

**IN THE COURT OF APPEALS OF IOWA**

No. 0-464 / 09-1672  
Filed October 6, 2010

**IN RE THE MATTER OF THE  
GUARDIANSHIP OF  
AUSTIN E. PADGETT,**

**JEANNE LANE,**  
Guardian-Appellant.

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Appeal from the Iowa District Court for Woodbury County, Duane E.  
Hoffmeyer, Judge.

Guardian appeals probate court's order terminating her guardianship.

**AFFIRMED.**

Craig H. Lane, of Craig H. Lane, P.C., Sioux City, for appellant.

Joshua Gaul, Iowa City, for appellee.

Heard by Vaitheswaran, P.J., Eisenhauer and Danilson, JJ.

## **EISENHAUER, J.**

Guardian Jeanne Lane appeals the probate court's order terminating her guardianship of her grandson, Austin Padgett. We affirm.

### **I. Background Facts and Proceedings.**

Donald Padgett and Carrie Lane are the unmarried parents of Austin. When Austin was ten-months-old, Carrie's mom, Jeanne, took over his care due to continuing substance abuse by Donald and Carrie. In January 2001, when Austin was three, Jeanne filed a petition for involuntary guardianship. In March 2001, after an evidentiary hearing including recommendations from Austin's guardian ad litem, the probate court granted Jeanne's petition and ordered limited visitation for Carrie and Donald. In August 2001, the probate court reviewed and continued Jeanne's guardianship, increased parental visitation, and ordered both parents to address their substance abuse issues.

After meeting with Austin's guardian ad litem, the parties agreed to a parenting plan, which was filed with the probate court in December 2002. Under the plan Carrie provided Austin's home base and Donald exercised visitation on Wednesdays and on weekends. Consequently, when Austin was four and one-half, his care shifted to Carrie with Donald having regular visitation.

In January 2009, Donald filed a petition to terminate Jeanne's guardianship, stating: "The reasons for the establishment of this guardianship in 2001 no longer exist." Jeanne and Carrie resisted Donald's petition to terminate.

In August 2009, Austin's guardian ad litem filed a report joining Donald's petition to terminate, stating "the concerns that led to the establishment of the guardianship in 2001 no longer exist."

Austin is twelve years old, in seventh grade, and continues to live with Carrie. Carrie is in a nine-year relationship with the father of her six-year-old son. Carrie has Hawk-I health insurance coverage on her younger son. Donald is married and is the parent of a toddler. Donald's health now requires him to have in-home dialysis every evening. In September 2009, after an evidentiary hearing, the probate court terminated Jeanne's guardianship. Jeanne now appeals.

## **II. Scope of Review.**

Actions for the termination of a guardianship are equitable proceedings reviewed de novo. *In re Guardianship of B.J.P.*, 613 N.W.2d 670, 672 (Iowa 2000). "We pay close attention to the credibility findings of the trial court because it had the opportunity to observe and listen to the parties and other witnesses." *In re Guardianship of Stewart*, 369 N.W.2d 820, 824 (Iowa 1985).

## **III. Merits.**

A guardian is "the person appointed by the court to have custody of the person of the ward." Iowa Code § 633.3(20) (2009). Because this section "defines a guardian as being the person who has custody of the ward, custody may not be placed in one who is not the guardian." *Zvorak v. Beireis*, 519 N.W.2d 87, 90 (Iowa 1994) (holding the court's six-month temporary placement of ward with mother is not a transfer of legal custody from

guardian/grandmother). Iowa Code section 633.675(4) provides for the termination of a guardianship when the court determines the guardianship “is no longer necessary for any other reason.” See *id.* §§ 633.675(1) (age of majority); 633.675(2) (death of ward); 633.675(3) (ward has decision-making capacity).

In resolving this guardianship issue, our primary consideration is the best interests of Austin. *In re Guardianship of Knell*, 537 N.W.2d 778, 780 (Iowa 1995). Iowa Code section 633.559 creates a presumptive preference: “The parents of a minor, or either of them, if qualified and suitable, shall be preferred over all others for appointment as guardian.” This presumption codifies the strong societal interest in preserving the natural parent-child relationship. *In re Guardianship of Roach*, 778 N.W.2d 212, 214 (Iowa Ct. App. 2009). However, this presumption is rebuttable. *Id.* The burden to overcome the parental preference is on the non-parent, Jeanne.<sup>1</sup> *Stewart*, 369 N.W.2d at 823.

First, we note the unusual circumstance of the guardian not being the custodian of the child. Since approximately December 2002, the child has lived with his mother. Second, we note the father who seeks termination of the guardianship does not seek custody of the child. Finally, as a result of the termination of the guardianship in probate, there is no court-ordered custody arrangement for the child, although the parents each testified they would continue to abide by the custody arrangement in existence since 2002.

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<sup>1</sup> We recognize “an involuntary guardianship would eliminate the parental preference from later consideration only if the relative custodial rights of the proposed guardian and the parent were put in issue and tried in the guardianship proceeding.” *Roach*, 778 N.W.2d at 215. The record before us does not establish custodial rights were put in issue and tried during earlier proceedings.

On appeal Jeanne argues the guardianship continues to be necessary to assure Austin will have reliable health insurance and to assure Jeanne can take time off from work to transport Austin to his medical appointments. Austin's long-term guardian ad litem addressed these concerns:

When questioned about why the biological mother and the guardian want this guardianship to continue, it appears the primary concern is financial. Apparently, Austin is able to be enrolled in [the guardian's] medical insurance program if Jeanne Lane remains his guardian. This was a critical factor in Austin's early years for the reason that he had multiple surgeries to correct various physical disabilities. At this time, however, Austin is medically stable and there are no future anticipated surgeries. If the guardianship is dismissed, Austin's parents will need to enroll him either in the Hawkeye program or in the Title XIX program. . . . [T]he Guardian ad Litem cannot ascertain that there are any medical expenses in the future for Austin besides routine care and the yearly checkups with his specialty providers.

The probate court ruled "maintaining health insurance is an insufficient legal basis for continuing a guardianship," and explained:

Both biological parents have been involved in Austin's life. They have successfully overcome the obstacles that required Austin to be placed outside their care. Both parents have become involved with other individuals and are parents of other children in their care. Their other children are not involved in any guardianships or monitoring by the Department of Human Services.

Both parents are suitable parents. Donald's current treatment may make primary care with him difficult, but he has successfully integrated visitation into his current health problems. Carrie has also done well. Austin has lived with her since 2002. Carrie signs all documents for the school and doctors. Carrie testified her mother only becomes involved on those "legal" items needing the guardian's signature. Donald has income from his disability and Carrie is employed.

The primary motivation for continuing the guardianship is to allow Austin to remain on his grandmother's health insurance with the post office and allow her to take time off from work, when necessary, to assist in transportation. Austin currently has Medicare coverage that is secondary to the post office coverage. Carrie has also looked into Hawk-I coverage for Austin but has not

yet been told if he is eligible. Even if so, they are concerned these plans sometimes require preauthorization and delay in treatment.

Upon our de novo review, and giving deference to the court that actually saw and heard the witnesses testify, we find Jeanne has not rebutted the parental presumption in favor of Carrie and Donald and the guardianship is no longer necessary. The record shows Carrie and Donald have successfully overcome the substance abuse issues leading to the creation of Jeanne's guardianship. Further, Carrie and Donald have successfully parented Austin since 2002, and we have confidence Austin will receive the same high-quality care in the future. Donald's agreement to Austin's physical care remaining with Carrie is logical considering Donald's health issues. Under the unusual circumstances of this case, our ruling recognizes and continues Austin's existing and successful custodial arrangement. We affirm the probate court's order terminating Jeanne's guardianship.

**AFFIRMED.**