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## The Children's Law Center of Indiana

### Guardianship

6/21/02

#### **In Re Guardianship of B.H. 770 N. E.2d 283 (Ind. 2002)**

In **In Re Guardianship of B.H. 770 N. E.2d 283 (Ind. 2002)**, the Supreme Court reversed the appellate court and affirmed the decision of the trial court in appointing the children's stepfather as their permanent guardian following the death of their mother. In doing so, the Court attempted to resolve the dispute in caselaw regarding the nature and quantum of evidence required to rebut the presumption that a child's best interests are served by placement in the custody of the natural parent. In this case, the stepfather's evidence was sufficient to overcome the presumption that the children's best interests were in being placed with their biological father.

The two children lived with the mother in Indiana while the biological father was serving in the army overseas and in Boston. During this period, the mother began living with the stepfather. The mother and biological father's marriage was eventually dissolved, and the mother was given custody of the children, with biological father given specified visitation rights. The mother then married the stepfather. The following year the mother died, and the stepfather obtained an order naming him temporary guardian of the children. The biological father filed a petition to terminate the temporary guardianship. The stepfather then petitioned for appointment as the permanent guardian, which the biological father moved to dismiss. The trial court denied the biological father's motions and appointed the stepfather as permanent guardian. The biological father appealed. The Court of Appeals reversed the trial court's decision. *In Re Guardianship of B.H.*, 730 N.E.2d 743 (Ind. Ct. App. 2000). The Supreme Court granted transfer.

**Before placing a child in the custody of a person other than the natural parent, a trial court must be satisfied by clear and convincing evidence that the best interests of the child require such a placement; such placement must represent a substantial and significant advantage to the child.** The Court noted that Indiana has long recognized that "natural parents are entitled to the custody of their minor children, except when they are unsuitable persons to be entrusted with their care, control, and education." *In Re Guardianship of B.H.* at 285 (quoting *Gilmore v. Kitson*, 165 Ind. 402, 406; 74 N.E. 1083, 1084 (1905)). However, the cases have come to vary in the relative consideration given to the rights of the natural parent. The elevated concerns accorded to the rights of natural parents found in *Gilmore* were re-stated in a three step approach in *Hendrickson v. Binkley*, 316 N.E. 2d 376 (Ind. Ct. App. 1974). First, it is presumed that the best interests of the child is in being placed with a natural parent. Secondly, to rebut this presumption there must be a showing of a.) parental unfitness, b.) long acquiescence, or c.) voluntary relinquishment such that the affections of the child and the third party have become so interwoven that to sever them would seriously mar and endanger the future happiness of the child. Thirdly, upon a showing of one of the above factors, it will be in the best interests of the child to be placed with the third party. *Id.* at 286 (quoting *Hendrickson* at 380). A number of cases followed the *Hendrickson* approach. However, beginning with *Turpen v. Turpen*, 537 N.E.2d 537 (Ind. Ct. App. 1989), some Appellate Courts began avoiding the strict application of the *Hendrickson*



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methodology because it suggested that the trial court must use a mechanical approach in evaluating evidence. *Id.* at 286. *Turpen* and its progeny (including *In re Marriage of Huber*, 723 N.E.2d 973 (Ind. Ct. App. 2000); *In re Paternity of L.K.T.*, 665 N.E.2d 910 (Ind. Ct. App. 1996); *Atteberry v. Atteberry*, 597 N.E.2d 355 (Ind. Ct. App. 1992)) insist there may be circumstances outside of the three Henderson factors that could support giving custody to a non-parent. These cases also interpret the law to favor the best interests of the child over the presumption that custody should be with a natural parent. *Id.* at 287.

The Court abrogated *Turpen* and its progeny as inadequate. *Id.* at 283, 287. Despite differences in Appellate Court decisions surrounding child custody disputes between natural parents and third persons, most cases recognize a strong presumption that a child's best interest ordinarily is in being placed with a natural parent. This, the Court stated, embodied many social, psychological, cultural, and biological considerations that significantly benefit the child. *Id.* However, in an effort to resolve the dispute in caselaw regarding the nature and quantum of evidence required to overcome this presumption, the Court made the following holdings: 1.) Before placing a child in the custody of a person other than the natural parent, a trial court must be satisfied by clear and convincing evidence that the best interests of the child require such a placement. 2.) The trial court must be convinced that placement with a person other than the natural parent represents a substantial and significant advantage to the child. 3.) The three factors enumerated in *Hendrickson* are important, but the trial court is not limited to those criteria. *Id.* According to the Court, the issue is not merely the "fault" of the natural parent. The issue is whether the strong presumption that a child's interests are best served by placement with a natural parent is clearly and convincingly overcome by evidence proving that a child's best interests are substantially and significantly served by placement with another person. *Id.* A mere recitation that placement with someone other than the child's natural parent is in the child's best interest will be insufficient to support the determination. *Id.* Detailed and specific findings are required. *Id.* These child custody decisions fall squarely within the discretion of the trial court and will not be disturbed absent an abuse of discretion. *Id.* at 288.

**The stepfather's evidence was sufficient to overcome the presumption that placement of the children should be with the biological father.** The biological father argued that the presumption favoring placement with him was not overcome because there was no evidence that he was an unfit parent nor that he acquiesced in the children's placement with the stepfather, nor that the children would be harmed if the relationship with the stepfather was terminated. However, the Court noted that it held that the trial court was not limited to the three *Hendrickson* factors. The trial court's findings relied on *many* factors to support its judgment: the estrangement between the biological father and his children since his separation from their mother; the failure of the biological father to stay current in his child support obligations; instances of abuse with the children's maternal aunt; the biological father's history of excessive drinking; the stepfather's role as the only psychological father the children had known for years; the children's connections with the community and extended family through placement with the stepfather; the recommendation of the CASA report and the children's psychotherapist that the children's best interest was to



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remain in Indiana with the stepfather, and the stepfather's role as primary source of financial support for the children during the previous four years. According to the Court, these detailed findings provided ample support for the judgment of the trial court. They indicate the trial court was clearly convinced that placement with the stepfather represented a substantial and significant advantage to the children. Giving the trial court proper deference, the Court could not say that the trial court's findings were clearly erroneous or its judgment against the logic and effect of the evidence. *Id.* at 288.