

Children's Law Center of Indiana



CHINS

06/30/2009

In In Re N.S., 908 N.E.2d 1176 (Ind. Ct. App. 2009), the Court reversed and remanded for further proceedings, two consolidated cases in which the trial court had erroneously ordered that DCS pay the GAL fees associated with the underlying CHINS proceedings. In these two cases, In Re N.S. and In Re J.M., following emergency detention hearings, the trial court determined that there was probable cause to believe the children were CHINS, appointed a GAL, and ordered DCS to pay a \$300.00 preliminary GAL fee. DCS appealed the trial court's orders that it pay the preliminary GAL fee, and moved that the cases be consolidated for appeal. The consolidation request was granted.

Having concluded that IC 31-40-3-2 clearly states that the fiscal body of the county shall appropriate money for use by the courts in providing GAL or CASA services, and that IC 33-24-6-4 supports the proposition that the burden of financially supporting GAL and CASA programs lies with the county, the Court held that the trial court erred in ordering DCS to pay the fees associated with the services provided by the GALs in the instant matters. Id. at 1182. The Court noted that the General Assembly did not amend IC 31-40-3-2 to shift the burden of paying GAL and CASA fees to DCS when, in 2008, it adopted HEA 1001, which shifted the burden of the payment of other services from the county to DCS, and the fact that it could have but did not, suggests that the General Assembly intended for the burden to pay fees associated with services provided by GALs and CASAs to remain with the county. Id. at 1181. The Court distinguished In Re J.C., 735 N.E.2d 848 (Ind. Ct. App. 2000), relied upon by the Appellees for their argument that Indiana precedent supports the trial court's ruling that DCS shall bear the burden of paying for the GAL's services. In J.C. the panel concluded that a statutory basis existed to order the predecessor of DCS, the local child welfare service office, to pay the fees associated with services provided by the GAL. The panel did not explore the General Assembly's intent regarding the payment of GAL or CASA fees in light of IC 31-40-3-2, but instead determined that the local child welfare service office had waived its argument relating to statutory provisions appearing to suggest that the General Assembly had intended for the county to pay for the services. Further, inasmuch as prior to the General Assembly's adoption of HEA 1001, the local child welfare service office was funded in large part, if not entirely, by the county, the J.C. court's determination that there was a statutory basis to hold the local child welfare service office liable for the payment of the fees was in harmony with IC 31-40-3-2. N.S. at 1181-82. The Court also disagreed with the argument that the applicability of IC 31-40-3-2 hinged on evidence that a county has created a GAL or CASA fund and that, here, no evidence was presented suggesting that Hendricks County had created such a fund. The Court noted that IC 31-40-3-2 does not contain any limiting language such as "if such fund exists;" rather IC 31-40-3-2 states that "the fiscal body of the county *shall* appropriate money ... to the juvenile courts ... for use by the courts in providing [GAL] or [CASA] services." The

Court also found it instructive that IC 33-24-6-4 provides for state “matching funds” to help “supplement” the funds which are appropriated or collected by the county to finance services provided by GALs or CASAs, and that the General Assembly’s use of the terms “matching funds” and “supplement” suggests, in harmony with the Court’s interpretation of IC 31-40-3-2, that the General Assembly intended for the onus of financial support for GAL and CASA programs to be with the county, and not the State. Id. at 1182.