

# FAMILY LAW FOCUS

## Legislators Enact Family Law Bills



*Democrats and Republicans worked to get these bills passed into law.*

As surely as tulips signal the arrival of spring, so too did the recent activity in the hallways of the Indiana Statehouse in Indianapolis.

There legislators grappled with a variety of issues — knowing that the regular session of the General Assembly would end on April 29.

Among the bills enacted and signed into law by the Governor are:

### SPOTLIGHT ON:

- Recent Session of Legislature Handled Issues of Family Law...1
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### Lease Protections for Victims of Domestic Violence (HB 1509)

HB 1509 gives tenants who are victims (or alleged victims) of crimes involving domestic or family violence, sex offenses or stalking with additional ways of keeping themselves safe.

To trigger this protection, the tenant must give the landlord a copy of a civil court order for protection or a criminal no-contact order that restrains a perpetrator from contact with the individual.

Applying to any rental agreement for a dwelling entered into after June 30, it requires a landlord to change the locks on a tenant's unit within 24 hours of receiving a no-contact order, if the perpetrator is a resident there.

If the perpetrator is not a resident, the landlord has 48 hours in which to change the locks.

If the landlord complies, the victim pays for the lock change.

When staying in the property is dangerous, the victim can end the lease without financial penalty with 30 days' notice and pro-rated rent until the termination date.

A landlord cannot retaliate against a domestic violence victim or end or refuse to renew a lease solely because a victim has a court order against an abusive partner.

### Neglect of a Dependent (HB 1381)

A person caring for a dependent commits "neglect of a dependent" if the person's abandonment or cruel confinement of the dependent:

- 1) deprives a child of necessary food, water or sanitary facilities;
- 2) consists of confinement in an area not intended for human habitation; or
- 3) involves the unlawful use of handcuffs, a rope, a cord, tape or a similar device to physically restrain the child.

Effective July 1, 2007, HB 1381 is classified as a Class C felony. ♦



*Effective July 1, 2007, these bills were signed into law by the Governor.*

# Adoption Petition Calls for Consent of 14-year-old Boy



*New Stepmom filed petition to adopt her husband's two children.*

Despite a fact situation indicating this adoption should go well, reality proved to be far different.

While married, Mom and Dad had two sons: J.E.H., born in 1991, and W.D.H., born in 1995.

Divorced in 2000, Dad got custody of the children, and Mom was ordered to pay child support.

Four years later, Dad married Stepmom and, in 2005, she petitioned to adopt J.E.H. and W.D.H.

Attaching Dad's written consent to her petition, she alleged Mom had abandoned the children.

## Court Denied Adoption Petition

A hearing was held in January, 2006, and her petition was denied.

The court found J.E.H. was 14 years old at the time of the hearing and, as such, his written consent to the adoption was required by law.

He had not executed a written consent and, as a result, Stepmom's petition was denied.

The court denied the petition as to W.D.H., too, finding it was not in his best interests to have a different mother than his brother.

## Argument Focused on Consent

On appeal, Stepmom argued even though J.E.H. was 14 years old at the hearing, his consent was not needed because he was 13 when she filed her petition.

But the Court disagreed.

IC 31-19-9-1(a) states a petition to adopt a child of less than 18 years "may be granted only if written consent to adoption has been executed by . . . [t]he child to be adopted if the child is more than fourteen (14) years of age."

## Was State Statute Ambiguous?

"If a statute is unambiguous, then we need not and cannot interpret it; rather, we must apply its plain and clear meaning," the Court observed.

The language here was clear, it noted. J.E.H. was 14 at the hearing—the time at which the trial court was called upon to grant the petition. Because he had not given written consent, the petition could not be granted.

The trial court was affirmed.

See *In Re Adoption of J.E.H. and W.D.H.*, 859 N.E.2d 388 (Ind.App. 2006). ♦

## REALITY CHECKS:

If you have been hit by your partner or if you are afraid and controlled by your partner's intimidating behavior, you need to make a safety plan.

✓ If an argument seems to be unavoidable, try to have it in a room or in an area with an exit.

✓ Don't have an argument in the bathroom, kitchen or anywhere near possible weapons.

✓ Have a packed bag ready, hidden in a secret but accessible place, so you can leave quickly.

✓ Inform a neighbor about the violence and ask them to call the police if they hear a disturbance coming from your home.

✓ Come up with a code word to use with your children, family, friends and neighbors to let them know when you need the police.

✓ Even if you don't think you will need to leave home, decide—and plan—where you will go.

✓ Figure out who will let you stay with them and who will lend you money, should you need it.

✓ If the situation becomes very dangerous, rely on your instincts to keep yourself safe.

✓ Call the police as soon as it is possible to do so.

SOURCE: *Domestic Violence Safety Plan*, Domestic Violence Coordinating Council, funded by United Way and City of Cincinnati.

# Adult Son Requires Guardianship

Even though the person at the heart of this guardianship case was an adult, the courtroom dramatics of his parents played themselves out much as they would as if he had been a small child.

The adult Son had been living with his Father and his Stepmother since 1998.

Because of his several mental and physical disabilities, including cerebral palsy and moderate mental retardation, Father used caregiving services to meet his needs.

## **Petition for Incapacitated Person**

In July of 2004, his Mother and Siblings collectively petitioned the court to hold a hearing to declare Son an incapacitated person.

They asked the court to find that a guardian was necessary for the Son and that they be appointed as his guardian.

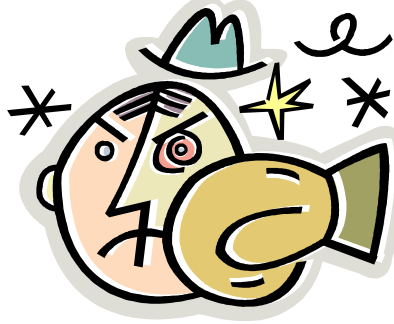
In August, an Adult Protective Services (APS) petition was filed to declare Son an endangered adult in need of protective services.

## **Pattern of Physical Abuse**

APS based its petition on reports from Son's former caregivers about a consistent pattern of physical, verbal and psychological abuse occurring in Father's home.

Father then filed a cross-petition, asking to be appointed as Son's permanent guardian.

In mid-August, the court held a



*Father and Stepmother were abusing adult son who was left in their care.*

hearing on the APS petition. Several caregivers testified they had witnessed mostly the Stepmother, but also the Father, abusing the Son.

Father disputed this evidence and sought to introduce Son's testimony about where he wanted to live. But the court refused to hear it.

## **Introduce Son's Statement Later**

After indicating Son's statement could be introduced later, the court reiterated that "we are all here today on [the APS] petition."

That same day, the court issued a Protective Services Order.

The Son was to be placed in an alternative living situation with 24-hour care. His caregivers were to remain with him at all times.

In October, APS petitioned to prohibit contact between Father and Son after receiving reports Father had ignored the earlier court order.

## **Court Issued Protective Order**

In November, the court held a hearing on the Motion to Prohibit Contact, and it was so ordered.

The Mother and Siblings then moved for summary judgment on the guardianship, asking judicial notice be taken of the evidence presented at the prior hearings.

The court granted their motion.

## **Issues of Material Fact Existed**

Father appealed, arguing the court erred in granting the guardianship to Mother and Siblings because the evidence showed genuine issues of material fact.

The Court of Appeals agreed.

A party who seeks a summary judgment must show "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law," it observed.

Neither the August nor the November order went to whether Mother and Siblings, collectively, were suitable choices for guardian.

## **APS Petition Evidence Taken**

In addition, the evidence was taken only for the determination of the APS petition rather than for the guardianship issues.

"Neither order conclusively settled the . . . guardianship issue permanently," and the court erred in granting a summary judgment.

As such, the Court reversed and remanded to the trial court.

See *Reising v. Guardianship of Reising*, 852 N.E.2d 644 (Ind.App. 2006).♦

# Parent-child Relationship Severed



*Illicit drugs were factor in ending parent-child relationships.*

Flying in the face of the belief that children belong with their parents, the Court on appeal affirmed a lower court's involuntary termination of the parent-child relationship.

In May of 2004, the Marion County Office of Family and Children filed a petition, asserting that three young siblings were children in need of services (CHINS).

## **Mom Tested Positive for Drugs**

It alleged Mom tested positive for illicit substances at the births of her children and that two of them tested positive upon birth as well.

As for Dad, the CHINS petition

alleged he had not shown the ability or willingness to parent — nor had he established paternity.

Even though Dad admitted he was their Father at a June hearing, the court found the children to be CHINS, placing them in foster care.

Hopeful of ultimately reuniting them with their parents, the court laid out a plan for Dad in its decree.

## **Things Required by Decree**

He was told to be in counseling, take parenting classes, undergo drug and alcohol assessments, participate in supervised visits with the children and to establish legal paternity.

But Dad did nothing.

A Petition for Involuntary Termination of the Parent-Child Relationship was filed in January, 2005.

A hearing was held at which an attorney was appointed for Dad.

For the next year, hearings were set and continued because Dad failed to appear. Finally, the court

ended the parent-child relationships in his absence in early 2006.

## **Was Dad's Due Process Violated?**

On appeal, Dad argued the court violated his procedural due process rights when it denied his attorney's Motion for a Continuance of the final termination hearing and proceeded in Dad's absence.

The Court of Appeals disagreed, however, and affirmed.

"Given that [Dad's] attorney continued to represent him and cross-examine witnesses in [his] absence, that [Dad] did not complete the court-ordered services, which made it impossible . . . to tell if [he] had stopped using drugs, and that [he] does not have a constitutional right to be present at the hearing, we conclude the risk of error caused by the trial court's denial of the continuance was minimal."

See *In Re E.E.*, 853 N.E.2d 1037 (Ind.App. 2006).♦

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