

Children's Law Center of Indiana



Guardianship/Third Party Custody

05/31/2007

In ***In Re M.K.***, 867 N.E.2d 271 (Ind. Ct. App. 2007), the Court reversed and remanded the trial court's denial of Mother's petition to terminate the guardianship of her two children. When Mother and Father divorced in the 1990's, Mother was awarded physical custody of the children. She married again and her new husband treated the children as his own. In September 2000, the children found Mother's husband dead of an overdose of prescription pills. Mother was so grief-stricken and depressed that she became suicidal, and in October 2000, she overdosed on prescription pills. The children were placed in foster care and adjudicated to be CHINS. Mother maintained contact with the children and reunification was ordered in June 2002. However, the day the children were scheduled to return home, Mother took an overdose of prescription pills, and the reunification was cancelled. Because of a statutory time requirement, a petition to terminate Mother's parental rights was filed, but because of the close bond between Mother and the children, an alternative permanency plan of guardianship by the children's aunt and uncle was put in place and the petition to terminate was dismissed. The aunt and uncle were granted guardianship of the children in August 2002. In April 2005, Mother filed a petition to terminate the guardianship. After a hearing in May 2006, the trial court denied the Mother's petition. Mother appealed.

The presumption in favor of Mother obtaining custody of her daughters was not rebutted: (1) there was absolutely no indication that, at the time of the hearing, Mother was an unfit parent; (2) Mother did not voluntarily abandon her daughters for any considerable length of time; and (3) there was no compelling, real, or permanent interests of the children that would be best served by their remaining in the custody of the guardians. *Id.* at 275. The Court stated that, in a custody dispute between a natural parent and a third party, there is a presumption in all cases that the natural parent should have custody and the third party bears the burden of overcoming this presumption by clear and cogent evidence. It also discussed *In Re Guardianship of L.L.*, 745 N.E.2d 222, (Ind. Ct. App. 2001) in which the appeals court reversed the trial court's denial of the mother's petition to terminate the guardianship of her son. The Court found the facts here to be analogous to those in *L.L. M.K.* at 275. The Court noted that, here, (1) Mother left the children with their aunt and uncle in 2002 because of her depression and substance abuse; (2) the aunt and uncle were appointed the children's guardians in August 2002; (3) Mother has since completed two drug and alcohol recovery programs and has been sober since January 2003; (4) Mother attends four to seven AA or NA meetings per week, leads recovery groups, and sponsors other members; (5) Mother continues to see a therapist regularly and takes medication for her depression; (6) Mother receives Social Security Disability benefits and will receive child support from the children's father; (7) Mother has been in a stable relationship for four years

and lives in a house with room for the children; (8) Mother kept in regular contact with the children during the course of their guardianship; (9) Mother speaks to the children at least three times a week, and sometimes daily; and (10) the children have spent summers and holidays with Mother. Id.