

# Children's Law Center of Indiana



## Guardianship and Third Party Custody

4/30/2014

In **In Re Adoption of L.T.**, 9 N.E.3d 172 (Ind. Ct. App. 2014), the Court reversed the trial court's decision dismissing the guardianship for lack of subject matter jurisdiction and granting Father immediate custody, and remanded the matter for further proceedings. The Court held that: (1) although the Hamilton County Court did not lack subject matter jurisdiction, it was the improper venue; (2) the remedy for improper venue was transfer to the correct venue, which was Marion County, whereupon the Marion County Probate Court was required to complete the proceedings that had commenced in Hamilton County; (3) Father did not have an absolute right to custody upon the death of Mother; and (4) the trial court was required to hold a hearing on terminating the guardianship, which included evidence on changed circumstances and the best interests of the child.

Mother and Father had a child in October 2010, and Father established paternity in Marion County in December 2011. Mother died in October 2012. Maternal Grandparents filed a petition in Hamilton County seeking guardianship of the child, and attached to the petition a notarized, signed document that purportedly waived Father's consent. Father later asserted that he acted under duress in signing the consent. Maternal Grandparents were appointed as guardians of the child. In January 2013, Father filed, in Hamilton County, a motion to set aside the guardianship or to dismiss it for lack of subject matter and personal jurisdiction. Paternal Grandparents intervened in the Marion County Paternity Court case and requested that the Hamilton County Guardianship case be transferred to Marion County Paternity Court. On February 1, 2013, Marion County Paternity Court ordered the Hamilton County guardianship proceedings to be transferred to Marion County Paternity Court, and the guardianship proceedings were consolidated with the paternity proceedings on February 27, 2013. Meanwhile, on February 22, 2013, Maternal Grandparents filed a petition to adopt the child in the Marion County Probate Court. On March 30, 2013, the Marion County Paternity Court transferred the matter to the Marion County Probate Court, and all proceedings were consolidated into the Marion County Probate Court. On April 8, 2013, the Marion County Probate Court conducted a hearing and heard argument on whether Hamilton County lacked subject matter jurisdiction over the guardianship proceedings, and ordered the parties to submit briefs. The Marion County Probate Court issued several interim orders on parenting time, contempt, and substance evaluations. On October 8, 2013, the Marion County Probate Court issued its "Order Granting Motion to Dismiss or to Terminate Guardianship," which concluded that the Hamilton County Court lacked subject

matter jurisdiction to enter any orders relating to the guardianship action filed by Maternal Grandparents. The Order required the child to be immediately returned to Father.

**The Hamilton County Court did not lack subject matter jurisdiction to conduct the guardianship proceedings; therefore, the dispositive issue was venue.** *Id.* at 177. A court must have both subject matter and personal jurisdiction in order to issue a valid judgment. *Id.* at 175. “Subject matter jurisdiction is the power of the court to hear and decide the general class of actions to which a particular case belongs.” *Id.* (internal citations omitted). If a court does not have subject matter jurisdiction, its actions and orders are void *ab initio* and have no effect. *Id.* (internal citations omitted). Subject matter jurisdiction is given only through the Constitution or a statute; it cannot be waived and the lack of subject matter jurisdiction can be raised at any time. *Id.* The Court noted that there were several relevant statutes in determining the question of subject matter jurisdiction. *Id.* IC 29-3-2-1(b)(1) provides for subject matter jurisdiction for probate courts, giving them exclusive original jurisdiction over guardianships of a minor, except for, *inter alia*, when a juvenile court is exercising its own exclusive original jurisdiction over minor described in IC 31-30-1-1. IC 31-30-1-1(1)(3) provides: “A juvenile court has exclusive original jurisdiction ... in ... proceedings concerning the paternity of a child under IC 31-14.” The Court cited *In re Paternity of Fox*, 514 N.E.2d 638, 641 (Ind. Ct. App. 1987), which determined that “[e]xclusive jurisdiction over a particular cause of action vests when the complaint or equivalent pleading or document is filed.” *L.T.* at 176. In *Paternity of Fox*, although there were two different courts which could have properly exercised jurisdiction over the custody proceedings, the *Fox* Court determined that the juvenile court properly exercised exclusive jurisdiction of the matter because the petition regarding custody had been filed there first, and the related petition for guardianship was not filed until almost two weeks later. *L.T.* at 176 (citing *Fox*, 514 N.E.2d at 641). The *L.T.* court noted that although paternity had been established in Marion County, Father was not litigating custody in Marion County at the time the Hamilton County Court’s jurisdiction was invoked, and had even signed a consent to guardianship, and possibly more than one consent to guardianship. 176-7. If the issue of the child’s custody had been brought before the Marion County Paternity Court, then it would have exclusive original jurisdiction and the Hamilton County Court would have been precluded from issuing any orders. *Id.* at 176. However, since that was not the case, and since the Hamilton County Court had properly exercised subject matter jurisdiction, the dispositive issue was proper venue. *Id.* at 177.

**Although the custody proceedings regarding the child were commenced in the wrong venue, the proper remedy was transfer of the case to the correct venue; once Marion County Probate Court received the case, it was required to complete the proceedings that had commenced in Hamilton County.** *Id.* at 177. The Court first noted IC 29-3-2-2, which provides that the proper or preferred venue for cases involving a guardianship over a minor is the county where the minor resides. *Id.* The Hamilton County Court had statutory authority to hear and decide the case, but since it was stipulated the child was not a resident of Hamilton County, the proper venue was Marion County. *Id.* Although Hamilton County was not the proper or preferred venue, the filing of a case in the wrong venue does not divest the trial court of subject matter jurisdiction. *Id.* (internal citations omitted). Instead, IC 29-3-2-2(c) provides that a guardianship proceeding that was commenced in the wrong venue may be transferred to the correct venue, and once the transfer has concurred, the court must complete the proceedings as it

were originally commenced in that court. Id. (emphasis in opinion). The Court determined that the use of the word “complete” in the statute meant a continuation of the proceedings, and that the receiving court was to continue from the current status of the proceedings in the transferring court. Id. The Court noted that Indiana Trial Rule 75(B) also provides that whenever a proceeding is filed in an improper venue, the action is not to be dismissed, but instead, should be transferred to the correct venue and court. Id. The Court opined that to decide otherwise would result in courts not giving proper effect to existing, valid orders, allowing an “end run” around previous lawful orders. Id. Since the Marion County Probate Court was the receiving court, and the Hamilton County Court was the transferring court, the Marion County Probate Court was required to complete the proceedings which had commenced in Hamilton County. Id.

**Father did not have an absolute right to custody upon the death of Mother, and the trial court erred in not conducting a hearing on the best interests of the child and on changed circumstances that would warrant a modification of custody.** Id. at 179. Father argued that he was automatically entitled to custody of the child when Mother died, relying on IC 29-3-3-3, which provides that parents or a surviving parent have the right to custody of a minor without the appointment of a guardian. Id. at 178. However, this statute provides for several exceptions, such as court orders from other custody proceedings or other proceedings authorized by law. Id. The Court determined that the plain language in this statute did not give Father an absolute right to physical custody of the child regardless of a prior court order. Id. The Court further opined that the language in the concurring opinion of In re Paternity of J.A.C., 734 N.E.2d 1057 (Ind. Ct. App. 2000) did not indicate that custody of the child should be immediately given to Father when Mother died, since this language was dicta and therefore, not binding law. L.T. at 178-9. The Court also noted that even in J.A.C., the trial court did not dispense with a hearing regarding the best interests of the child. L.T. at 179 (citing J.A.C., 734 N.E.2d at 1058). Maternal Grandparents argued that (1) the probate court was required to consider the child’s best interests, and they were given no opportunity to present evidence on the child’s best interests; and (2) that a change of child custody can only be ordered when there is a showing that a modification is in the best interests of the child and that there is a change in circumstances. L.T. at 177. The Court opined that case law does not “summarily dispense” with the necessary inquiry into a child’s best interests in a custody dispute between a parent and a non-parent, even though the strong parental presumption usually means that a substantial change in circumstances is almost always met at the outset in a custody dispute between a parent seeking to regain custody and a non-parent seeking to retain custody. Id. at 178 (citing In re Paternity of K.I., 903 N.E.2d 453, 457 (Ind. 2009)). The K.I. Court determined that when a natural parent seeks to regain custody of his or her child from a non-parent, “[t]he natural parent must meet a minimal burden of showing a change in a permissible custodial factor, but then the [non-parent] must prove by clear and convincing evidence that the child’s best interests are substantially and significantly served by [continued placement with the non-parent].” L.T. at 178 (citing K.I., 903 N.E.2d at 460-61). “If the [non-parent] carries this burden, then custody of the child remains with the [non-parent]. Otherwise, custody must be modified in favor of the child’s natural parent.”” Id. Father signed consent to guardianship after Mother’s death and the order granting guardianship was valid; therefore a hearing on the termination of the guardianship was necessary. L.T. at 179. Since no hearing was conducted, the record was devoid of any evidence of changed circumstances and any evidence of the best interests of the child indicating that the guardianship should be terminated. Id.