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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE GUARDIANSHIP OF B.D. AND L.D.	)	
MICHELLE DOLL Appellant/Respondent,	)	
vs.	)	No. 32A01-0704-CV-192
KEVIN DOLL and PAMELA DOLL, Appellees/Petitioners.	)	

APPEAL FROM THE HENDRICKS SUPERIOR COURT
The Honorable David H. Coleman, Judge
Cause No. 32D02-0605-GU-1

December 5, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Respondent Michelle Doll ("Mother") appeals the trial court's order naming Appellees-Petitioners Kevin and Pamela Doll ("Maternal Grandparents") permanent co-guardians of minor children B.D. and L.D. (the "children"). On appeal, Mother claims that the evidence was insufficient to support the court's factual findings and that the court's legal conclusions were not adequately supported by the facts. We affirm.

FACTS AND PROCEDURAL HISTORY

Mother is the biological parent of two children, B.D., born March 28, 2001, and L.D., born December 5, 2002. B.D. has resided in the home of Maternal Grandparents for his entire life, with the exception of a three to four month period when he was an infant. L.D. has resided in the home of Maternal Grandparents all of his life. L.D. suffers from "failure to thrive"[1], a history of aspiration[2] and some feeding intolerance. Tr. pp. 28-29. Consequently, L.D. has special nutritional needs, which includes the need to take a nutritional supplement to ensure proper growth. Both children were born out of wedlock, and neither child's paternity has been established.

Prior to August of 2005, Mother and the children lived in an upstairs "in-law" apartment in the home of Maternal Grandparents. Mother and the children lived together with Maternal Grandparents and Mother's siblings as a family unit, using the upstairs apartment primarily as sleeping quarters and spending the majority of their time

[1] The term failure to thrive indicates poor growth, or growth that is below normal. Tr. p. 29.

[2] L.D.'s history of aspiration meant that he had difficulty swallowing liquids. When L.D. swallowed liquids, some would pass into his trachea and into his lungs, instead of passing through his esophagus or swallowing tube. This condition put L.D. at a risk of aspiration pneumonia. Tr. p. 9.

elsewhere in the house, socializing and eating meals with the rest of the family. Mother worked and provided health insurance for the children, and Maternal Grandparents provided food, clothing, and shelter for Mother and the children without seeking or receiving repayment from Mother.

In 2003 and 2005, Child Protective Services substantiated neglect on Mother's part because of the condition in which she kept the upstairs apartment that she occupied with the children. Maternal Grandparents and Mother's siblings assisted her with cleaning up the living quarters after the neglect reports were substantiated. Mother testified at trial that she "didn't know" why she had allowed the apartment to get that bad. Tr. p. 267.

In August of 2005, Mother moved into an apartment in Danville with her boyfriend, Matt McPeek, voluntarily leaving the children to live at Maternal Grandparents' home. After she moved out, her contact with the children was sporadic and limited. The children have visited Mother's apartment but have never resided there with Mother. Mother has not financially supported the children since moving out of Maternal Grandparents' home.

On March 24, 2006, McPeek filed a petition for permanent guardianship of the children, which Mother consented to. In this petition, McPeek and Mother stated that the children resided at McPeek's apartment. Mother subsequently admitted that the children did not reside at her and McPeek's apartment at the time she made this statement. Mother did not seek to be appointed co-guardian or to preserve her rights as the natural parent of the minor children even though Mother testified that Maternal Grandmother

expressed concern that she was "signing her kids over to a complete stranger" and that "Matt might run off with her kids." Tr. p. 257. Mother testified that the sole reason that McPeek petitioned for guardianship was to put the children on his health insurance because she had lost her coverage after she was terminated from her employment at Hendricks Regional Health. McPeek's petition contained no reference to health insurance.

On April 5, 2006, Maternal Grandparents sought to intervene and filed a petition for permanent guardianship over the children. On April 7, 2006, McPeek moved to dismiss his petition. The trial court permitted Maternal Grandparents to intervene and on May 1, 2006, issued an order naming Maternal Grandparents temporary guardians of the children. The trial court subsequently set this matter for a hearing at which, after considering the parties' evidence, it entered an order granting Maternal Grandparents' petition for permanent guardianship over the children. Mother now appeals.

DISCUSSION AND DECISION

A. Standard of Review

Child custody/guardianship decisions fall squarely within the discretion of the trial court and, as such, a decision will not be disturbed on appeal unless one shows that the trial court abused its discretion. *Truelove v. Truelove*, 855 N.E.2d 311, 314 (Ind. Ct. App. 2006). Reversal is appropriate only if we conclude that the trial court's decision is against the logic and effect of the facts and circumstances before the trial court or the reasonable inferences drawn therefrom. *Id*. When reviewing a guardianship determination requiring proof by clear and convincing evidence, an appellate court may

not impose its own view as to whether the evidence before the trial court was clear and convincing, but must consider only whether a reasonable trier of fact could conclude that the judgment was established by clear and convincing evidence. *See In re Guardianship of B.H. and S.H.*, 770 N.E.2d 283, 288 (Ind. 2002).

Additionally, Mother is appealing from a decision in which the trial court entered special findings of fact and conclusions thereon. *See* Ind. Trial Rule 52(A). Thus, in deference to the trial court's proximity to the issues, "'we disturb the judgment only where there is no evidence supporting the findings or the findings fail to support the judgment.'" *In re Guardianship of B.H.*, 770 N.E.2d at 287 (quoting *Oil Supply Co. v. Hires Parts Serv., Inc.*, 726 N.E.2d 246, 248 (Ind. 2000) (internal citations omitted)). We do not reweigh the evidence, but consider only the evidence favorable to the trial court's judgment. *Id*. at 288. A challenger bears the heavy burden of showing that the trial court's findings are clearly erroneous. *Id*.

B. Analysis

Mother challenges the trial court's determination naming Maternal Grandparents co-guardians of the children as unsupported by sufficient clear and convincing evidence that the guardianship is in the children's best interests. More specifically, she argues that the trial court was required to find that she was unfit, that she acquiesced to the guardianship, or that she abandoned her children. We disagree.

Indiana courts generally recognize the important and strong presumption that a minor child's best interests are ordinarily served by placement in the custody of his or her natural parent. *Id*. at 287. The presumption in favor of a natural parent will not be

overcome merely because a third party could provide better things for the child, but rather the trial court must be satisfied by clear and convincing evidence that the best interests of the child require such a placement. *See id*. In a proceeding to determine whether to place a child with a person other than the natural parent, a trial court is not limited to considering the natural parent's unfitness or acquiescence, or the demonstration that a strong emotional bond has formed between the child and the third person, but may consider all factors relating to or impacting the child's best interest. *See id*.

The issue before the trial court in a guardianship determination is not merely the "fault" of the natural parent, but rather it is whether the important and strong presumption in favor of the natural parent is clearly and convincingly overcome by evidence proving that the child's best interests are substantially and significantly served by placement with another person. *See id*. Accordingly, the trial court was not required, as Mother insists, to make specific findings of her unfitness, her acquiescence in the children's living arrangements, or her abandonment of her children.

The trial court concluded that the appointment of a guardian was a necessary means of providing care and supervision of the children, Maternal Grandparents provided sufficient evidence to overcome the presumption in favor of Mother, and it is in the best interests of the children that Maternal Grandparents be appointed co-guardians of the children. These conclusions were supported by the court's factual findings, which, in turn, were supported by the evidence.

The trial court's findings focused on the children's long-term placement with Maternal Grandparents, Mother's lack of financial support of her children, her lack of

responsible parenting, and her sporadic involvement in the children's day-to-day lives. *See Truelove*, 855 N.E.2d at 314. The evidence supporting these factual findings is as follows. The only home the children have ever known is Maternal Grandparents' home. The children have established strong emotional bonds with Maternal Grandparents as a result of their long-term placement with the Maternal Grandparents after Mother voluntarily left her children in their care. Maternal Grandparents are better equipped to take care of L.D.'s special health and dietary needs. Maternal Grandparents have provided for the children's emotional, financial and physical needs, even when Mother has failed to do so. Mother has two prior substantiated findings of neglect by the Hendricks County of Child Protective Serves dating from 2003 and 2005. Mother consented to her boyfriend of thirteen months being named guardian of her children without reserving her parental rights. Mother knowingly made false statements to the court concerning the children's place of residence. Mother has continually shown bad judgment as evidenced by her decision to drive with the children without a valid driver's license and the termination of her employment for allegedly improperly looking at a certain individual's medical records. Mother acquiesced by granting Maternal Grandparents care and control of the children when she moved to a separate residence and also by consenting to the appointment of a guardian at the onset of this case. Mother continues living with McPeek and does not appear to be concerned by numerous prior allegations of abuse of children left in McPeek's care. The Guardian Ad Litem expressed concern that Mother does not have the maturity needed to adequately address the best interests of the children and recommended Maternal Grandparents be named guardians of

the children. Finally, Mother's contact with the children since leaving them to live with Maternal Grandparents has been sporadic and limited.

Although the trial court appropriately refrained from labeling Mother as an "unfit" parent, there is clear and convincing evidence that the children's best interests are substantially served by placement with their Maternal Grandparents.

The judgment of the trial court is affirmed.

NAJAM, J., and MATHIAS, J., concur.