

Children's Law Center of Indiana



Guardianship/Third Party Custody

10/18/2006

In **Truelove v. Truelove**, 855 N.E.2d 311 (Ind. Ct. App. 2006), the Court affirmed the dissolution trial court's award of the custody the two children of the marriage to their paternal grandparents. The two children were born in 2000 and 2001. In 2002, Mother filed for dissolution of the marriage and custody of the children. The trial court's provisional order awarded physical custody of the children to Father, and Father immediately placed the children in the home of the paternal grandparents, where he sometimes resided. In March 2005, the parties' marriage was dissolved and a final custody hearing was set for October 2005. In August 2005, the paternal grandparents moved to intervene and petitioned for de facto custodianship. At the time of the custody hearing, the Mother and Father were living together, but the children remained with the paternal grandparents. The trial court found that the paternal grandparents had been de facto custodians of the children, and awarded them custody. Pursuant to a motion to correct error, the trial court agreed with Mother that the paternal grandparents could not be considered de facto custodians of the children during the time Mother's petition for custody was pending (I.C. 31-9-2-35.5) and acknowledged that the paternal grandparents were not de facto custodians, but re-iterated its conclusion in the original custody order that the presumption favoring custody in a natural parent had been overcome by clear and convincing evidence. Mother appealed, but Father did not challenge the award of custody to the paternal grandparents.

Although the trial court appropriately refrained from labeling Mother an "unfit" parent, there was clear and convincing evidence that the children's best interests were substantially served by placement with the paternal grandparents. *Id.* at 315. Mother argued that the custody award to the paternal grandparents was unsupported by sufficient evidence that the placement was in the children's best interests. Mother contended that the trial court was required to find that the paternal grandparents were de facto custodians of the children, Mother was unfit, or Mother had long acquiesced to the Grandparents' custody of the children, which it had not. The Court stated that 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, and cited to the other provisions of **In re Guardianship of B.H.**, 770 N.E.2d 283, 287 (Ind. 2002) regarding necessary considerations of a trial court in a third-party custody case. The Court held that, accordingly, contrary to Mother's arguments, the trial court was not required to make specific findings of Mother's unfitness or her acquiescence in the children's living arrangements. The Court noted that the trial court's findings addressed (1) the children's long-term placement with the paternal grandparents; (2) the parents' lack of financial resources and payment of child support; and (3) Mother's sporadic involvement in the children's day-to-day lives. The Court also discussed the evidence supporting these findings. *Id.* at 314-15.