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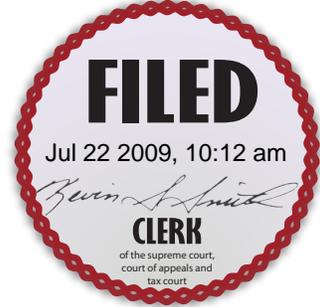
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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF I.C., J.C., & J.C.:)
INDIANA DEPARTMENT OF)
CHILD SERVICES, Appellant-Petitioner,)

vs.)

S.R. & J.C., Appellees-Respondents.)

IN THE MATTER OF R.P. & K.M.:)
INDIANA DEPARTMENT OF)
CHILD SERVICES, Appellant-Petitioner,)

vs.)

S.W., S.P., & C.M., Appellees-Respondents.)

No. 32A01-0902-JV-97

IN THE MATTER OF J.P. & T.D.:)
INDIANA DEPARTMENT OF)
CHILD SERVICES, Appellant-Petitioner,)

vs.)

J.D., Appellee-Respondent.)

IN THE MATTER OF J.C. & L.C.:)
INDIANA DEPARTMENT OF)
CHILD SERVICES, Appellant-Petitioner,)
)
vs.)
)
A.R. & L.C., Appellees-Respondents.)

APPEAL FROM THE HENDRICKS CIRCUIT COURT
The Honorable J.V. Boles, Judge
Cause Nos. 32C01-0902-JC-3; 32C01-0902-JC-4; 32C01-0902-JC-5; 32C01-0902-JC-6; 32C01-0902-JC-7; 32C01-0903-JC-8; 32C01-0903-JC-9; 32C01-0903-JC-10; and 32C01-0903-JC-11

July 22, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary and Issue

In this consolidated appeal, the Indiana Department of Child Services (“DCS”) appeals four “Orders Appointing Guardian Ad Litem,” each charging it with the responsibility to pay the Guardian Ad Litem (“GAL”) fees associated with the underlying Child in Need of Service (“CHINS”) proceedings. DCS asserts that Indiana statutory law dictates that GAL fees are to be paid by the county, not DCS. We reverse and remand the portions of the orders requiring GAL fees to be paid by DCS and remand for further proceedings.

Facts and Procedural History

The relevant facts are simply that on February 12 and March 3 and 9, 2009, the juvenile court issued orders appointing GALs and ordering DCS to pay the GAL fees in four CHINS proceedings. Appellant's Br. at 18, 21, 24, 27.¹

Discussion and Decision

DCS contends that the juvenile court's orders are contrary to the Indiana statutory law governing the payment of GALs. Initially, we observe that an appellee's brief has not been filed in this case. Typically, in such a case, we would apply a less stringent standard of review. *Zoller v. Zoller*, 858 N.E.2d 124, 126 (Ind. Ct. App. 2006). That is, the appellant need only establish prima facie error, which is an error at first sight, on first appearance, or on the face of it. *Id.* However, the sole issue here presents a question of statutory construction and, as such, our review is de novo. *Shaffer v. State*, 795 N.E.2d 1072, 1076 (Ind. Ct. App. 2003). "*De novo* review allows us to decide an issue without affording any deference to the trial court's decision." *Id.* Accordingly, we do not apply this lesser standard of review in this case. *See Akins v. State*, 824 N.E.2d 676, 677 (Ind. 2005) (deciding not to apply lesser standard or review where the issue presented a question of law).

"Our goal in statutory construction is to determine, give effect to, and implement the intent of the legislature." *Shaffer*, 795 N.E.2d at 1076. "The cardinal rule of statutory construction is that if a statute is unambiguous, then we need not and cannot interpret it;

¹ Although DCS included the orders from which it is appealing in its appellant's brief, it did not provide an appellant's appendix, and therefore our knowledge of the facts is limited to those orders. However, given the nature of the issue presented, the particulars of the CHINS cases are not relevant.

rather, we must apply its plain and clear meaning.” *Vanderburgh County Election Bd. v. Vanderburgh County Dem. Cent. Comm.*, 833 N.E.2d 508, 510 (Ind. Ct. App. 2005).

In the case at bar, the payment of fees associated with GAL services is at issue. A GAL is “an attorney, a volunteer, or an employee of a county program” who is appointed by a court to represent and protect the best interests of a child and provide the child with services requested by the court, including researching, examining, advocating, facilitating, and monitoring the child’s situation. Ind. Code § 31-9-2-50. “The juvenile court may appoint a [GAL] or a court appointed special advocate [“CASA”], or both, for the child at any time.” Ind. Code § 31-32-3-1. The juvenile court is required to consider whether it is appropriate to appoint a GAL or a CASA in all CHINS cases. Ind. Code § 31-34-10-3. The juvenile court is required to appoint a GAL or a CASA or both when a child is alleged to be a CHINS and the parent, guardian, or custodian denies the allegation of the CHINS petition. *Id.* Also, DCS is required to request the juvenile court to appoint a GAL or a CASA when a child is taken into custody without a court order. Ind. Code § 31-34-2.5-4. As to payment of fees associated with GAL and CASA services, Indiana Code Section 31-32-3-9 specifically states, “If any fees arise, payment shall be made under IC 31-40.” Indiana Code Article 31-40 governs funding of various costs and fees associated with the juvenile court, including, in Chapter 3, GAL and CASA user fees.

The question of whether the DCS or the county is responsible for paying GAL and CASA fees has entered the limelight because of our legislature’s recent overhaul of the CHINS statutes. This overhaul was effected via Public Law 146-2008, which changed both

the manner in which CHINS services are funded and the source of authority for implementing those services. Prior to Public Law 146-2008, any child services ordered by the juvenile court were funded by the relevant county pursuant to Indiana Code Section 12-19-7-1 and paid for by the county fiscal body through the local child welfare services office pursuant to Indiana Code Section 31-40-1-2. However, Indiana Code Sections 12-19-7-1 through -34 were repealed and portions of Indiana Code Article 31-40 were amended by Public Law 146-2008, section 806 and sections 664-72 respectively, effective January 1, 2009.² In its new form, Indiana Code Section 31-40-1-2(a) states,

Except as otherwise provided in this section and subject to:

- (1) this chapter; and
- (2) any other provisions of IC 31-34, IC 31-37, or other applicable law relating to the particular program, activity, or service for which payment is made by or through the department;

the department shall pay the cost of any child services provided by or through the department for any child or the child's parent, guardian, or custodian.^[3]

Thus, the new statutory provisions shifted the burden of paying for child services in CHINS proceedings from the county to the State. Significantly, Public Law 146-2008 does not

² Also, Public Law 146-2008 granted authority to DCS to recommend services and placements in all CHINS cases. Ind. Code § 31-34-4-7, 31-34-19-6.1 (2008). In addition, the new laws provide that if the juvenile court disregards DCS's recommendations and orders services or placements other than those recommended by DCS, the county's fiscal body may become responsible for funding any and all services ordered by the juvenile court. *Id.*

³ Prior to the enactment of Public Law 146-2008 section 665, Indiana Code Section 31-40-1-2 read:

- (a) The county shall pay from the county family and children's fund the cost of:
 - (1) any services ordered by the juvenile court for any child or the child's parent, guardian, or custodian, other than secure detention; and
 - (2) returning a child under IC 31-37-23.
- (b) The county fiscal body shall provide sufficient money to meet the court's requirements.

specifically address whether the burden of paying the fees associated with GALs and CASAs shifted to the State, and consequently the source for payment of these fees has become uncertain.

With this background in mind, we turn to the particulars of DCS's argument. DCS contends that Indiana Code Section 31-40-3-2, which was unaffected by Public Law 146-2008, provides that fees for GAL services are to be paid by the county, not DCS.⁴

Indiana Code Section 31-40-3-2 provides,

The fiscal body of the county *shall* appropriate money from:

- (1) the guardian ad litem fund; or
- (2) the court appointed special advocate fund;

to the juvenile courts of the county for use by the courts in providing guardian ad litem or court appointed special advocate services and the costs of representation for the guardians ad litem or court appointed special advocates.

(Emphasis added.)

We recently considered DCS's argument in *In the Matter of N.S. & J.M.*, No. 32A05-0902-JV-78, 2009 WL 1872466, (Ind. Ct. App. June 30, 2009). We agree with the conclusion therein, which is as follows:

Nothing in Indiana Code section 31-40-3-2 appears to contemplate the possibility that DCS should bear the burden of paying GAL or CASA fees. Indiana Code section 31-40-3-2 unambiguously provides that the county shall pay the fees associated with services provided by GALs and CASAs and, as such, we must apply its plain and clear meaning. *See Vanderburgh County Election Bd.*, 833 N.E.2d at 510.

⁴ As earlier noted, Indiana Code Section 31-32-3-9 provides that GAL and CASA fees are to be paid pursuant to Indiana Code Article 31-40.

In addition, we note that the General Assembly did not amend Indiana Code section 31-40-3-2 to shift the burden of paying GAL and CASA fees to DCS when it adopted HEA 1001 [now Public Law 146-2008], which shifted the burden of the payment of other services from the county to DCS. The General Assembly could have shifted the burden of paying fees associated with the services provided by GALs and CASAs to DCS had it so intended, but its failure to do so suggests that the General Assembly intended for the burden to pay fees associated with services provided by GALs and CASAs to remain with the county.

Id., slip op. at 8-9.

In addition, the *N.S.* court found that Indiana Code Section 33-24-6-4 supported its conclusion:

Indiana Code section 33-24-6-4 ... provides that the division of state court administration *may* establish an office of GAL and CASA services, which the General Assembly *may* appropriate funds to, as it sees fit. *If* the General Assembly chooses to appropriate funds to the GAL and CASA services office, the division of state court administration shall provide *matching funds* to counties that implement and administer a GAL or CASA program. Ind. Code § 33-24-6-4. The counties may then use these funds to *supplement* their GAL and CASA programs. Ind. Code § 33-24-6-4. Thus, the State's duty to provide matching funds to Indiana counties to help supplement their GAL or CASA programs is contingent upon a decision by the General Assembly to fund the office of GAL and CASA services. We also find it instructive that Indiana Code section 33-24-6-4 provides for "matching funds" to help "supplement" the funds which are appropriated or collected by the county to finance services provided by GALs or CASAs. The General Assembly's use of the terms "matching funds" and "supplement" suggests, in harmony with our interpretation of Indiana Code section 31-40-3-2, that the General Assembly intended for the onus of financial support for GAL and CASA programs to lie with the county, and not the State.

Id., slip op. at 10-11 (emphasis in original).

Accordingly, we conclude that Indiana Code Section 31-40-3-2 requires the county, not DCS, to pay GAL and CASA fees.⁵ We therefore reverse the portions of the juvenile court's orders requiring DCS to pay the GAL fees and remand for further proceedings.⁶

Reversed and remanded.

BRADFORD, J., and BROWN, J., concur.

⁵ We note that in *In re the Matter of J.C.*, 735 N.E.2d 848 (Ind. Ct. App. 2000), another panel of this Court concluded that a statutory basis existed to order the predecessor of DCS to pay fees associated with GAL services. *Id.* at 849. However, the *J.C.* court did not consider the payment of GAL or CASA fees in light of Indiana Code Section 31-40-3-2, and therefore it is not applicable to the case at bar.

⁶ DCS presents an alternative argument based on Indiana Code Section 31-40-1-2 (effective January 1, 2009). Indiana Code Section 31-40-1-2(e) provides that DCS is not responsible for the payment of the costs of services, programs, or placements that are (1) not eligible for federal assistance under either Title IV-B or Title IV-E of the federal Social Security Act and (2) that it did not recommend. Indiana Code Section 31-40-1-2(h) states that if DCS is not responsible for the costs of services, programs, or placements ordered by a court and another source of payment is not specified under applicable law, then “the county in which the [CHINS] case or delinquency case was filed is responsible for payment of those costs and expenses.” DCS asserts that GAL fees do not qualify as “services, programs or placements” contemplated by the relevant statutory law, and that even if GAL fees did so qualify, DCS did not recommend the service and is therefore not responsible for payment. Because we have concluded that Indiana Code Section 31-40-3-2 unambiguously provides that the county is responsible for the payment of fees for GAL and CASA services, we need not address this argument.

Likewise, we need not consider DCS's argument that the payment of GAL and CASA fees will severely hinder its ability to protect and provide services to Indiana's children.