In re J.W.F., Respondent, v. Winfield SCHOOLCRAFT,
Appellant
Case No. 870146-CA
Court of Appeals of Utah
*763 P.2d 1217; 1988 Utah App. LEXIS 166; 95 Utah Adv.
Rep. 15*
November 3, 1988, Filed

STANDING OF GUARDIAN AD LITEM

When a court presumes to consider the best interests of a child, especially when custody is at issue, it is crucial for that child to have party status. Additionally, it is critically important for him to have personal representation by counsel who has no other agenda than to determine what actually is in the best interest of that child. The court cannot do "complete justice" unless the child is recognized as a necessary, indispensable party to the proceeding. Justice Curtis made a classic statement on party status in *Shields v. Barrow,* [**8] *58 U.S. (17 How.) 15* L. Ed. 158 (1855) which is just as apropos now as in 1855:

The court here points out three classes of parties to a bill in equity. They are: 1. Formal parties. 2. Persons having an interest in the controversy, and who ought to be made parties, in order that the court may act on that rule which requires it to decide on, and finally determine the entire controversy, and do complete justice, by adjusting all the rights involved in it. These persons are commonly termed necessary parties; but if their interests are separable from those of the parties before the court so that the court can proceed to a decree, and do complete and final justice, without affecting other persons not before the court, the latter are not indispensable parties. 3. Persons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience.

The Utah State Legislature recognized this concept in the Juvenile Court Act when it provided for a guardian ad litem to represent the best interests [**9] of the child. Utah Code Ann. § 78-3a-44.5 (1987) states that:

(1) The court may appoint a guardian ad litem to represent the best interests of a child involved in a case before the court.

(2) The guardian ad litem shall investigate the case, especially as it affects the interests of the child, and present to the court an independent determination of what court action would be in the best interests of the child ....

(3) The guardian ad litem shall continue to serve the child until released from his duties by the court. ....

Further, Utah Code Ann. § 78-3b-11 (1987) requires that "in every case which results in a judicial proceeding involving an abused or neglected child, the court shall appoint a guardian ad litem to represent the child."

In this case, the guardian ad litem was appointed by the court to represent the best interests of J.W.F. and, thus, had a duty to investigate the case and present an [*1221] independent determination to the court of what those best interests might be.

However, ... when a child needs a guardian ad litem, he needs an advocate -- someone who will plead *his* cause as forcefully as the attorneys for each competing custody claimant plead theirs. [**10] The basic premise of the adversary system is that the best decision will be reached if each interested person has his case presented by counsel of unquestionably undivided loyalty. *There is no person more interested in a child custody dispute than the child.* His representative should act accordingly.

Veazey v. Veazey, 560 P.2d 382, 390 (Alaska 1977) (emphasis added). It is the guardian ad litem's duty to stand in the shoes of the child and to weigh the factors as the child would weigh them if his judgment were mature and he was not of tender years. *In re J.L.H., 647 S.W.2d 852, 860-61 (Mo. Ct. App. 1983).*

We conclude that J.W.F. was an interested, indispensable party in this proceeding and that the guardian ad litem, in representing J.W.F., had a responsibility as well as a right to raise the issue of appellant's paternity and his right to custody.