

Memorandum

February 4, 2019

What is the standard to terminate a guardianship in Oklahoma?

Excerpted Results from Ross Intelligence (“Deep Matches”)

<p>In re Guardianship of C.D.A., 2009 OK 47, 212 P.3d 1207</p>	<p>¶ 7 Pursuant to section 4-804 of title 30 of the Oklahoma Statutes, a temporary guardianship may be terminated when it is no longer necessary. It is deemed "no longer necessary" when the impediment to the natural parent's custody has been removed, unless to do so would be inimical to the welfare of the child. In re Guardianship of Hatfield, 1972 OK 10, ¶ 8, 493 P.2d 819, 821; see also Grose v. Romero, 1948 OK 120, 193 P.2d 1014. The person seeking to terminate a temporary guardianship as " no longer necessary" has the burden of proving by clear and convincing evidence that the conditions that led to creation of the guardianship have been corrected. If that person is a parent who has been found unfit, fitness must be established. If the parent has not been found unfit, the parent must show that the conditions which resulted in the temporary guardianship have changed and that the parent is now able to take care of his or her children. In re Guardianship of M.R.S., 1998 OK 38, ¶ 26, 960 P.2d 357, 365. On review, we will not reverse unless the trial court's determination is against the clear weight of the evidence. In re Guardianship of the Estate of Reid, 1956 OK 64, ¶ 0, 294 P.2d 544, 545 (syllabus of the court # 1).</p>
	<p>¶ 8 It is presumed that the best interest of the child is to be with his or her parent, unless it is demonstrated that such custody would be detrimental to the child's welfare. This Court has held:</p> <p>In a contest between the [parent] and the [third party], in order to deprive the [parent] of the custody of [their] child, it must be shown that [his or her] condition in life, or [his or her] character and habits, are such that provision for the child's ordinary comfort and contentment or for its intellectual and moral development cannot be reasonably expected at the parent's hands.</p>

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	<p>Page 1210</p> <p>Matter of Guardianship of M.R.S., 1998 OK 38, ¶ 14, 960 P.2d 357, 362. Further, " [i]n order to justify a court in depriving a parent of the care and custody of [his or her] child, the evidence offered to establish the unfitness of the parent must be clear and conclusive, and sufficient to show the necessity for so doing to be imperative." Hood v. Adams, 1964 OK 217, ¶ 10, 396 P.2d 483, 485.</p>
	<p>¶ 9 In this matter, Grandparents offered compelling expert witness testimony to demonstrate the need for the temporary guardianship to continue. However, Mother offered evidence demonstrating her capacity and willingness to care for her child. As a natural parent, Mother is expected and entitled to have her daughter with her full time. " [A] parent's right to the companionship, care, custody, and management of his or her child is a fundamental right protected by the U.S. and Oklahoma Constitutions." J.V. v. State Dept. Of Institutions, Social and Rehabilitative Servs., 1977 OK 224, ¶ 3, 572 P.2d 1283, 1284 (overruled on other grounds by In re A.E., 1987 OK 76, 743 P.2d 1041). It is presumed that the best interest of the child is to be with his or her parent, unless it is demonstrated that such custody would be detrimental to the child's welfare.</p>
<p>Guardianship of M.R.S., 960 P.2d 357 (Okla. 1998)</p>	<p>¶9 A guardianship is not a proceeding for termination of parental rights. The statutory language above implies that a guardianship is temporary, until such time as the factors leading to the guardianship are remedied. See, Wilkerson v. Davila, 351 P.2d 311, 315 (Okla.1960). This Court has not previously stated a "test" for termination of a guardianship of a minor child on the grounds that the guardianship is no longer necessary. Two previous decisions, however, make clear that where the natural parent is seeking to terminate a guardianship, the parent need only show that the impediments that led to the guardianship being imposed have been removed. In Grose v. Romero, 200 Okla. 330, 193 P.2d 1014, 1016 (1948), although decided on jurisdictional grounds, we observed that:</p> <p>"Under the above statute and decisions [predecessor to 30 O.S. § 4-801(8) and Guardianship of Hight, 194 Okla. 214, 148 P.2d 475 (1944)], upon an application made in the</p>

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	<p>guardianship proceeding to terminate the guardianship of the person, and a showing that petitioner [mother] had recovered from the physical disability under which she labored, she would be entitled to the custody of the children unless it was clearly established that she was unfit, or that the change of custody was inimical to the welfare of the minors."</p>
	<p>¶10 We later discussed the grounds for termination of the guardianship of a minor in <i>In re Guardianship of Hatfield</i>, 1972 OK 10, 493 P.2d 819....</p> <p>¶12 The trial court in the case at bar used the post-decree change of custody standard of proof set forth in <i>Gibbons v. Gibbons</i>, 442 P.2d 482 (Okla.1968), as the proper standard to be applied in this guardianship termination proceeding. <i>Gibbons</i> involved a mother's motion to modify a divorce decree to change custody from the father to herself. The mother sought to modify the decree by showing a change in her condition. We placed the burden of proof on the party seeking the change of custody to show: 1) material and substantial change in circumstances, and 2) that modifying the court's previous order would be in the best interests of the child. <i>Gibbons</i> was a contest between the natural parents for custody of their children. The case discussed custody matters between parents who were seeking custody, said that in attempts to change custody:</p> <p>"Under these basic rules, the burden of proof is upon the parent asking that custody be changed from the other parent to make it appear: a) that, since the making of the order sought to be modified, there has been a permanent, substantial and material change of conditions which directly affect the best interests of the minor child, and b) that as a result of such change in conditions, the minor child would be substantially better off, with respect to its temporal and its mental and moral welfare, if the requested change in custody be ordered." (emphasis added)</p> <p>¶13 The natural father in the case at bar argues and we agree, that the <i>Gibbons</i> test applies to contests between the natural parents for custody of their children. Our review of the record in the case at bar indicates that the burden of proof placed on the natural father, who had not been found to be unfit at any time, was that he must show, by clear and convincing</p>

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	<p>evidence, 1) that he could provide for M. more than the guardians were currently providing her, 2) that a material and substantial change of condition had occurred, and 3) that it would be in M.'s best interests to terminate the guardianship. The trial judge found that the father had not met his burden of proof to show a change of condition "sufficient to change custody of M." Although recognizing that the father was not unfit, the trial judge found that "by clear and convincing evidence there is no evidence of material or substantial change since the entry of this Court's Order in 1993." The trial judge believed that the best interest of the child outweighed any "rights" of the natural parent to her custody and control, and he found that there was "overwhelming evidence that M.'s moral, temporal and physical welfare are provided by the Guardians and that it is in the best interests of the minor child that she remain with the Guardians." This was error.</p>
	<p>In Hood v. Adams, 1964 OK 217, 396 P.2d 483, the maternal grandmother proposed that it was for the best interest of the minor child that she be appointed guardian, contending that the father was a total stranger to the child. The child had been reared to her present age and carefully nurtured by her mother, step-father, and by her maternal grandparents. She knew and loved her step-father and maternal grandparents and wanted to remain with them. There was no question about the fitness of either the natural father or the grandmother. We said in that case:</p> <p>Page 362</p> <p>"In order to justify a court in depriving a parent of the care and custody of his child, the evidence offered to establish the unfitness of the parent must be clear and conclusive, and sufficient to show the necessity for so doing to be imperative.</p> <p>In describing the "unfitness" that would deprive a parent of the care and custody of his child, we said:</p> <p>"In a contest between the father and the grandparents, in order to deprive the father of the custody of his child, it must be shown that his condition in life, or his character and habits,</p>

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	<p>are such that provision for the child's ordinary comfort and contentment or for its intellectual and moral development cannot be reasonably expected at the parent's hands." (emphasis added).</p> <p>We further recognized that such "unfitness" must be positive and not comparative:</p> <p>"The unfitness which will deprive a parent of the right to the custody of his minor child must be positive and not comparative; and the mere fact that the child might be better cared for by a third person is not sufficient to deprive the parent of his right to its custody."</p> <p>The fact that a child might be better cared for by a third party is not sufficient reason for depriving a parent of custody of his or her child.</p> <p>¶15 In considering the welfare of a child, the natural love and affection of a parent is of great importance. We said, in <i>Alford v. Thomas</i>, 316 P.2d 188 (Okla.1955), a habeas corpus proceeding:</p> <p>"Parents have by nature, as well as law, the legal right to the custody of their minor children. This right will always control the judgment of the courts, unless circumstances of great weight and importance connected with the necessary welfare of the child exist to overcome such right."</p> <p>See also, <i>In re Guardianship of Hight</i>, 194 Okla. 214, 148 P.2d 475 (1944).</p>
	<p>¶16 It follows that there will be circumstances in which a natural parent should not have custody of his or her child, but this Court repeatedly has held that for custody to be taken from the parent there must be a showing, by clear and convincing evidence, of unfitness of the parent, and "unfitness" means that the parent is unable to provide for the child's ordinary comfort or intellectual and moral development, and the fact that the child might be better cared for by a third person does not deprive the parent of the right to custody. <i>Sherrick v. Butler</i>, 175 Okla. 538, 53 P.2d 1097 (1936) (noting that there was no evidence offered that the mother was unable or unfit to care for her child); <i>Marcum v. Marcum</i>, 265 P.2d 723 (Okla.1954); <i>Roberts v. Biggs</i>, 272</p>

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	<p>P.2d 438 (Okla.1953); Hollick v. McDaniel, 401 P.2d 466 (Okla.1965).</p> <p>¶17 In Ingles v. Hodges, 562 P.2d 845 (Okla.1977), a habeas corpus proceeding brought by a natural father to obtain custody from the maternal grandparents, although noting that in a habeas proceeding involving only the issue of custody the parent's legal right was subordinate to the best interests of the child, we held that in the absence of a clear showing of unfitness of the father, he was entitled to have custody of his children. We reiterated that to deprive a parent of custody of his children in favor of a third person, the parent must be affirmatively, not comparatively, shown to be unfit. Further, the fact that the children stated a preference for staying with their grandparents was not sufficient to justify taking them from their father when there was no evidence of the father's unfitness. The children had been living with their maternal grandparents after the death of their mother, who had received custody in the divorce. The father had remarried and had other children, and testified that his present family would have no problems in accepting the girls or in providing a stable and loving atmosphere. We applied the parental preference and recognized that the child's best interest is presumed to be with the parents.</p>
Appeal of Barnett, 1926 OK 955, 252 P. 410	
Bowling v. Merry, 217 P. 404 (Okla. 1923)	
In re Guardianship of Borovets, 2013 OK CIV APP 39, 300 P.3d 140	
In re L.W.H., 2013 OK CIV APP 19, 297 P.3d 405	
In re Guardianship of S.M., 2007 OK CIV APP 110, 172 P.3d 244	
In re Guardianship of J.J.H., 2007 OK CIV APP 75, 168 P.3d 243	

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In re Guardianship of H.D.B., 38 P.3d 252 (Ok. Civ. App. 2001)	
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