



"In pursuit of a consistent, efficient, and effective Juvenile Justice System"

CASA/GAL

3/26/04

In **In Re Guardianship of Hickman**, 805 N.E.2d 808 (Ind. Ct. App. 2004), the Court affirmed the trial court's judgment granting permanent guardianship of the person and property of Josephine Hickman, an adult. On appeal, the Court addressed three issues, including whether the trial court abused its discretion by admitting certain testimony of the guardian ad litem. The Court found that the appellant had waived the arguments it raised on appeal of this issue by failing to make a contemporaneous objection to the admission of the evidence at trial on those grounds.

Waiver notwithstanding Indiana courts have not addressed the admissibility of a guardian ad litem's opinion. *Id.* at 823. The Court distinguished D.V.H., 604 N.E.2d 634 (Ind. Ct. App. 1992), in which the Court had agreed with a trial court's finding that IC 31-6-3-4 (providing for the appointment of a guardian ad litem to represent the child's interests) contemplates some summarization of the child's desires and state of mind. *Id.* at 638-639. In doing so, the Court pointed out that D.V.H. had been decided before the adoption of Indiana's rules of evidence, and that the D.V.H. court allowed the guardian ad litem to summarize the child's desires, but did not specifically address whether the guardian ad litem's recommendations were admissible. Hickman at 823 n. 8.

In actions for child custody or modification, the trial court is permitted by statute to order an investigation by a guardian ad litem, and the guardian ad litem's report: "(1) may be received in evidence at the hearing; and (2) may not be excluded on the grounds that the report is hearsay or otherwise incompetent." IC 31-17-2-12. Further, the statute provides that the guardian ad litem may be called to testify and may be subject to cross examination. *Id.* Although the guardianship statutes provide that the purpose of the guardian ad litem is to "represent the interests of the alleged incapacitated person," the guardianship statutes contain no provisions regarding the admissibility of the guardian ad litem's recommendations. I.C. 29-3-2-3(a).

The Court stated that it did not mean to suggest that statements and other submissions from a guardian ad litem made before a nonadvisory jury were not completely subject to the rules of evidence for their admissibility. The Court found that it did not need to decide the admissibility of a guardian ad litem's opinion in this case. The Court stated that, even assuming the trial court abused its discretion by admitting the evidence, any error in the advisory jury hearing the guardian ad litem's testimony was harmless. When a case is tried to the bench, on appeal, it is presumed that the trial court ignored inadmissible evidence in reaching its judgment. Hickman at 823-24.