



## Guardianship and Third-Party Custody

1/26/22

In **Geels v. Morrow**, 182 N.E.3d 237 (Ind. Ct. App. 2022), *rehearing granted with minor corrections made at* 188 N.E.3d 46 (Ind. Ct. App. 2022) *trans. denied*, the Court held that the trial court did not abuse its discretion when it denied Petitioners' request for guardianship.

Respondents are the Mother and Father of a three-year-old child. Mother relied on Petitioners for daycare for around 3 months, before she asked Petitioners to care for child full-time because the heat went out in her apartment. Petitioners became de facto custodians of the child; caring for her and integrating her into their extended family over the course of nine months. Mother visited off and on when she could get ahold of Petitioners. After nine months, Mother asked Petitioners to return the child. They refused, citing concern for the child's safety and Mother called the police. The police called DCS who investigated and found Mother's residence appropriate and released child into Mother's care. Child stayed with Mother for ten days until Mother returned her to Petitioners. Child remained with Petitioners for another 6 months, during which time Petitioners paid Mother's rent. Mother again retrieved child. Petitioners filed a petition to establish guardianship after caring for the child on and off for nearly two years. Evidence was presented at a hearing and the trial court issued its order denying Petitioners' guardianship petition. Petitioners appealed, claiming that the trial court erred in finding that it was not in the child's best interests for them to be appointed the child's guardians.

**The trial court's unchallenged findings supported the conclusion that it was not in Child's best interests for Petitioners to be her guardians. Id. at 246-47.** On appeal, Petitioners argued that Mother was unfit to care for the child, she "long acquiesced" to the Petitioners caring for the child, and Mother's abandonment of the child led to an interwoven bond between the Petitioners and child that would harm the child's future happiness if severed; thus, the trial court's conclusion was unsupported by these facts. There is a presumption that fit parents act in the best interests of their children. *Troxel v. Granville*, 530 U.S. 57, 68 (2000). 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. *Truelove v. Truelove*, 855 N.E.2d 311, 314. The presumption in favor of the natural parent will not be overcome merely because a third party could provide better things for the child. *Id.* While Petitioners challenged the trial court's best interest finding, they did not contest any of the other trial court findings. Such findings include: at the time of the hearing, Mother was providing adequate care and stable housing for the child; the Petitioners had not seen the child in two years; the child recognized Mother as her mother; all of DCS' assessments were unsubstantiated; and there was no evidence Mother suffered from mental or physical illness. There was evidence that Petitioners have more financial means to provide the child, but that in and of itself, does not overcome the presumption that a natural parent should have custody of their child. "For the sake of children, society should encourage parents who are experiencing difficulties raising them to take advantage of an available 'safety net,' who is willing to accept temporary custody of a

child.” To then grant custody of the child to that person without the heightened best interests consideration “would discourage such action by parents in difficult straights and discourage efforts to reform or better their life situation if their chances of later reuniting with their children were reduced.” Thus, the Petitioners did not meet the burden to overcome the presumption, and the evidence supported the trial court’s best interest finding.

**Upon rehearing, the Court acknowledged that “guardianship” was the incorrect term to use in its opinion, but reaffirmed their end result; the appellate review standard for both guardianship and third party custody cases is interchangeable.** 188 N.E.3d 46, 47 (Ind. Ct. App. 2022) *trans. denied*.