691. Citing Harris v. Johnson, 273 N.E.2d 779 (Ind. Ct. App. 1971), the guardians argued that they had met their burden of proof when the guardianship was established and the parents should have had the burden of proving they were fit in subsequent requests to terminate the guardianship. The Court acknowledged that Harris held that the natural father had the burden of proof and persuasion with respect to his petition to terminate the guardianship over the child. The Court, however, declined to give Harris precedential value, and cited numerous cases issued after Harris which hold that, even when the parents file to reobtain custody of the child, the burden of proof stays with the guardian or third-party custodian and does not shift to the parent. Consequently, the Court concluded that, here, even though the parents filed the petition to terminate the guardianship, the guardians had the burden of proving the requirements set forth by

the Indiana Supreme Court in In Re Guardianship of B.H., 770 N.E.2d 283 (Ind. 2002). Quoting B.H. at 287, the Court stated that the issue before the trial court was “whether the important and strong presumption that [the child’s] interests are best served by placement with the [parents] is clearly and convincingly overcome by evidence proving that [the child’s] best interests are substantially and significantly served by placement with [the guardians].” J.K. at 691-93

Crone, J., dissented with a separate opinion. He stated that he agreed with the guardians that where the parents file a petition to terminate a guardianship, the burden of proving that the guardianship is no longer necessary should rest with the parent. Id. at 694.