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The Children's Law Center of Indiana

Guardianship

2/18/02

Roydes v. Cappy, 762 N.E.2d 1268 (Ind. Ct. App. 2002)

In **Roydes v. Cappy**, 762 N.E.2d 1268 (Ind. Ct. App. 2002), the Court affirmed the trial court's denial of the mother and father's petition to terminate guardianship of their minor child by the child's maternal grandmother, affirmed the trial court's denial of the mother and father's petition to restore custody of the child to the mother, and reversed the trial court's order that father pay guardian \$60 per week towards work related child care expenses.

The child was born out of wedlock. The maternal grandmother filed a petition for appointment as guardian of the child when the child was two weeks old. Attached to the petition were consents signed by the parents. The trial court issued an order of appointment of grandmother as guardian. The grandmother contributed substantial financial support to her daughter and the child and assumed significant parenting responsibilities over the child as well. The mother contributed comparatively little financially and had a history of financial irresponsibility. The father, who had never established paternity, no longer lived with the mother. When the child was four years old, the parents filed a petition to terminate the grandmother's guardianship and to restore custody to the mother with appropriate orders for the father. The trial court heard evidence on the petition and issued findings that set forth the relevant facts of the case. It then denied the parents' petition to terminate the grandmother's guardianship and further ordered the father to pay \$60 a week to the grandmother for work related child care expenses. The parents appealed the decision.

In denying the parents' petition to dissolve the guardianship, the trial court had sufficient evidence to support its finding that the mother was incapable of taking care of her child. The Court restated the long standing appellate standard of review when the trial court enters finds of fact and conclusions thereon: It first determines whether the evidence supports the findings, and, secondly, whether the findings support the judgment. *Roydes v. Cappy* at 1273. Findings and judgment will not be set aside unless they are clearly erroneous. *Id.* Originally, the grandmother was granted guardianship for health insurance purposes. Because the father eventually was able to provide insurance for the child through his employer, a court could have terminated the guardianship because it was no longer necessary. *Id.* at 1274 (quoting I.C. 29-3-12- 1(c)(4)). However, the Court noted that in determining whether a guardianship should be terminated, it has generally applied a more detailed test than required by the plain language of the statute. *Id.* (quoting *Froelich v. Clark*, 745 N.E.2d 222, 227 (Ind. Ct. App. 2001)). The court looks beyond the original reasons for establishing the guardianship because a guardianship proceeding, in these circumstances, is essentially a child custody proceeding that implicates important concerns about parental rights and the best interests of the children. *Id.* In *Froelich*, the court reiterated the standard when considering a parent/non-parent child custody dispute: There is a presumption in all cases that the natural parent should have custody of the child. The third party bears the burden of overcoming this presumption by clear and cogent evidence. Evidence sufficient to rebut the presumption may, but need not necessarily, consist of the parent's present fitness or



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past abandonment of the child such that the affections of the child and the third party have become so interwoven that to sever them would seriously endanger the happiness of the child. A general finding that it would be in the child's best interest to be placed in the custody of a third party is not sufficient to rebut the presumption. If the presumption is rebutted, the court then engages in a best interest analysis. If the decision to leave or place custody of the child in a third party is based solely upon the child's best interest, as opposed to a finding of parental unfitness or abandonment or other wrongdoing, such interests should be specifically delineated, as well as compelling and in the "real and present" interests of the child. *Id.* (quoting Froelich at 230-231). In the instant case, the Court held that the trial court did not abuse its discretion in denying the parents' petition to terminate the grandmother's guardianship. While the trial court did not find specifically that the mother was presently an unfit parent, it did find that the grandmother's concerns about mother's inability to care for the child were justified. The Court found sufficient evidence in the record to support this finding. The mother had a history of losing jobs and not paying bills. In the past, she had been physically violent toward the grandmother and physically violent toward the father in the presence of the child. The mother's income was insufficient to support both herself and her child. The Court stated that it must consider any recent history of financial responsibility and employment instability, especially if it is consistent with an established pattern of such behavior. *Id.* at 1275. In this regard, the Court noted the mother's failure to pay utility bills (resulting in the electricity being shut off during cold weather) and failure to pay property taxes. The Court determined that the mother had yet to demonstrate that she could meet her own financial needs for any length of time, much less the additional needs of her five year old son. While mother had remained employed for the previous seven months, this evidence alone could not overcome the grandmother's clear and cogent showing that the mother was presently an unfit parent. The evidence supported the trial court's finding that mother was unable to care for her child. This finding, in turn, supported the trial court's judgment denying the parents' petition to terminate the guardianship.

Because she was retired, the guardian of the child was not entitled to receive workrelated child care expenses. The parents argued that the trial court erred in ordering the father to pay the guardian \$60 a week toward work related child care expenses. The parents cited to Indiana Child Support Guideline 3(E)(1), which details various work related child care costs that should be added to the basic child support obligation while the custodial parent works or is actively seeking employment. The parents pointed out that the grandmother/guardian was retired and thus ineligible to receive these payments. The Court agreed. As the child's guardian, the grandmother was the custodial parent as contemplated by Child Support Guideline 3(E)(1). As she was neither working, nor actively seeking employment, she was not entitled to payment for work related child care expenses.