



## Case Summary

R.R. (“Mother”) appeals the denial of her Indiana Trial Rule 60(B)(6) motion,<sup>1</sup> whereby she sought to set aside a consent order awarding guardianship of Mother’s child, H.W., to her maternal grandmother, R.B. (“Grandmother”). Mother presents the sole issue of whether the guardianship order is void ab initio for lack of subject matter jurisdiction. We affirm.

### Facts and Procedural History

On August 20, 1999, Mother gave birth to H.W. In 2001, Mother and the Monroe County Title IV-D prosecutor filed an action to establish paternity and child support. Grandmother initially intervened, but withdrew her petition. On March 11, 2002, the Monroe County Circuit Court awarded custody of H.W. to Mother.

On January 12, 2006, Grandmother petitioned the Brown County Circuit Court for guardianship of H.W. At a hearing conducted on April 18, 2006, Mother and Grandmother each appeared and testified. As of the hearing date, H.W. had already lived with Grandmother for more than three years. The petition for guardianship was granted, with Mother’s consent.

Three and one-half years later, on November 9, 2009, Mother petitioned to set aside the guardianship order. At a hearing conducted on December 21, 2009, Mother testified and acknowledged her earlier consent to Grandmother’s guardianship of H.W. However, she

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<sup>1</sup> Trial Rule 60(B)(6) provides in relevant part that, “[o]n motion and upon such terms as are just the court may relieve a party or his legal representative from a judgment, including a judgment by default, for the following reasons: ... the judgment is void[.]”

asked that the guardianship be set aside because the Brown County Circuit Court lacked subject matter jurisdiction and its order was void ab initio. On February 2, 2010, the trial court denied Mother's motion to set aside the guardianship order. She now appeals.

### **Discussion and Decision**

Where, as here, the facts are not in dispute, the question of subject matter jurisdiction is purely one of law, to be reviewed de novo. GKN Co. v. Magness, 744 N.E.2d 397, 401 (Ind. 2001). There are two types of jurisdiction, subject matter jurisdiction and personal jurisdiction. K.S. v. State, 849 N.E.2d 538, 540 (Ind. 2006). Subject matter jurisdiction is the power of a court to hear and decide the general class of actions to which a particular case belongs. Id. Personal jurisdiction requires that the appropriate process be effected over the parties. Id. When a court lacks subject matter jurisdiction, its actions are void ab initio and have no effect whatsoever. Allen v. Proksch, 832 N.E.2d 1080, 1095 (Ind. Ct. App. 2005).

Indiana Code Section 29-3-2-1 sets forth the jurisdiction of Indiana courts to hear guardianship actions. In re Guardianship of M.E.T., 888 N.E.2d 197, 198 (Ind. Ct. App. 2008). Pursuant to this statute, the probate court has jurisdiction of “[t]he business affairs, physical person, and property of every incapacitated person and minor residing in Indiana.” It is undisputed that, at the time of the guardianship order, H.W. was residing in Indiana and in Brown County, in the legal custody of Mother and under the physical care of Grandmother.

Mother directs our attention to In re Guardianship of S.M., 918 N.E.2d 746 (Ind. Ct. App. 2009). Therein, a panel of this Court determined that an Indiana trial court lacked

subject matter jurisdiction under the Uniform Child Custody Jurisdiction Law (“UCCJL”), Indiana Code Article 31-21, to modify an Illinois court’s child custody order and thus the Indiana order was void ab initio. Id. at 749. Here, there was no custody dispute of interstate dimension; the UCCJL was not implicated. Mother’s reliance upon In re S.M. is misplaced. Moreover, there was no custody dispute. Mother consented to Grandmother’s guardianship. Notwithstanding the entry of a custody order in 2002 in Monroe County, the Brown County Circuit Court did not lack subject matter jurisdiction over the guardianship matter.

To the extent that Mother now attempts to challenge the personal jurisdiction of the Brown County Circuit Court, her claim also fails. Mother, as custodial parent of H.W., appeared in the Brown County Circuit Court, did not challenge the court’s personal jurisdiction over H.W.,<sup>2</sup> and consented to Grandmother’s guardianship of H.W.

The trial court properly denied Mother relief pursuant to Indiana Trial Rule 60(B)(6).

Affirmed.

RILEY, J., and KIRSCH, J., concur.

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<sup>22</sup> A motion asserting lack of jurisdiction over the person shall be made before pleading if a further pleading is permitted or within twenty days after service of the prior pleading if none is required; otherwise, the defense is waived. Indiana Trial Rule 12(B)(2).