

Children's Law Center of Indiana



CASA/GAL

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In **K.S. v. State**, 849 N.E.2d 538 (Ind. 2006), the Court affirmed the trial court's order committing the juvenile to the custody of the Department of Correction (DOC) and addressed other issues raised on appeal which the Court of Appeals had not addressed. In 831 N.E.2d 738, (Ind. May 5, 2005) the Court had vacated the Court of Appeals' decision in 807 N.E.2d 749 (Ind. App. Ct. 2004) (adhered to on rehearing by 816 N.E.2d 1164 (Ind. Ct. App. 2004)) which had reversed the trial court's judgment. Pursuant to the State's petition alleging that the juvenile was a delinquent child for committing acts constituting a Class A misdemeanor battery if committed by an adult, the juvenile court held an initial hearing and determined that it had authority to hear the matter after confirming the juvenile's age. On May 10, 2002, the juvenile admitted to the allegations and the juvenile court adjudicated him to be delinquent and placed him on probation. Over the next year, the juvenile violated his probation several times: On October 31, 2002 and December 4, 2002, respectively, he admitted to using language towards a teacher sufficiently disrespectful to provoke suspension from school and he admitted to running away, for which the juvenile court ordered a suspended commitment to the DOC; and on March 12, 2003, he admitted failing to submit verification of sign-in and sign-out sheets for school, for which probation violation, the juvenile court continued the suspended commitment and placed the juvenile on intensive probation. Then, on the evening of May 10, 2003, the juvenile's sister answered a phone call for the juvenile, and called out to him twice that the phone was for him, but by the time the juvenile retrieved the phone, the caller had hung up. The juvenile began yelling at his sister, and the mother intervened to diffuse the situation, but, soon thereafter, the juvenile charged his sister, grabbed her from behind, and covered her mouth and nose with his hands. His sister bit his hands because she was having trouble breathing. The mother intervened and eventually called the police. The juvenile court granted wardship to the DOC for six months for this probation violation. The juvenile appealed, claiming that the juvenile court did not have jurisdiction over the case from the very beginning because it had failed to approve by written order the filing of the original delinquency petition. The Court of Appeals agreed with the juvenile and vacated the original delinquency adjudication and all orders flowing from it. The Indiana Supreme Court granted transfer.

The juvenile court had jurisdiction over the juvenile, and any alleged procedural defect was not available through collateral attack. *Id.* at 544. Subject matter jurisdiction is the power to hear and determine cases of the general class to which any particular proceeding belongs; and personal jurisdiction requires that appropriate process be effected over the parties Where these two exist, an Indiana

court's decision may be set aside for legal error only through direct appeal and not through collateral attack. Other phrases recently common to Indiana practice, like jurisdiction over a particular case, confuse actual jurisdiction with legal error, and "we will be better off ceasing such characterizations." *Id.* at 540. The Court noted, and cited caselaw and secondary sources to support that Indiana has for some time adhered to the rule that the judgment of a court having jurisdiction of the subject matter of the suit and of the person, however irregular, is not void and not impeachable collaterally, unless it may be for fraud; by contrast, a judgment rendered without jurisdiction may be collaterally attacked; and the fact that a trial court may have erred along the course of adjudicating a dispute does not mean it lacked jurisdiction. The Court found that there was no question that the juvenile court in Marion County had subject matter jurisdiction in that it has exclusive jurisdiction over a proceeding alleging a child to be a delinquent child; and that it had personal jurisdiction in that the juvenile was a Marion County resident who submitted himself to the authority of the court. Thus, the claim of procedural error was untimely because, despite the alleged error occurring in the original delinquency proceedings for battery, the juvenile did not object during those proceedings; and the juvenile's collateral attack after being committed to the DOC, characterized as jurisdictional, was not. *Id.* at 541-42.

Indiana juvenile law designates a child's parent as a party to the proceedings and grants the parent all rights of parties provided under the Indiana Rules of Trial Procedure. I.C. 31-37-10-7. As the juvenile's parent, his mother was a party not covered by the order for a separation of witnesses. *Id.* at 542-43. The Court noted that Indiana Evidence Rule 615, which the juvenile cited as the sole authority to support his claim that the trial court erred in allowing his mother to stay in the courtroom despite its having granted his request for separation of witnesses, states that it "does not authorize the exclusion of (1) a party who is a natural person...." *Id.*

The parent of an alleged juvenile delinquent does not have a conflict of interest by virtue of being a parent of both the juvenile and the victim. *Id.* at 543.

The Indiana Code leaves to the juvenile court's discretion whether to appoint a guardian ad litem in delinquency matters. *Id.* The Court noted that a juvenile court is well within its discretion when it decides not to appoint a guardian ad litem (GAL) to a juvenile whose mother does not have a conflict of interest; the juvenile was represented by counsel hired to protect his best interests; and counsel was eligible to be appointed GAL in the event the court chose to appoint one.

Here, each of the somewhat varying accounts of the witnesses indicated that a battery occurred. Thus, the evidence was sufficient. *Id.* at 544. The juvenile claimed on appeal that the evidence was insufficient because the accounts of the battery given by the mother and the sister, the basis for the recent probation violation, were inconsistent. The juvenile referred the Court to Davenport v. State, 689 N.E.2d 1226, 1230 (Ind. 1997) for the proposition that when a sole witness gives inherently contradictory testimony that is either equivocal or coerced, and there is a complete lack of circumstantial evidence, a

trial court should be reversed. The Court noted that, here, there were multiple witnesses and the somewhat varying accounts indicated that a battery occurred. Id. at 543-44.

After repeated probation violations, the juvenile court reasonably concluded that commitment to the DOC, where counseling and educational programs were to continue, served everyone's best interests. Id. at 544. The juvenile argued that the juvenile court did not act with rehabilitation in mind when it committed him to the DOC, given his mental and emotional conditions. The Court acknowledged that the juvenile's "mental and emotional issues abound," and listed some of the events the juvenile had witnessed and conditions for which he had been diagnosed. As to the juvenile's position that he deserved a plan of rehabilitation to help him deal with these issues, the Court pointed out that, since his first disposition in May 2002, a plan of rehabilitation had been in effect including a mentoring program, community service, counseling, and intensive probation. Id.