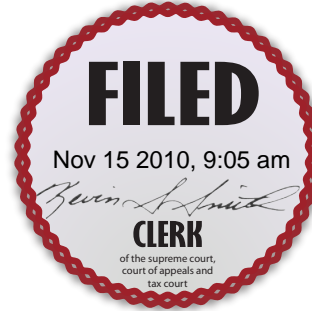


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE GUARDIANSHIP OF)
PATRICK M. HILL,)
)
KRISTIN S. HILL,)
)
Appellant,)
)
vs.)
)
MICHAEL W. HILL,)
)
Appellee.)

No. 49A04-0906-CV-339

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Tanya Walton Pratt, Judge
Cause No. 49D08-0902-GU-8173

November 15, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Kristin Hill (“Mother”), *pro se*, appeals the probate court’s order appointing Michael Hill (“Father”) as guardian over their son, Patrick Hill. Mother raises three issues, which we consolidate and restate as whether the probate court erred by not dismissing or transferring Father’s petition for guardianship. We affirm.

The relevant facts follow.¹ Mother and Father were married, and Patrick was born to them. Mother and Father’s marriage was dissolved on November 14, 1996.² At some point, the Boone Superior Court issued custody orders awarding Father custody of Patrick and providing Mother with supervised visitation.

On February 23, 2009, Father filed a Petition for Appointment of Guardian over Person and Estate of Incapacitated Person and Petition for Temporary Guardianship During Pendency of Cause of Action in the Marion Superior Court Probate Division (the “probate court”). Father alleged that Patrick was twenty-one years old and was incapacitated and unable to maintain and care for his financial affairs because he suffers from numerous birth related anomalies. The petition alleged that Patrick owns personal property in the approximate amount of \$6,000, owns no real property, and has no

¹ The record does not contain a copy of the transcripts from the various hearings. On November 6, 2009, Mother filed a Verified Statement of the Evidence. On November 30, 2009 the Marion Superior Court Probate Division filed a Certified Statement of the Evidence, which stated that the court “hereby files its certified statement of the evidence”

² Mother’s appendix does not contain a copy of the chronological case summary, the dissolution decree, or any order relating to custody. We direct Mother’s attention to Ind. Appellate Rule 50(A) which provides that “[t]he appellant’s Appendix shall contain . . . copies of the following documents, if they exist: (a) the chronological case summary for the trial court; . . . [and] (f) pleadings and other documents from the Clerk’s Record in chronological order that are necessary for resolution of the issues raised on appeal”

monthly income. The petition also alleged that Patrick's assets "need to be preserved for his support, maintenance, care, and proper medical treatment." Appellant's Amended Appendix at 26.

On February 27, 2009, the probate court held a hearing on Father's petition for temporary guardianship. Father testified that Patrick is not capable of taking a shower or bathing by himself, is fed through a feeding tube but is not capable of feeding himself, has "CHARGE Syndrome," is mentally and physically delayed, has an IQ of "around 60-65," and "requires supervision but can be left by himself to watch videos for short periods of time." Id. at 2. Mother "expressed her belief that the Court did not have jurisdiction to hear the matter regarding custody of Patrick." Id. Mother "explained that the case is in the divorce court and [Father] still has custody under [the] Indiana Code even though Patrick is an adult, because he is incapacitated." Id. at 3.

That same day, the probate court issued an Order Appointing Temporary Guardian of the Person and Estate of Patrick M. Hill & Order Setting Permanent Hearing. In its order, the probate court adjudicated Patrick to be an incapacitated person and determined that a guardian of his person and estate was necessary. The probate court ordered that Father serve as temporary guardian and that Mother "shall receive the same supervised visitation as provided in the couple's divorce decree." Id. at 35.

On April 9, 2009, Mother filed a Motion to Stay the Probate Proceedings and Transfer for Improper Venue in the Probate Division of the Marion Superior Court. Mother alleged that the dissolution court had entered a divorce decree and issued a

custody order which was later modified. Mother alleged that the “Boone Superior Court II” issued a custody order in 1998 and later modified custody in 2000. Id. at 20. Mother argued that the probate court did not have “jurisdiction of the case to issue a guardianship of Patrick M. Hill’s person and the proper venue of his estate.” Id. at 23. Mother appeared to argue that the court where the divorce, custody, and visitation matters were heard should retain continuing jurisdiction over the case and requested that the court “stay the proceedings and transfer the proceedings to the proper venue pursuant to IC 29-3-2-2(b)(c)(1)(d).” Id.

On April 14, 2009, the probate court held a hearing. At either the February 2009 hearing or the April 2009 hearing,³ Mother argued that the probate court did not have jurisdiction and that emancipation of Patrick should not be presumed, and Father argued that when a person turns twenty-one he or she is emancipated. The probate court stated that Patrick “is emancipated and [Father and Patrick] live in and have lived in Marion County and we have jurisdiction over this case.” Id. at 10.

On April 17, 2009, the probate court issued an Order Appointing Guardian Over Person and Estate of Incapacitated Person, which found Patrick to be incapacitated, appointed Father as guardian over Patrick, and ordered Father to allow Mother “supervised visitation with [Patrick] pursuant to the terms and conditions established and

³ Mother’s Verified Statement of the Evidence is unclear as to when these arguments were made to the probate court as it appears that some of the pages in Mother’s Verified Statement of the Evidence are duplicated and some pages are missing. See Appellant’s Amended Appendix at 3-7.

ordered by the Boone County Superior Court that issued the Custody Order that awarded sole custody of [Patrick] to [Father] in 1998.” Id. at 39.

Initially, we note that Mother is proceeding *pro se*. “An appellant who proceeds *pro se* is ‘held to the same established rules of procedure that a trained legal counsel is bound to follow and, therefore, must be prepared to accept the consequences of his or her action.’” Thacker v. Wentzel, 797 N.E.2d 342, 345 (Ind. Ct. App. 2003) (quoting Ramsey v. Review Bd. of Ind. Dep’t of Workforce Dev., 789 N.E.2d 486, 487 (Ind. Ct. App. 2003)). “It is well settled that the duty of presenting a record adequate for intelligent appellate review on points assigned as error falls upon the appellant, as does the obligation to support the argument presented with authority and references to the record pursuant to App. R. 46(A)(8).” AutoXchange.com, Inc. v. Dreyer & Reinbold, Inc., 816 N.E.2d 40, 44 (Ind. Ct. App. 2004). This court will not “indulge in any benevolent presumptions on [their] behalf, or waive any rule for the orderly and proper conduct of [their] appeal.” Foley v. Mannor, 844 N.E.2d 494, 496 n.1 (Ind. Ct. App. 2006).

The issue is whether the probate court erred by not dismissing or transferring Father’s petition for guardianship. Mother appears to argue that the probate court erred by not dismissing Father’s petition because the dissolution court has exclusive and continuing jurisdiction over child custody matters. Mother argues that “[t]he Probate Court lacks jurisdiction to hear the matter concerning Patrick’s person.” Appellant’s Amended Brief at 5. Mother argues that “the Probate Court does not have jurisdiction

over Patrick’s person simply because the Probate Order gives Mother the same visitation rights as the child custody order provided.” Id. at 6.

We observe that the Indiana Supreme Court has held that Indiana trial courts possess two kinds of “jurisdiction.” K.S. v. State, 849 N.E.2d 538, 540 (Ind. 2006). “Subject matter jurisdiction is the power to hear and determine cases of the general class to which any particular proceeding belongs. Personal jurisdiction requires that appropriate process be effected over the parties.” Id. The Court also held that “[o]ther phrases recently common to Indiana practice, like ‘jurisdiction over a particular case,’ confuse actual jurisdiction with legal error, and we will be better off ceasing such characterizations.” Id.

Ind. Code § 33-33-49-9 governs the court system organization in Marion County and provides that the Marion Superior Court has the following jurisdiction:

- (1) Concurrent and coextensive jurisdiction with the Marion circuit court in all cases and upon all subject matters, including civil, criminal, juvenile, probate, and statutory cases and matters, whether original or appellate.
- (2) Original and exclusive jurisdiction in all matters pertaining to the following:
 - (A) The probate and settlement of decedents’ estates, trusts, and guardianships.

* * * * *

- (E) *The appointment of guardians, assignees, executors, administrators, and trustees.*
- (F) The administration and settlement of:

- (i) estates of protected persons (as defined in IC 29-3-1-13) and deceased persons;

* * * * *

- (iii) all other probate matters.

* * * * *

- (4) Original and exclusive juvenile jurisdiction.

(Emphasis added).

In addition, Ind. Code § 29-3-2-1, which governs jurisdiction of courts in guardianships and protective proceedings in Indiana and is titled “Exclusive original jurisdiction,” provides in part:

- (a) This article applies to the following:
 - (1) The business affairs, physical person, and property of every incapacitated^[4] person and minor residing in Indiana.

⁴ Ind. Code § 29-1-1-3(a)(12) provides that “[i]ncapacitated” has the meaning set forth in IC 29-3-1-7.5.” Ind. Code § 29-3-1-7.5 provides that an “[i]ncapacitated person” means an individual who:

- (1) cannot be located upon reasonable inquiry;
- (2) is unable:
 - (A) to manage in whole or in part the individual’s property;
 - (B) to provide self-care; or
 - (C) both;

because of insanity, mental illness, mental deficiency, physical illness, infirmity, habitual drunkenness, excessive use of drugs, incarceration, confinement, detention, duress, fraud, undue influence of others on the individual, or other incapacity; or

- (3) has a developmental disability (as defined in IC 12-7-2-61).

* * * * *

- (b) *Except as provided in subsections (c) through (e), the court^[5] has exclusive original jurisdiction over all matters concerning the following:*
- (1) *Guardians.*
 - (2) Protective proceedings under IC 29-3-4.

* * * * *

- (d) Except as provided in subsection (c), courts with child custody jurisdiction under:
- (1) IC 31-14-10;
 - (2) IC 31-17-2-1; or
 - (3) IC 31-21-5 (or IC 31-17-3-3 before its repeal);

have original and continuing jurisdiction over custody matters relating to minors.

(Emphasis added).

Based upon Ind. Code §§ 33-33-49-9 and 29-3-2-1, we conclude that the Marion Superior Court Probate Division had jurisdiction over Father’s petition for guardianship. To the extent that Mother argues that subsection (d) of Ind. Code § 29-3-2-1 applies and that “the dissolution court who has made a child custody determination . . . has jurisdiction over this case,” we disagree. Appellant’s Reply Brief at 3. Subsection (d) provides that “courts with child custody jurisdiction . . . have original and continuing

⁵ Ind. Code § 29-1-1-3(a)(3) provides that “[c]ourt” means the court having probate jurisdiction.”

jurisdiction over custody matters relating to *minors*.” (Emphasis added). Ind. Code § 29-1-1-3(a)(17) provides that “[m]inor’ or ‘minor child’ or ‘minority’ refers to any person under the age of eighteen (18) years.” Because Patrick is twenty-one years old, he does not qualify as a minor under subsection (d) as that term is defined in the probate code. Moreover, subsection (b) provides that the probate court has “*exclusive* original jurisdiction over all matters concerning . . . [g]uardians,” while subsection (d) provides that “courts with child custody jurisdiction . . . have original and continuing jurisdiction over custody matters relating to minors.” (Emphasis added). See Chicago Southshore & South Bend R.R. v. IteL Rail Corp., 658 N.E.2d 624, 632 (Ind. Ct. App. 1995) (holding that the “grant of original, but not exclusive, jurisdiction to the district courts does not deprive other state and federal courts of jurisdiction over such civil proceedings”). Based upon the plain language in Ind. Code § 29-3-2-1, we conclude that the probate court did not err by failing to dismiss or transfer Father’s petition.

Mother also cites Fackler v. Powell, 839 N.E.2d 165 (Ind. 2005). In Fackler, during a divorce proceeding, Melvin Powell, Jr., and Pamela Fackler agreed on a property settlement drafted by a mediator and approved by the Allen Superior Court-Family Relations Division that was made part of the final dissolution decree of March 22, 2002. 839 N.E.2d at 166. Later, Fackler filed a complaint in the Allen Superior Court-Civil Division contending that she was entitled to \$103,000. Id. Powell responded and asserted that the complaint should be dismissed because the Allen Superior Court-Family Relations Division held exclusive jurisdiction. Id. The court determined that it possessed

subject matter jurisdiction over the matter. Id. On appeal, Powell argued that the Allen Superior Court-Civil Division lacked jurisdiction to determine the rights of the parties under the property settlement agreement and that the Allen Superior Court-Family Relations Division retained jurisdiction to interpret the terms of the agreement. Id. at 167.

The Court recognized the “firmly established rule that a court that issues a dissolution decree retains exclusive and continuing responsibility for any future modifications and related matters concerning the care, custody, control, and support of any minor children.” Id. The Court also recognized that the case did not “precisely invoke this rule” because “Fackler did not seek to modify a support or custody arrangement or even to modify the property settlement . . . [and] [i]nstead, Fackler petitioned the Trial Court seeking clarification and enforcement – not modification – of the property settlement agreement.” Id. The Court held that “even under these circumstances, we believe the interests of judicial efficiency and comity are best served by requiring litigants to seek clarification and enforcement of property settlement agreements in the dissolution court.” Id. The Court concluded that a court that dissolves a marriage “retains jurisdiction to interpret the terms of its decree and decide questions emanating from its decree pertaining to its enforcement,” and that Fackler should have filed her complaint in the Allen Superior Court-Family Relations Division under the original cause number of the dissolution and that the Allen Superior Court-Civil Division erred in not dismissing Fackler’s suit for lack of jurisdiction. Id. at 169.

Here, unlike in Fackler, Father is not seeking modification, clarification, or enforcement of any previous order issued by the dissolution court or related matter concerning a minor child. Rather, Father is petitioning for guardianship of his twenty-one-year-old son, Patrick. Accordingly, we cannot say that the probate court erred in not dismissing or transferring Father's petition for guardianship. See In re Guardianship of Thompson, 514 N.E.2d 618, 619-621 (Ind. 1987) (addressing appellants' argument that the juvenile code preempted the guardianship statute and holding that there was no conflict between the provisions of the juvenile and probate codes and that the probate court had jurisdiction).

For the foregoing reasons, we affirm the probate court's order.

Affirmed.

DARDEN, J., and BRADFORD, J., concur.