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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN RE: THE ADOPTION OF G.E.L., )  
 )  
HEIDI J. FRANKS, )  
 )  
Appellant-Respondent, )  
 )  
vs. )  
 )  
DARLA LIPPERT and JASON LIPPERT, )  
 )  
Appellees-Petitioners. )

No. 71A03-0710-CV-471

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APPEAL FROM THE ST. JOSEPH PROBATE COURT  
The Honorable Peter J. Nemeth, Judge  
Cause No. 71J01-0702-AD-30

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**April 4, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## **STATEMENT OF THE CASE**

Heidi J. Franks (“Mother”) appeals the trial court’s decisions granting a protective order (“Protective Order”) to Jason Lippert (“Father”) and denying Mother’s request for the appointment of a guardian ad litem or a court appointed special advocate (“CASA”) over their minor child, G.E.L. Mother raises two issues for our review:

1. Whether the court abused its discretion in issuing the Protective Order.
2. Whether the court abused its discretion in not appointing either a guardian ad litem or a CASA over G.E.L.

We affirm.

## **FACTS AND PROCEDURAL HISTORY**

On July 11, 1998, Father and Mother married. At the time, Mother was twenty-seven years old. Mother had first tried marijuana at thirteen, she began drinking alcohol at fifteen, and she began using cocaine and crystal meth at twenty. Mother had also used other illegal substances and lied to doctors to obtain narcotics.

In February of 2003, Mother became pregnant with G.E.L. Despite being pregnant, Mother continued to drink alcohol and use narcotics and cocaine. About a month before G.E.L. was born, Mother was admitted to Elkhart General Hospital for detoxification from narcotics, but she refused to participate and left the hospital.

On October 16, 2003, G.E.L. was born. She weighed less than five pounds at birth and suffered from respiratory problems. Although Mother knew of G.E.L.’s breathing problems, Mother did not inform the hospital staff that she had used cocaine during the pregnancy. Subsequent lab results revealed cocaine in G.E.L.’s system, and, as a result,

the local welfare department informed Mother that she had to seek treatment for drug abuse if she wanted to be permitted to care for G.E.L.

In November of 2003, Mother began receiving outpatient treatment for her drug addictions at Oaklawn Psychiatric Center. However, in April of 2004 Mother went on a four-week “[c]ocaine binge.” Transcript at 27. Shortly thereafter, her doctor at Oaklawn advised her to return for inpatient treatment, but Mother refused. On May 13, Father filed his petition for dissolution of marriage in the Elkhart Superior Court (“dissolution court”).

During the dissolution proceedings, the dissolution court appointed Mary Raatz as G.E.L.’s guardian ad litem. The court also permitted Mother supervised parenting time with G.E.L. at Mother’s residence and ordered Mother to stop using drugs and alcohol. But despite that order, Mother continued to use drugs and alcohol. As a result, the dissolution court ordered Mother to receive inpatient care at the Caron Foundation (“Caron”), in Pennsylvania, and it ordered her parenting time with G.E.L. to take place under supervision at the Elkhart Child Abuse Protection Services (“CAPS”). Mother reported to Caron in December of 2003.

In the meantime, Father had met Darla Lippert (“Stepmother”). The dissolution of Mother and Father’s marriage was finalized in February of 2005, and the next month Father and Stepmother were married. The dissolution court granted Father full legal and physical custody of G.E.L., who was sixteen months old at the time.

In March of 2005, Mother returned from Caron and visited with G.E.L. But in April, Mother was again using narcotics, and that summer she began drinking alcohol

again. In February of 2006, Mother brought her minor niece with her on an illegal drug buy. Also in February, the dissolution court ordered Mother's "nearly nonexistent" relationship with G.E.L. supervised through therapist Julie Wilke rather than CAPS. Id. at 35.

In August of 2006, the dissolution court suspended Mother's supervised parenting time with G.E.L. and ordered her to return to Caron. Mother returned to Caron in September. During her time at Caron, Mother did not have any significant contact with G.E.L. On January 10, 2007, Mother was released from Caron's extended inpatient program but continued to receive outpatient care through June of 2007. After leaving Caron, Mother continued to associate with other "recovering people" at bars and clubs in which there would be alcohol and "[a] plethora of drugs around." Id. at 47, 49.

On February 15, 2007, Father and Stepmother jointly filed a petition for adoption of G.E.L. in the St. Joseph Probate Court ("adoption court"). In that petition, Father and Stepmother alleged the following:

9. The Petitioners have not been convicted of a felony or a misdemeanor relating to [the] health and safety of children.
10. The Petitioners are able to care for, support and educate the child and have sufficient income to support the child.
11. The consent of the mother . . . is not required because she is unfit to be a parent under [Indiana Code Section] 31-19-9-8(a)(11). [Mother's] consent is also not required under [Indiana Code Sections] 31-19-9-8(a)(2)(A) and [ ] 31-19-9-8(a)(2)(B).<sup>[1]</sup>

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<sup>1</sup> Indiana Code Section 31-19-9-8(a) states, in relevant part, as follows:

Consent to adoption . . . is not required from any of the following:

\* \* \*

Appellant's App. at 21. The next day, Mother filed a motion to re-establish parenting time in the dissolution court. The dissolution court stayed Mother's motion pending the adoption court's resolution of the petition for adoption. On March 16, Mother filed a motion to contest adoption with the adoption court.

On June 13, Mother served interrogatories on Father and Stepmother. In particular, Mother requested the following: information relating to Father's mental and physical health; whether Father had ever attended Alcoholics Anonymous, Narcotics Anonymous, or a similar group; Father's criminal history, if any; Father's income and assets, including account numbers and balances; Father's vacations and expenditures over \$10,000 since May of 2004; and whether Father had ever abused Mother. Mother also sought Father's income tax returns and medical records. On June 27, Father sought a protective order against Mother's interrogatories and document requests. The court granted Father's motion and issued its Protective Order on July 6, after a hearing.

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(2) A parent of the child in the custody of another person if for a period of at least one (1) year the parent:

(A) fails without justifiable cause to communicate significantly with the child when able to do so; or

(B) knowingly fails to provide for the care and support of the child when able to do so as required by law or judicial decree.

\* \* \*

(11) A parent if:

(A) a petitioner for adoption proves by clear and convincing evidence that the parent is unfit to be a parent; and

(B) the best interests of the child sought to be adopted would be served if the court dispensed with the parent's consent.

On August 6, three days before the scheduled bench trial, Mother filed a motion for the court to appoint a guardian ad litem, CASA, or both to represent G.E.L. Mother also requested a stay of the final hearing “until such time as the [guardian ad litem] and/or the CASA can complete its investigation(s) and report(s) to the Court.” Id. at 28. On August 7, Father and Stepmother filed their objection, noting that Raatz had been appointed as G.E.L.’s guardian ad litem during the dissolution proceedings and that Raatz had continued to serve in that capacity. Attached to their objection was a letter written by Raatz on August 6, in which she stated that her involvement “has continued to this date,” that “[G.E.L.] views her step-mother Darla as her mother,” and that Raatz “do[es] not believe it is in [G.E.L.’s] best interest to have to continue to wait for [Mother] to take her recovery seriously and maintain a stable and healthy lifestyle so that [G.E.L.] can have a relationship with her mother.” Appellee’s App. at 26-27. Later that same day, the adoption court denied Mother’s motion after a hearing.

On August 9, the court held a bench trial on Father and Stepmother’s adoption petition. During the trial, Mother acknowledged much of her past drug abuse and rehabilitative efforts. Mother also acknowledged that, since the dissolution of her and Father’s marriage in February of 2005, G.E.L. had lived exclusively with Father and Stepmother. Further, Mother testified that, since February of 2005, she has had less than thirty-five hours of parenting time with G.E.L., all of which were supervised. And Mother stated that she paid only \$250 in child support since February of 2005, although she has assets in excess of \$250,000 and a 2005 income in excess of \$200,000. Because

of her addiction issues, Mother remained voluntarily unemployed since the dissolution of her and Father's marriage.

On August 16, the adoption court granted Father and Stepmother's petition for adoption. Likewise, the court denied Mother's motion to contest the adoption. This appeal ensued.

## **DISCUSSION AND DECISION**

### **Standard of Review**

As a reviewing court, we will not disturb the trial court's decision in an adoption proceeding unless the evidence at trial leads to but one conclusion and the trial court reached the opposite conclusion. In re M.L.L., 810 N.E.2d 1088, 1091 (Ind. Ct. App. 2004). We will neither reweigh the evidence, nor assess the credibility of witnesses. Id. We examine the evidence most favorable to the adoption court's decision. Id.

Here, Mother argues that the adoption court erred in granting the adoption request and denying her motion to contest the adoption. In particular, Mother contends that the adoption court erroneously granted the Protective Order and denied her request for the appointment of a guardian ad litem. We address each issue in turn.

### **Issue One: Protective Order**

Mother first asserts that the adoption court abused its discretion in entering the Protective Order that prevented her "from conducting discovery that could have [led] to relevant evidence." Appellant's Brief at 8 (emphasis removed). We afford great deference to a trial court's discovery decisions. Turner v. Boy Scouts of Am., 856 N.E.2d 106, 112 (Ind. Ct. App. 2006). "We will interfere with a trial court's ruling on

discovery matters only where an abuse of discretion is apparent.” Id. (quoting Andreatta v. Hunley, 714 N.E.2d 1154, 1159 (Ind. Ct. App. 1999), trans. denied). An abuse of discretion occurs when the trial court’s decision is against the logic and circumstances of the case. Id.

Where, as here, a trial court enters a prehearing discovery order excluding a party from acquiring evidence, that party must make an offer of proof of that evidence during the hearing in order to preserve the trial court’s decision for appellate review. See, e.g., Goad v. State, 516 N.E.2d 26, 28 (Ind. 1987) (holding that, where a trial court limited a witness’s trial testimony in accordance with the court’s prehearing discovery order, the defendant waived appellate review of the court’s decision by failing to make an offer of proof “concerning the contents of the . . . testimony excluded by the court.”); see also Ind. Evidence Rule 103(a)(2) (“In the case the ruling is one excluding evidence, the substance of the evidence [must be] made known to the court by a proper offer of proof, or [be] apparent from the context within which questions were asked.”). An offer of proof allows the trial and appellate courts to determine the admissibility of the evidence and the potential for prejudice if it is excluded. Dowdell v. State, 720 N.E.2d 1146, 1150 (Ind. 1999). Failure to make an offer of proof waives the issue for purposes of appellate review. Id.

Here, the only evidence sought by Mother at trial that pertained to the Protective Order concerned Father’s income in 2006. While Father’s counsel objected, the adoption court permitted the testimony. But in no other way did Mother seek the evidence excluded by the Protective Order during trial. Mother made no offer of proof on any

other issue covered by the Protective Order, nor was the substance of the excluded evidence otherwise apparent. Accordingly, Mother has waived her appeal of the adoption court's decision to exclude the evidence listed in the Protective Order. See Goad, 516 N.E.2d at 28; Dowdell, 720 N.E.2d at 1150.

### **Issue Two: Appointment of Guardian Ad Litem**

Mother also argues that the trial court erred in denying her August 6 motion for the court to appoint a guardian ad litem, CASA, or both to represent G.E.L. In particular, Mother asserts that although “the adoption statutes do not mandate the appointment of a [guardian ad litem] or a CASA . . . , since an adoption, in this case, serves to terminate the [M]other’s parental rights . . . she believes that such an appointment is appropriate.” Appellant’s App. at 7. Father responds by noting that Mary Raatz had already been appointed G.E.L.’s guardian ad litem by the dissolution court, and that there was no need for the adoption court to appoint another guardian. We agree with Father.

Mother does not address the fact that Raatz had been appointed G.E.L.’s guardian ad litem and had served in that role from the time G.E.L. was eight months old through the adoption proceedings. In a similar case, we held that the trial court did not commit reversible error when it declined to appoint a guardian ad litem for a child already represented by a CASA.<sup>2</sup> See In re B.C.S., 793, N.E.2d 1054, 1060-61 (Ind. Ct. App.

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<sup>2</sup> “Under the statutory definitions, a CASA and a guardian ad litem function in the same capacity at the trial court. Each represents and protects the best interests of the child by researching, examining, advocating, facilitating, and monitoring a child’s situation.” In re B.C.S., 793 N.E.2d 1054, 1061 (Ind. Ct. App. 2003).

2003). Likewise here, G.E.L.'s interests were adequately represented by Raatz. Thus, we affirm the court's denial of Mother's motion.

### **Conclusion**

In sum, Mother has waived her appeal of the adoption court's decision to exclude the evidence listed in the Protective Order. Further, because G.E.L.'s interests were being represented by Raatz, the court did not abuse its discretion in denying Mother's motion for the appointment of another guardian ad litem. Accordingly, we must affirm the adoption court's decision to grant the adoption petition and deny Mother's motion to contest G.E.L.'s adoption.

Affirmed.

SHARPNACK, J., and DARDEN, J., concur.