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Opinion No. 08-121

Circuit Court Authority to Appoint CASA Volunteer

QUESTIONS

1. A juvenile court is authorized by Tenn. Code Ann. § 37-1-149(b)(1) to appoint a Court Appointed Special Advocate (or “CASA”) for a child; in a circuit court’s de novo trial on appeal of a juvenile court case, does the circuit court enjoy the same authority to appoint a CASA?
2. If so, does the CASA appointed by the circuit court enjoy the immunity that Tenn. Code Ann. § 37-1-149(b)(3) confers upon a CASA appointed by a juvenile court?

OPINIONS

1. Yes, because Tenn. Code Ann. §§ 37-1-149(a)(1) and (b)(1) authorize appointment of a CASA “at any stage of a proceeding under this part,” and a circuit court’s de novo trial of an appeal from a juvenile court qualifies as a “stage of a proceeding under this part.”
2. Yes, because the immunity supplied by Tenn. Code Ann. § 37-1-149(b)(3) to a CASA applies to a CASA appointed “at any stage of a proceeding under this part.”

ANALYSIS

While you have asked two questions, they may be jointly analyzed. Tenn. Code Ann. § 37-1-149 authorizes the appointment of both guardians ad litem and Court Appointed Special Advocates and provides, in full:

(a) (1) The court at any stage of a proceeding under this part, on application of a party or on its own motion, shall appoint a guardian ad litem for a child who is a party to the proceeding if such child has no parent, guardian or custodian appearing on such child's behalf or such parent's, guardian's or custodian's interests conflict with the child's or in any other case in which the interests of the child require a guardian. The court, in any proceeding under this part resulting from a report of harm or an investigation report under §§ 37-1-401 — 37-1-411, shall appoint a guardian ad litem for the child who was the subject of the report. A party to the proceeding or the party's

employee or representative shall not be appointed.

(2) Any guardian ad litem appointed by the court shall receive training appropriate to that role prior to such appointment.

(b) (1) The court may also appoint a nonlawyer special advocate trained in accordance with that role and in accordance with the standards of the Tennessee Court Appointed Special Advocates Association (CASA) to act in the best interest of a child before, during and after court proceedings.

(2) The court-appointed special advocate shall conduct such investigation and make such reports and recommendations pertaining to the welfare of a child as the court may order or direct.

(3) Any guardian ad litem or special advocate so appointed by the court shall be presumed to be acting in good faith and in so doing shall be immune from any liability that might otherwise be incurred while acting within the scope of such appointment.

The statute specifically permits the appointment of a guardian ad litem (or “G.A.L.”) “at any stage of a proceeding under this part.” Tenn. Code Ann. § 37-1-149(a)(1). The statute continues, “The Court may *also* appoint a nonlawyer [CASA] to act in the best interest of a child before, during and after court proceedings.” Tenn. Code Ann. § 37-1-149(b)(1) (emphasis added). The statute concludes by providing immunity to either a G.A.L. or a CASA appointed pursuant to the statute. Tenn. Code Ann. § 37-1-149(b)(3).

The statute’s meaning must “be determined not from special words in a single sentence or section, but from the act taken as a whole, viewing the legislation in light of its general purpose.” *Pearson v. Hardy*, 853 S.W.2d 497, 500 (Tenn. Ct. App. 1992). Read as a whole, Tenn. Code Ann. § 37-1-149 is intended to apply equally to a guardian ad litem and a CASA. A court may appoint a G.A.L. “at any stage of a proceeding under this part.” Tenn. Code Ann. § 37-1-149(a)(1). By adding in Tenn. Code Ann. § 37-1-149 (b)(1) that the court may “also” appoint a CASA, the Legislature clearly intended that the CASA may “also” be appointed “at any stage of a proceeding under this part.” Similarly, the Legislature clearly intended in Tenn. Code Ann. § 37-1-149(b)(3) to supply immunity to a G.A.L. or a CASA who is “so appointed.”

Thus, both of your questions are resolved in the affirmative if a circuit court’s de novo trial of an appeal from a juvenile court qualifies as a “stage of any proceeding under this part,” i.e., under Part 1 of Chapter 1 of Title 37 (“Part 1”). Part 1 applies largely to juvenile courts and proceedings and supplies to the juvenile court exclusive and original jurisdiction over several proceedings, including proceedings to determine whether a child is dependent and neglected or unruly. Tenn. Code Ann. § 37-1-103(a)(1). However, Part 1 also supplies to the circuit court appellate jurisdiction

over the latter proceedings.¹ Specifically, Part 1 provides that juvenile court proceedings in which a child is alleged to be dependent and neglected are appealed “to the circuit court,” which “shall hear the testimony of witnesses and try the case de novo.” Tenn. Code Ann. § 37-1-159(a). Hence, a circuit court de novo trial of a juvenile court proceeding qualifies as a stage of a proceeding under Part 1. Therefore, a circuit court conducting such de novo review is authorized by Tenn. Code Ann. § 37-1-149(a)(1) and (b)(1) to appoint a CASA for the child at issue, and the CASA is entitled by Tenn. Code Ann. § 37-1-149(b)(3) to immunity for any actions within the scope of appointment.²

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¹While this opinion is limited to de novo trials in the circuit court of appeals from juvenile court proceedings in which a child is alleged to be dependent and neglected or unruly, the analysis would apply equally to de novo trials in “the criminal court or other court having criminal jurisdiction” of appeals from juvenile court proceedings in which a child is alleged to be delinquent. Tenn. Code Ann. § 37-1-159(a).

²Ironically, absent the statutory grant of immunity, a CASA would likely enjoy an even greater level of immunity. In *Winchester v. Little*, 996 S.W.2d 818, 826-27 (Tenn. Ct. App. 1998), the court held that absent the statutory immunity afforded by Tenn. Code Ann. § 37-1-149, a guardian ad litem -- and, by extension, a CASA -- would enjoy common law absolute judicial immunity for his or her actions.