



Guardianship

12/12/2019

In **Matter of Guardianship of A.Y.H.**, 139 N.E.3d 1050 (Ind. Ct. App. 2019), the Court affirmed the trial court's denial of Father's petition to terminate the guardianship, holding that the trial court's findings and conclusions supported the strong presumption that the trial court followed and properly applied the applicable law.

The child was born to Mother and Father in 2010, and shortly after birth, began living with Guardians (maternal great aunt and uncle). Guardianship was granted to Guardians in November 2011. Father was incarcerated from February 2011 to February 2012, at which time Father and Mother divorced. From 2012 to 2015, neither Father nor Mother visited with or provided support to the child. In 2015, Father filed a petition to terminate the guardianship; an agreement was reached in 2017, where Guardians agreed to forego adopting the child, and the guardianship would continue until the child turned eighteen. The agreement gave Father phased in parenting time. Father filed a second petition to terminate the guardianship in 2018, and in July 2019, the trial court issued findings of fact and conclusion of law denying Father's petition to terminate the guardianship.

The trial court did not abuse its discretion in denying Father's petition to terminate the guardianship; the trial court's " findings and conclusions support the strong presumption that the trial court followed the applicable law and employed the presumption favoring the natural parent over the third parties but simply rendered a decision that is contrary to Father's desired outcome." Id. at 1055. A court may terminate a guardianship when it is no longer necessary. IC 29-3-1-(c)(4). Because Father neglected to provide a copy of the transcript of the trial court proceedings, he waived any allegations of error pertaining the accuracy or adequacy of the findings; the Court limited itself to determining whether the findings supported the judgment. Id. at 1052. The Court noted the standard for examining a termination of guardianship case: the burden of proof does not shift to the parent, and the burden to show a change in circumstance is minimal; then, that the third party must overcome the presumption that placement with a parent is in the child's best interests by clear and convincing evidence, and that the child's best interests are substantially and significantly served by placement with the third party. Id. at 1054. Clear and convincing evidence sufficient for a third party to overcome the parental presumption can include evidence of unfitness, long acquiescence, or voluntary relinquishment, but the inquiry is not limited to these factors. Id., citing K.I. ex rel. J.I. v. J.H., 903 N.E.2d 453, 459 (Ind. 2009), and In re Guardianship of B.H., 770 N.E.2d 283, 286 (Ind. 2002).

The Court dismissed Father's argument that the trial court was required to specify that Guardians were subject to a clear and convincing standard in its order, noting that Father failed to cite any case law for this proposition. Id. at 1054. The Court also noted that trial courts are presumed to

have considered the relevant factors and followed the applicable law, and the party challenging the trial court's conclusion must overcome this strong presumption. Id. (internal citations omitted).

The Court noted the following findings: (1) Father waited three years to petition to terminate the guardianship; (2) Father then entered into an agreement continuing the guardianship until age eighteen; (3) Father again filed to terminate the guardianship; (4) the child lived with Guardians for eight years, since birth; (5) Father did not see the child for six years, and much of the time he was able to do so; (6) Father has never financially supported the child; (7) Father began his phased in parenting time, and the child began exhibiting adjustment problems; (8) Father declined to participate in child's counseling; (9) Father tells the child he will take the child to the police if the child does not behave; (10) Father has not engaged with the child's school at all; and (11) the child is very bonded to Guardians. Id. at Id. at 1055. The Court noted that these findings stand as proven, and that they were reasons supporting the trial court's decision to not terminate the guardianship. Id.