

Children's Law Center of Indiana



CASA/GAL

12/23/2008

In **In Re Paternity of N.L.P.**, 898 N.E.2d 403 (Ind. Ct. App. 2008), the Court reversed and remanded the trial court's order awarding to GAL a portion of the fees she had requested. In this case, problems arose between Mother and Father regarding visitation and parenting. The GAL was appointed February 2, 2004 as a result of a joint petition of the parties. The parties executed engagement agreements with the GAL which outlined the terms of the GAL's services, including the hourly billing rate, that the parties would be billed per quarter hour, and that they would be billed for expenses such as long-distance calls, postage, fax charges, photocopies, and other necessary charges. The GAL remained involved in the paternity matter until she requested release on March 6, 2008. The decision describes the substantial amount of work she performed during that period. On the first day of hearing, May 23, 2007, there was some discussion of an outstanding balance on the GAL's bill for services. On the final day of hearing, October 23, 2007, the GAL submitted her Request for GAL Fees, which showed that, as of that date, the total sum of incurred fees and expenses was about \$34,800, for which she had received payments from Father of \$11,480.80 and from Mother of \$2,678.32. On December 27, 2007, the trial court issued its order which found that "although the GAL has conducted a thorough investigation, the GAL fees are not reasonable," reduced the total GAL fees to \$20,000, and ordered each party to be responsible for half of the total fees. The trial court based its findings on (1) the fact that the GAL charged by the quarter hour and not by the tenth of an hour; (2) charges for long distance calls, copying, and faxing should have been included as overhead; (3) the income of the parties and their ability to pay; and (4) some of the GAL's services were duplicitous of those performed by the custodial evaluator. The GAL appealed.

In this case, the GAL fees were not properly determined, were not reasonable, and require a more complete careful analysis of the duties performed. *Id.* at 408-09. The Court noted that, (1) in a paternity action, the child's interests are not necessarily the same as the interests of the parents or the State; (2) appointment of a GAL is not mandatory in every paternity action, but is a matter entrusted to the trial court's discretion; and (3) a GAL is appointed by the trial court to represent and protect the best interests of a child, and provide the child with services requested by the court, including : researching; examining; advocating; facilitating; and monitoring the child's situation. *Id.* at 407 (citations omitted). The Court observed that (1) IC 31-14-18-2(a) provides that the trial court may order a party to a paternity action to pay a reasonable amount of the cost to the party of maintaining the action, and a reasonable amount for attorney's fees, including amounts for legal services provided and costs incurred; and (2) acknowledged that, here, the reasonableness of the amount of GAL fees in paternity matters is a matter of first impression for the Court. The Court looked to probate and estate administration cases for guidance, and concluded that the factors contained therein could be translated for the determination of reasonable GAL fees in this case, as: (1) the labor performed; (2) the nature of

the paternity case; (3) difficulties in performing GAL duties; (4) the peculiar qualifications of the GAL; and (5) all other factors necessary that would aid in the consideration that would be fair to the parents and reasonable for the GAL and the attorney. Id. The Court also found relevant the guidelines for determining legal fees set out in Indiana Professional Conduct Rule 1.5 and in case law which indicated that, although the trial court must consider all factors relating to the reasonableness of a requested fee, the key is that the fees be reasonably commensurate to the time and work involved. Id. at 407-08 (citation omitted).

The Court held that although the trial court found the GAL fees to be unreasonable, instead of engaging in an analysis of what a reasonable fee would have been, it arbitrarily chose \$20,000 to be a reasonable amount of fees for this paternity action. The Court also held that the fees submitted by the GAL were not reasonably commensurate to the time and work involved and that acting as both the GAL and the GAL's attorney, the GAL should have billed her duties separately for each role and differentiated between when she was performing GAL duties and when she was performing legal duties as an attorney. In this regard, the Court specifically stated that the services performed as a GAL, such as supervising parenting time, home visits, and preparing GAL reports, should not be billed at an attorney's billing rate in that a GAL oftentimes is not an attorney; and the legal work performed as an attorney, such as drafting pleadings and participating in court hearings, could be billed as attorney fees. Id. at 408.