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Vermont House Judiciary Committee
Vermont Legislature
Montpelier, VT

Re: H. 307

To the Vermont House Judiciary Committee:

As there was not sufficient time for me testify last Friday, I am putting my thoughts in writing after having the benefit of listening to the testimony of others. My interest in the bill stems from my service as the probate judge for Windsor County for 18.6 years. I retired last summer.

I wanted to share with you my observations regarding minor guardianships over the course my tenure. I would say that 98% of guardianships, over which I presided, began as consensual. In recent years, the typical scenario for initiation of a minor guardianship was as follows: Parent, frequently a single mother, had a substance abuse issue and/or mental illness. Grandparents (or other family members) offered to take the child so that mother could get help and kids would be safe. Sometimes parent(s) and grandparents came to the initial hearing but often the parent was already in rehab or her whereabouts were unknown. If the parent were present, the grandparents would go out of their way not to criticize the parent out of fear that the parent would change her mind. In addition, I think that the grandparents were embarrassed.

When the parties file a petition for guardianship, they are given a form that encourages them to formulate a guardianship plan that addresses contact with the parent(s) and the length of the guardianship.The parties often did not fill out the guardianship plan or did not fill it out thoroughly. I would always ask at the hearing how long the parties anticipated that the guardianship would last. They might say until the parent was clean, had a place to live and a job but had no idea how long that would take. I would also always explain the termination process to the proposed guardians but I suspect that it did not stick in their minds because at the time their primary concern was the safety of the child.

Often DCF had been involved with the family and the family saw guardianship as a solution to avoid placement of the child in state custody. In Windsor County, a DCF worker sometimes would come to the initial hearing but would be clear that the DCF file would be closed upon creation of the guardianship because the child was in a safe place.

In my experience, over 50% of all minor guardianships were long-term. The policy of the minor guardianship statute as a temporary solution for families, 14 VSA 2621, is very aspirational but not realistic. For many parents addressing substance abuse and mental illness is a lengthy process that may or may not be successful. It was not unusual for a parent to file a Motion to Terminate after several years of guardianship. During this time, the child had found stability and security with the grandparents. The thought of returning to a parent created instability and fear in the child. Many of these children were in therapy as a result of neglect or abuse under the parents' custody or started therapy as a result of a Motion to Terminate. The testimony of child therapists has borne out the anxiety that these motions can cause for the child. Sometimes, the parent would change course and drop the motion because their own situation de-stabilized. However, this parent might re-file down the road. Sometimes the guardian would give up fighting to maintain guardianship because the thought of trying to prove their child unsuitable was overwhelming. The guardians also feared that if the parent were successful at terminating the guardianship, they might never see their grandchild again. Sadly, Marcy Bartlett's story is not unusual.

I think that adding "the best interests" standard to the criteria for a non-consensual guardianship would help. I have speculated that the best interest standard was left out because the drafters were not thinking about applying the standard to the continuation of a guardianship. If a parent is found unsuitable in an initial non-consensual proceeding, by definition almost, a guardianship is in the best interests of the child. However, in a motion to continue a guardianship, even if a parent is objectively suitable, it may not be in the child's best interest to return to the custody of a parent with whom they have not lived for several years. In my experience, parents often had no realistic insight into the impact of the termination of the guardianship upon the child.

I agree with the testimony of Judge Grearson and Judge Kilgore that placing the burden of suitability of the parent on the parent would not pass constitutional muster. See *In re KMM,* 189 VT 372 (2011) (emphasizing the fundamental interest of a parent). I think that *In re KMM* was responsible for the decision to place the burden of termination on the guardian when the minor guardianship statute was amended a few years ago.

I am wondering if it is possible to add to the policy provision of the minor guardianship statute, 14 VSA 2122, the importance of permanency and stability for children. Certainly, permanency is a goal of the child protection statute when children are placed in state custody. Perhaps, time frames could be inserted into the minor guardianship statute so that termination of long-term guardianships is treated differently. Of course, long-term would have to be defined.

Sadly, other solutions to the issues that arise in minor guardianships would require funding that I suspect is not available. In an ideal world, all parties would have attorneys and DCF would continue to provide resources to families after a guardianship is created. We all struggle with the limits of funding.

Thank you for the opportunity to provide you with input. I would be happy to answer any questions.

Sincerely,

Joanne M. Ertel