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Dennis Gardne
Clerk of the Circuit Cou
Vermilion County, Illinoi

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
VERMILION COUNTY, ILLINOIS

IN RE THE MATTER OF:
[redacted]
Minor,

[redacted]
Petitioner,

and

[redacted]
mother, and [redacted]
father,
Respondents.

Case No. [redacted]

MEMORANDUM OF LAW

REGARDING NON-PARENTS RAISING MINORS

The general legal rule is that natural parents have superior rights to custody of their children than all third parties. Unfortunately, many children end up in the care of other relatives, often grandparents, when their parents are unable or unwilling to provide for their care. And the frequency of this seems to have dramatically increased in recent years, often due to substance abuse issues.

There is a continuum of ways non-parents may get the authority to care for a child ranging from very informal to semi-permanent to permanent. The purpose of this memorandum is to briefly highlight the statutory authority and the legal prerequisites for the various types of legal relationships.

SHORT-TERM GUARDIANSHIPS

A natural parent can give short-term guardianship to a non-parent which can last for up to 365 days without having to go to court. A standardized form is prescribed pursuant to 755 ILCS 5/11-5.4. In this matter, the parents voluntarily signed such a

form on January 19, 2017, pursuant to a safety plan overseen by the Department of Children and Family Services. This is an easy option legally but it can be revoked by the natural parents at any time and third parties are not required to accept it.

COURT ORDERED GUARDIANSHIPS

A more formal guardianship can be obtained through court and can only be ended by a court order. 755 ILCS 5/11-8 addresses the requirements for a guardianship petition. That provision, along with 755 ILCS 5/11-5(b), details the circumstances required for a court to have jurisdiction and for a non-parent to have the right to file a petition in a minor guardianship matter. A non-parent has standing to file for guardianship only if:

a. The parents are deceased;

b. The parents voluntarily relinquished physical custody and consent; or

c. The parents are unwilling or unable to carry out day to day child care decisions. If contested, the petitioner must prove this by a preponderance of evidence.

If the natural parents are able to take care of the problems that prevented them from caring for the children, they may go to court and ask that the guardianship be terminated pursuant to 755 ILCS S. 5/11-14.1(b) which specifies a shifting burden of proof and the best interest factors to be weighed.

PRIMARY PARENTAL DECISION MAKING AND TIME/CUSTODY

A non-parent can seek primary parental decision and time (formerly and commonly known as custody) pursuant to 750 ILCS 5/601.2(a)(3),(4) and (5).

The general rule is that a petition can be filed by a person in the county where the child resides "but only if he or she is not in the physical custody of one of his or her parents." But it turns out, that doesn't equate simply with being in the physical possession of the petitioner at the time the petition is filed. There is a body of case law under the older version of the statute (back when it was called custody) that interpret this to mean that any surviving parents must have voluntarily and indefinitely given up care and control of the child. There are also separate very specific provisions for step-parents and grandparents (750 ILCS 5/601.2(a)(4) and (5)) that are not applicable to this case.

In this case, the minor child was born with methamphetamines in his system. The Department of Children and Family Services stepped in and rather than become subject to a juvenile court action in Edgar County, both respondents voluntarily agreed to let Dominic be raised by his maternal grand-aunt. The arrangement was open ended. In the last year, they have only visited [redacted] once and that visit did not go well. They have not attempted to assert parental rights.

Once a non-parent establishes standing and meets the best interest standard and is awarded primary parenting, that judgment is difficult to change in the first two years. The parents would have the burden of showing that there is a serious danger to the well-being of the child. Primary parenting therefore offers more permanency and stability for the minor child. However, the parents may still be awarded visitation and be obligated to pay child support under appropriate circumstances.

ADOPTION

The Adoption Act (750 ILCS 50/0.01 *et. seq.* and the Juvenile Court Act (705 ILCS 405/1-1 *et seq.*) provide different paths to termination of the natural parent's rights either by the state initiating a quasi-criminal case or private individuals initiating a civil action. Both require proving parental unfitness(750 ILCS 50/1.D(m) or 705 ILCS 405/2-29(2)). Once that happens, a child would be eligible for adoption. That option would provide the highest level of permanency and may be appropriate under some circumstances but it is not being sought in this case

CONCLUSION

The Petitioner in this case has met the standing requirements for primary parenting and it is in the best interest of [redacted] that she be awarded that responsibility.

Respectfully Submitted
Valerie McWilliams
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Attorney for Petitioner

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IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
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IN RE THE MATTER OF:
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[redacted]

Petitioner,

and

[redacted]
mother, and [redacted]
father,

Respondents.

Case No. [redacted]

JUDGMENT FOR PRIMARY DECISION-MAKING AND TIME (CUSTODY)

STANDING

This cause having come for hearing on the Petition for Primary Parental Decision Making and Time on the issue of standing filed by the Petitioner, [redacted] by and through counsel, Valerie McWilliams, Land of Lincoln Legal Assistance Foundation, Inc., the Respondent Parents having been served summonses and receiving notice of this hearing, the Court having heard the testimony and verified pleadings, and being fully advised in the premises finds and for her Petition for Primary Decision-Making and Time (Custody) alleges as follows:

1. Petitioner, [redacted] is the maternal grand-aunt of the minor child, [redacted] born [redacted]. Petitioner is 52 years old, resided at [redacted] Danville, IL 61832. She is employed as a day care provider.

2. [redacted] is the mother of the minor child. Her current address is [redacted] Paris IL 61944.

3. [redacted] is the father of the minor children. He was served a summons at the Edgar County Jail in Paris, IL 61944.

4. The Petitioner has standing to seek primary parental responsibility pursuant to S. 601.2(b)(3) of the Illinois Marriage and Dissolution Act since the child is not in the physical custody of either of his parents. She has been the primary caretaker of the minor child since the Respondents voluntarily and indefinitely placed the child in her care on January 19, 2017, as part of a safety plan at the hospital.

IT IS THEREFORE ORDERED AND ADJUDGED AS FOLLOWS:

A. Petitioner has standing to proceed on her Petition for Primary Parental Decision Making and Time.

Date: 3/8/2018

JUDGE

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Case No. [redacted]

JUDGMENT FOR PRIMARY DECISION-MAKING AND TIME (CUSTODY)

BEST INTERESTS

This cause having come for hearing on the Petition for Primary Parental Decision Making and Time filed by the Petitioner, [redacted], by and through counsel, Valerie McWilliams, Land of Lincoln Legal Assistance Foundation, Inc., the Respondent Parents having been served summonses and receiving notice of this hearing, the Court having heard the testimony and verified pleadings, and being fully advised in the premises finds and for her Petition for Primary Decision-Making and Time (Custody) alleges as follows:

1. Petitioner, [redacted], is the maternal grand-aunt of the minor child, [redacted] born [redacted], Petitioner is 52 years old, resided at [redacted] Danville, IL 61832. She is employed as a day care provider.

2. [redacted] is the mother of the minor child. Her current address is [redacted] Paris IL 61944.

3. [redacted] is the father of the minor children. He was served a summons at the Edgar County Jail in Paris, IL 61944.

4. The Petitioner has previously been determined to have standing to seek primary parental responsibility.

5. Both parents have drug and alcohol addictions that have led them to engage in criminal behavior and generally make poor life choices. They have not attempted to assert parental rights during the last year.

6. The Petitioner is a fit and proper person to have sole parental decision making and parenting time of the minor child, [redacted], and it is in [redacted] best interest that he remain in the care of the Petitioner:

a. Petitioner and the child have a strong emotional bond. She has been the sole caretaker since his birth.

b. She has provided for all the physical and emotional needs of [redacted]

c. Petitioner has made sure [redacted] medical needs have been met including the complications from having been born with methamphetamines in his system at birth.

d. Respondents have not participated in the care of the minor child, have provided no support and have only visited the minor child once.

IT IS THEREFORE ORDERED AND ADJUDGED AS FOLLOWS:

A. Petitioner is awarded all parental decision making and parenting time of the minor child.

B. Respondents may have supervised parenting time by agreement of the Petitioner, under conditions that protect the well-being of the child.

C. The issue of support is reserved.

Date: 3/8/2018

JUDGE

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