

Children's Law Center of Indiana



Guardianship/Third Party Custody Custody and Parenting Time 6/11/18

In **Manis v McNabb**, 104 N.E.2d 611 (Ind. Ct. App. 2018), Mother appealed a denial of her petition to terminate the guardianship over her child and a denial of her request for parenting time with said child. The Court held that the Guardian met her burden of proof for continuing the guardianship, but in an issue of first impression, the trial court erred when it determined that it did not have the authority to order parenting time for Mother.

In December 2015, Guardian filed for guardianship over the child. A temporary guardianship was granted in January after a hearing, and was both contested and extended through motions on both sides. The trial court held a final hearing and during the time that the final order was pending, Mother was charged with unlawful possession or use of a legend drug, possession of a controlled substance, and possession of paraphernalia. In August 2016, the trial court granted permanent guardianship to Guardian, with parenting time allowed at Guardian's discretion. Six months later, Mother pled guilty to unlawful possession or use of a legend drug and the other charges were dropped. Mother then petitioned for termination of the guardianship and for parenting time. The trial court immediately denied to hear Mother's request for parenting time, stating that it was unable to order parenting time in a guardianship matter. After multiple days of testimony, the trial court eventually denied Mother's petition and granted Guardian's, finding that despite Mother's statements that she was ready to parent the child, Mother still lacked regular employment, her housing situation was unstable, and was a risky driver.

The trial court did not err by denying Mother's petition to terminate the guardianship, and did not err in making its findings supporting its judgment. *Id.* at 619. The Court first noted that "[w]e review custody decisions for error, with a 'preference for granting latitude and deference to our trial judges in family law matters. *Matter of Guardianship of I.R.*, 77 N.E.3d 810, 813 (Ind. Ct. App. 2017)." *Id.* at 617. The Court noted the following evidence which supported the trial court's order: (1) Mother failed to submit a complete records for the appeal, so the Court did not know the reasons why the guardianship was sought and originally granted, and thus, could not compare the circumstances; (2) Mother lived with her grandparents; (3) Mother was financially dependent on Grandparents for her needs; (4) Mother was unable to support the child or provide for the child's needs; (5) Grandmother kicked Mother out of her house for Mother's behavior and using credit cards without permission; (6) Mother was using drugs; Mother was unemployed; Mother was responsible for three recent car accidents; and (7) Mother's living situations were unstable, she was not self-sufficient, and she was unable to make safe decisions. *Id.* at 618-19.

Mother was entitled to parenting time, and the trial court erred when it determined that it did not have the authority to grant Mother parenting time in the context of a guardianship proceeding. Id. at 620-621. The Court opined that this was an issue of first impression, and that there is no statutory authority that either expressly permits or prohibits a trial court's authority to grant parenting time in a guardianship proceeding. Id. at 619-20. Since other statutory law clearly indicates that it was the General Assembly's intent for noncustodial parents to have parenting time with their children, the Court held that a trial court has the authority to determine and order parenting time for a parent whose child is placed with a guardian. Id. at 620-21. Both case law and statutory law provide that a noncustodial parent is entitled to parenting time. Id. at 620, citing Duncan v. Duncan, 843 N.E.2d 966, 969 (Ind.Ct.App. 2006), IC 31-17-4-1, IC 31-17-4-2. The Indiana Parenting Time Guidelines provide that a child has the right to both parenting time with and support from a noncustodial parent. Id. at 620. Extraordinary circumstances must exist in order to deny a parent parenting time. Id. In awarding a parent parenting time in a guardianship case, trial court must balance a parent's right to visit with their child with the child's best interests. Id. at 620-21. It would be best practice for the trial court to make findings of fact to support its parenting time order. Id. A trial court should not allow a third party alone to make a determination about a parent's parenting time during guardianship proceedings. Id. If the parties cannot make an agreement, then the trial court must craft its own parenting time order for them. Id.