

Children's Law Center of Indiana



Paternity

05/20/2008

In **R.J.S. v. Stockton**, 886 N.E.2d 611 (Ind. Ct. App. 2008), the Court affirmed the trial court's dismissal of the paternity petition filed as the child's next friends by the parents of the child's alleged father (Petitioners). The alleged father had died prior to the child's birth.

The trial court's dismissal of the paternity petition was proper because Petitioners, the parents of the child's alleged father, lacked standing to file such a petition. *Id.* at 616. The Court reviewed the provisions of IC 31-14-4-1 regarding who may file a paternity petition, and concluded that Petitioners did not have standing to file the petition as alleged grandparents. *Id.* at 614. The Court then considered the propriety of their filing as the child's next friends (as they had), and concluded that if Petitioners were proper next friends of the child, their petition would not have been time-barred. *Id.* at 614 n.2. The Court noted that (1) there is no statutory definition of "next friend;" (2) but this definition was recently addressed in Jemerson v. Watterson, 877 N.E.2d 487 (Ind. Ct. App. 2007) which stated that the cases supported the "contention that only parents, guardians, guardians ad litem, and prosecutors may bring paternity actions as next friends of children;" and (3) Petitioners took issue with the Jemerson decision, arguing, "correctly, that some of the cases cited by this court and the ex-husband said, 'There is no limitation provided in the statute as to who may act as the child's next friend.'" *Id.* at 614-15. The Court rejected Petitioners' invitation "to rely on this language to suggest that there truly is no limit on who may file a paternity petition as a child's next friend," observing that the language must be read in context of the cases, and in those cases the "next friend" was a parent, guardian, or prosecutor. *Id.* at 615. The Court stated that it did not believe the legislature could have intended absolutely unfettered discretion by anyone to intervene in the life of a child by filing a paternity petition. The Court also (1) recalled its reasoning in Jemerson at 492 to the effect that a next friend is required for a child only when there is no parent or general guardian to institute an action on the child's behalf; (2) observed that, unlike a guardian or guardian ad litem, a "next friend" generally is not court-appointed; and (3) cited a Nebraska case which held that, because the child was living with his mother, his natural guardian, there was no basis for a next friend to initiate a paternity action. The Court here concluded, that, (1) although it was conceivable there could be a situation where a child had no physically present natural parents and no court-appointed guardian, and thus a third party could initiate a paternity proceeding on the child's behalf as a next friend, here, the child had a living natural mother and two court-appointed guardians with whom the law had entrusted the safeguarding of the child's interests; and (2) Petitioners were not entitled to circumvent the authority of the child's natural and court-appointed guardians by filing a paternity action as his next friend. The Court also (1) observed that the legislature had allowed grandparents to seek visitation with their grandchildren, but had not seen fit to allow alleged grandparents to file paternity actions; and (2) opined that there might be potential constitutional implications in permitting grandparents to initiate a paternity proceeding over the objections of the natural mother. *Id.* at 615, 616 & n.5.