



Guardianship

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In **White v. White**, 796 N.E.2d 377 (Ind. Ct. App. 2003), the Court reversed the order from the trial court that denied the guardian's motion to correct error regarding the court's finding that there was no child support order in existence between September, 1997 and October, 2002. Guardian is the child's great-grandmother. The guardian was appointed in 1991. The child's parents were never married. In 1992, pursuant to a paternity proceeding, the putative father was found to be the child's legal father and ordered to pay child support. In 1997, the mother and the father filed a Petition to Terminate Guardianship Proceedings and filed a Stipulation and Agreement asking the trial court to terminate the support order. The guardian did not receive notice, but the guardianship was terminated by the trial court on the day the Petition to Terminate Guardianship was filed. The court entered an order in the paternity case giving custody of the child to father and vacating the support order. Guardian timely filed a motion to correct errors asking the court to vacate the order terminating the guardianship, which was granted. The father filed a new Petition to Terminate Guardianship and notice of the new petition was required to be given to the guardian. The guardianship termination petition was dismissed in January, 2000 due to father's failure to respond to interrogatories. Four years later, a deputy prosecutor filed an information in the paternity case alleging that the father had failed to pay child support. The paternity court ruled that no child support order had been in existence since the court had vacated the support order. Guardian filed a motion to correct error in both causes regarding the finding that there was no support order. This motion was denied.

The guardian's failure to file a motion to correct error within 30 days of the order resulted in waiver of right to directly challenge the court's 1997 order. Ind. Trial Rule 59(C) states "the motion to correct error, if any, shall be filed not later than thirty (30) days after the entry of a final judgment or an appealable final order." *Id.* at 380. Ind. Appellate Rule 2 states the right to appeal is forfeited if a praecipe is not filed within thirty (30) days. *Id.* The Court elected to construe guardian's motion to correct error as a motion for relief from judgement and to address guardian's argument on the merits. *Id.* at fn. 2.

The paternity statute does not require notice to the guardian of a child, but judgment rendered without notice to a guardian violates the guardian's right to procedural due process and is void. Guardian argued that the Stipulation and Agreement filed by mother and father was void because the guardian was not given notice. *Id.* at 381. The Court agreed with the guardian by looking at the paternity statute. The paternity statute, I.C. 31-14-5-6, states "the child, the child's mother, and each

person alleged to be the father are necessary parties to each action.” Id. at 382. The Court stated that a guardian is in a situation distinguishable from a child without a guardian because a child will presumably live with the mother or alleged father who must be given notice. Id. Since the child was living with the guardian, the guardian should have been given notice. Id. Additionally, the guardian is the only party that can give the court information on the child’s life such as school and social activities. Id. at 383. The trial court demonstrated prima facie error when it refused to grant the guardian’s motion to correct error due to lack of notice.