1990

Guardians Ad Litem: Speaking for the Child

Jennifer J. Snider

Follow this and additional works at: http://open.mitchellhamline.edu/wmlr

Recommended Citation
Available at: http://open.mitchellhamline.edu/wmlr/vol16/iss5/9
INTRODUCTION

The concept that an innocent child should be protected from physical or emotional harm or neglect seems obvious in the abstract. However, this belief is sometimes difficult to apply to real families and their very real problems. Guardians ad litem have the responsibility and the power to advocate on behalf of abused and neglected children in the judicial system.

Whether a parent is able to provide a home which serves the best interests of a child or, at least, provides the least detrimental available alternative is the judge’s decision—but the competent, informed, and aware guardian ad litem can ensure that the judge will consider what is in the child’s best interests. A guardian ad litem is in a unique position to provide meaningful factual information to the court, information that has been collected in order to evaluate the best interests of the child.

I. THE ROLE OF THE GUARDIAN AD LITEM

The role of guardians ad litem is defined by statutory law, common law, and local practice.

A. Federal Statutory Incentives

A state cannot qualify for child abuse and neglect related federal assistance unless it provides for guardians ad litem or their equivalent in judicial proceedings involving abused or neglected children. A state cannot qualify for federal assistance grants “for the purpose of assisting the states in developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs,” unless the state provides by statute “that in every case involving an abused or neglected child which results in a judicial proceeding a guardian ad litem shall be appointed to represent the child in such proceedings.”

† Ms. Snider is a June 1990 graduate of William Mitchell College of Law.

1. 42 U.S.C. § 5103(b) (1982). A state cannot qualify for federal assistance grants “for the purpose of assisting the states in developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs,” id. § 5103(b)(1), unless the state provides by statute “that in every case involving an abused or neglected child which results in a judicial proceeding a guardian ad litem shall be appointed to represent the child in such proceedings.” Id. § 5103(b)(2)(G).
B. Statutory Law in Minnesota

In Minnesota, a statute provides for the appointment of guardians ad litem. The statute distinguishes situations that "permit" an appointment of a guardian ad litem from those that "require" the appointment of a guardian ad litem.

1. Required Appointment

A guardian ad litem is required "[i]n all proceedings for child custody or for marriage dissolution or legal separation in which custody or visitation of a minor child is an issue, if the court has reason to believe that the minor child is a victim of domestic child abuse or neglect." In this situation, the guardian must "represent the interests of the child and advise the court with respect to custody, support, and visitation." An appointment of a guardian ad litem would be required, for example, if one parent alleges that the other parent physically or sexually abused the child.

2. Permissive Appointment

It is permissible, but not required, for a court to appoint a guardian ad litem "[i]n all proceedings for child custody or for dissolution or legal separation where custody or visitation of a minor child is in issue." In this situation, the guardian ad litem "shall advise the court with respect to custody, support, and visitation."

3. Other Appointments

Guardians ad litem are often appointed in other proceedings that affect the interests of children. For instance, a guardian ad litem is appointed when a minor becomes a party to a case. Minnesota Rule of Civil Procedure 17.02 states that "[a] party who is an infant . . . and [who] is not so represented shall be represented by a guardian ad litem appointed by the court in which the action is pending or is to be brought."

3. Id.
4. Id.
5. Id.
6. Id.
7. Id.
In Nicholson v. Maack,\(^{10}\) for instance, the court of appeals upheld the trial court’s appointment of a guardian ad litem to bring a paternity action on behalf of a minor, if that guardian determined that bringing the paternity action would be in the best interests of the minor.\(^{11}\)

C. Common Law in Minnesota

In Minnesota, judges expect guardians ad litem to advocate for their wards’ best interests in and out of the courtroom. In In re the Welfare of D.F.B. and M.A.B.,\(^{12}\) the court adopted the Minnesota Judges Association’s Guidelines for Guardians Ad Litem:

To be effective in [participation in court proceedings], the guardian ad litem must become actively involved in the issues and actions which affect the child both before, during, and after actual court hearings. The primary duties of a guardian ad litem include case investigation, participation in negotiations and hearings, development of dispositional recommendations, presentation of recommendations to the court, regular contact with the child, protection of the child’s rights, participation in decision making meetings that affect the child, case monitoring, advocacy on behalf of the child to ensure their needs are met, and compliance with all statutory requirements pertinent to the matter to which he or she has been appointed. The guardian ad litem, whose only focus is on the child’s best interests, may also be in a unique position to facilitate the resolution of cases without litigation.\(^{13}\)

In D.F.B., the court held that the guardian’s activity fell far short of that necessary to be effective in her role as guardian ad litem.\(^{14}\) The guardian “never saw the children and had only met the mother as a result of participation on a review team that discussed the case.”\(^{15}\) The guardian not only failed to interview the children, but did not interview any adult significantly involved in the children’s lives. Because the guardian ad

\(^{10}\) 400 N.W.2d 160 (Minn. Ct. App. 1987).
\(^{11}\) Id. at 165.
\(^{12}\) 412 N.W.2d 406 (Minn. Ct. App. 1987).
\(^{13}\) Id. at 412 (citing MINNESOTA JUDGES ASSOCIATION, GUIDELINES FOR GUARDIAN AD LITEM 23 (1986)).
\(^{14}\) Id. The court stated that “[t]he guardian’s activity in this case falls far short of the prevalent standard.” Id.
\(^{15}\) Id.
litem was ineffective in her role, the information provided to the judge was insufficient to enable him to make a decision that fully addressed the special interests of the children. The guardian ad litem simply did not do enough to protect and advocate for these children.

In *Nicholson*, the guardian ad litem wrote a one page report one year after he was appointed to the case. He never met with the child. In his report to the trial court, he said, "'I have deliberately not contacted . . . Jennifer because I feel that the first part of [the trial court judge's] order in determining if it is in her best interest that parenting be adjudicated can be determined unemotionally and purely from a legal/sociological approach.' "

The court of appeals found that the trial court properly required the guardian ad litem to bring a paternity action for the child only if he determined it to be in her best interests. However, the trial court erred in granting the guardian's motion for summary judgment because the guardian's report had failed to consider any particular factors with regard to the child's best interests.

Legal or sociological principles are not to be applied in the abstract by guardians ad litem or court appointed special advocates. The specific interests of real children require a guardian's personal attention. The guardian ad litem's role as data-gatherer, collecting and transmitting specific personal information, is essential to the judicial process.

In this case, the trial court believed it had a duty to follow the guardian ad litem's recommendations because it had appointed the guardian. According to the court of appeals, however, the trial court had a duty to ensure that the guardian appointed by the court fulfilled his duty to the child. The court stated:

Here, the guardian ad litem never determined that adjudication of paternity would be in Jennifer's best interests. He

---

17. *Id.* at 163.
18. *Id.* at 165.
19. *Id.*
20. *Id.* "The guardian ad litem must consider all relevant factors" to make a proper determination of the child's best interests. *Id.*
21. *Id.*
22. *Id.*
merely gave his opinion that present sociological and legal trends compelled the conclusion that adjudication should always be made. He never interviewed Jennifer, her mother, the mother's husband, or Nicholson. He never considered the facts of this case. In short, he had no factual basis to make a recommendation. He violated the court's order, as well as his duty as a guardian, to act on behalf of the child as she would act if not under the disability of infancy. 23

In Nicholson, the court adopted a new standard for a guardian ad litem's duty. The court stated that the guardian ad litem "must consider all relevant factors, including the presence of a step-father seeking to adopt Jennifer; the effect of an adjudication of paternity on Jennifer's financial support, the stability of her home environment, and her emotional ties and well-being, as well as her desires if she is deemed mature enough to express a reasonable preference." 24 Further, the guardian ad litem's "study should include, at a minimum, interviews with the child, her mother, her step-father, and her biological father." 25

In Blacque v. Kalman, 26 the court set out specific and general duties of a guardian ad litem:

It is an elementary duty of a guardian in an action of this kind, where the minors are made parties defendant, to examine into the case and determine what the rights of the minors are, what defenses exist, and what defenses may be interposed with a reasonable prospect of success.

"It is the general duty of the guardian to make the case of the minor his own. He must exercise the same diligence and prudence that he would if the case were his own; . . . ." 27

This duty, the duty to look out for the minor as the guardian would look out for himself—at least for the purposes of the litigation—is similar to that duty owed by a fiduciary. 28

23. Id. The court implies that a guardian ad litem is able to determine the child's interests as though the child were not under the disability of infancy.

24. Id.


26. 225 Minn. 258, 30 N.W.2d 599 (1948).

27. Id. at 266-67, 30 N.W.2d at 604 (citation omitted).


See also Gallet, Judicial Management of Child Sexual Abuse Cases, 23 FAM. L.Q. 477 (1989). In light of this standard (that a guardian ad litem must look out for the minor
D. Local Practice

Local practice determines whether a guardian is paid or is a volunteer, whether a guardian is supervised or not, and what qualifications are required.

Hennepin County has a volunteer program providing guardians ad litem for children in juvenile court. About one hundred and forty volunteers handle about five hundred cases per year in juvenile court.29 In Hennepin County family court, lawyers are appointed as guardians ad litem and are paid fifty dollars per hour for their services.30

Washington County has a program director, three “contract” (paid) positions and about forty-seven volunteers.31 Ramsey County’s volunteer guardian ad litem program is headed by a paid director who is assisted by two program supervisor/guardians, a volunteer training coordinator, and approximately one hundred volunteer guardians. Because the Ramsey County court system is less than half the size of the Hennepin County court system, the Ramsey County guardian ad litem program handles only about three hundred and fifty cases per year in juvenile court. The program also handles many cases in Ramsey County family court.32

as he would look out for himself), some authorities suggest that settlement may often be the better path—even if litigation would ultimately prove successful. Id. at 479.

29. Telephone interview with Sue Stacey, Hennepin County Volunteer Guardian Ad Litem Program (March 5, 1990). Duties differ somewhat from county to county. For instance, in Hennepin County, guardians ad litem do not prepare written reports for the court. Interview with Jo Prouty, director, Ramsey County Guardian Ad Litem Program (May 28, 1990).

30. Telephone interview with Sue Stacey, Hennepin County Volunteer Guardian Ad Litem Program (March 5, 1990).

31. Telephone interview with Inta Sellars, director, Washington County Volunteer Guardian Ad Litem Program (March 5, 1990). All three counties played a part in the formulation and implementation of the Comprehensive Training Manual for the CASA/GAL. See EDNA MCCONNELL CLARK FOUNDATION, COMPREHENSIVE TRAINING MANUAL FOR THE CASA/GAL (1989) [hereinafter TRAINING MANUAL]. All three use a modified form of the manual for their training. Training provided by the Ramsey County Guardian Ad Litem Program is forty instruction hours in length. These programs are similar to other programs across the country. Id.; interview with Jo Prouty, director, Ramsey County Guardian Ad Litem Program (May 28, 1990); telephone interview with Sue Stacey, Hennepin County Volunteer Guardian Ad Litem Program (March 5, 1990); telephone interview with Inta Sellars, director, Washington County Volunteer Guardian Ad Litem Program (March 5, 1990).

32. Ramsey County Guardian Ad Litem Organization Chart (March 1990) (available at Ramsey County Guardian Ad Litem Program, Juvenile Service Center, St. Paul, MN). This is a growth industry. Ramsey County has seen about a 26% increase
II. ACCOUNTABILITY OF THE GUARDIAN AD LITEM

The guardian ad litem owes a legal duty to the assigned child only.\(^{33}\) In O'Neil v. Swan, the court held that since a guardian ad litem does not owe the parents any legal duty, there can be no liability to the parents for a guardian's negligent representation of the child's interests.\(^{34}\)

In 1988, the Minnesota Supreme Court affirmed absolute immunity from litigation for guardians ad litem.\(^{35}\) The court stated:

("In advising whether a settlement agreement is in the best interests of a child, guardians ad litem frequently must rely on incomplete facts and base their advice on a variety of legal and non-legal factors, some of which may conflict. . . . Removing immunity would impair the judicial process by discouraging guardians ad litem from advising settlement, and the energies of guardians ad litem would be diverted toward anticipating lawsuits rather than protecting the true interests of children.\(^{36}\)"

The guardian must be allowed to focus on the best interests of the particular child.\(^{37}\)

In some situations, a guardian ad litem may cause or contribute to the harm suffered by the child—and not be held responsible for that harm. An ABA Journal article described problems affecting the 1983 Scott County, Minnesota child sexual abuse cases:

"Many of the children were questioned on several occasions by investigators. "Repeated interviewing and discussions about abuse undermine the credibility of the witnesses," the report [by the FBI and the Minnesota Bureau of Criminal Apprehension] said. "According to experts, children may interpret repeated interviews as demands for more or different information . . . ."

. . . .

"Those defendants who were guilty went free, and those who were innocent were left without the opportunity to

\(^{34}\) Id. at 207, 218 N.W.2d at 457.
\(^{36}\) Id. (citation omitted).
\(^{37}\) See id. at 341. See also In re the Welfare of D.F.B. and M.A.B., 412 N.W.2d 406, 412 (Minn. Ct. App. 1987).
clear their names," the report said. "Those children who were victims became victims once again."38

In the Scott County cases, parents brought suit against several guardians ad litem, alleging that the guardians "engaged in a pattern of activity which was coercive and abusive to the minors placed under their direction . . ."39 In dismissing the claims against the guardians ad litem, the district court noted that, under Minnesota law, guardians ad litem are appointed by, and act as officers of, the court.40 The Eighth Circuit Court of Appeals affirmed the dismissal, concluding that absolute immunity was necessary to protect guardians ad litem from costly litigation directed at the performance of their duties.41

If guardians ad litem are to be effective and competent officers of the court, they must receive adequate training and supervision. Because individual guardians ad litem have immunity from suit for any liabilities incurred during the performance of their duties, the courts are ultimately responsible for ensuring that guardians ad litem perform their duties competently.

III. COMPETING INTERESTS

Traditionally, the state, acting in its parens patriae function, protects those under legal disability, including children.42

---

38. Moss, Are The Children Lying?, A.B.A. J., May 1987, at 58, 61. The Scott County county attorney dropped all charges against twenty-one defendants. Id. at 62. "[A]nother report from a special panel appointed by Minnesota Gov[ernor] Rudy Perpich questioned whether [County Attorney] Morris was justified in dropping charges. Some of the cases could have been successfully prosecuted, the commission concluded." Id. at 61.


40. Id. at 1573 (citing Hoverson v. Hoverson, 216 Minn. 237, 241, 12 N.W.2d 497, 500 (1943)).


42. Parens patriae is as a term which refers traditionally to [the] role of [the] state as sovereign and guardian of persons under legal disability. It is a concept of standing utilized to protect those quasi-sovereign interests such as health, comfort and welfare of the people, . . . .

Parens patriae originates from the English common law where the King had a royal prerogative to act as guardian to persons with legal disabilities such as infants . . . . In the United States, the parens patriae function belongs with the states.

However, judges and other officers of the court alone are not able to address the special interests of children because of their conflicting interests and their court functions. The guardian ad litem aids the state in fulfilling this duty.

A. Parens Patriae

Currently, children are viewed as “autonomous individuals, with distinct and independent interests.” It is generally recognized that the special interests of children will be affected by any litigation in which children are involved.

One commentator has observed that “children’s interests are . . . inadequately represented by counsel of the main litigants, and independent legal representation for children is therefore . . . imperative. The contemporary trend toward appointing guardians ad litem to represent children entangled in custody and neglect actions illustrates this development.” The guardian ad litem has access to legal representation if the guardian is not an attorney herself.

The guardian ad litem’s role is different in focus and scope from that of other professionals in the court system. An advocate for the state, an advocate for the parent, or an advocate for a third party may have a conflict of interest if she were also to be an advocate for the child. The guardian ad litem who conducts a full and competent investigation is critical to the state’s parens patriae function.

B. Parents’ Rights

Parents have more rights than anyone else with regard to their children. Their rights “operate against the state, against third parties, and against the child.” Because the parent’s interest may be different from the child’s interest, the parent is

43. See Note, State Intrusion Into Family Affairs: Justifications and Limitations, 26 Stan. L. Rev. 1383, 1391 (1974). Many commentators are now discussing a “Bill of Rights” for children. Id. at 1391 & n.47.
44. Id. at 1391 (citations omitted).
45. See infra note 84.
46. This investigation should include, at minimum, a personal interview with the child and any relevant adults in the child’s life. See Nicholson v. Maack, 400 N.W.2d 160 (Minn. Ct. App. 1987).
47. Bartlett, Rethinking Parenthood as an Exclusive Status: The Need for Legal Alternatives When the Premise of the Nuclear Family has Failed, 70 Va. L. Rev. 879, 884 (1984). Parents have a corresponding duty for their children’s support. Id. at 885.
not allowed to be a guardian ad litem.\textsuperscript{48}

In \textit{R.S. v. State},\textsuperscript{49} the court balanced a parent’s liberty and privacy interests in his children\textsuperscript{50} with the state’s countervailing interest in protecting the health and welfare of abused children and the state’s interest in protecting the family. The state statute at issue in \textit{R.S.}

\begin{quote}
declares the state’s policy of protecting both children \textit{and the family unit} and provides in pertinent part: “The legislature hereby declares that the public policy of this state is to protect children whose health or welfare may be jeopardized through physical abuse, neglect or sexual abuse; \textit{to strengthen the family} and make the home, school, and community safe for children by promoting responsible child care in all settings.”\textsuperscript{51}
\end{quote}

In \textit{R.S.}, the court expressed concern over the power of the state to intrude into the family:

\begin{quote}
There is a certain hysteria which has arisen in roughly the last decade concerning child abuse. Although serious, when ranked with homicide, aggravated assaults, armed robbery, burglaries, drug dealing, and other felonies, abuse does not occupy a special or sacrosanct position which puts it apart from the normal rules and codes of conduct, including the Bill of Rights. Yet, no other crimes seem shrouded with the mystique of child abuse. All normal concerns for
\end{quote}

\begin{itemize}
\item \textsuperscript{48} \textit{Nicholson}, 400 N.W.2d at 164–65.
\begin{quote}
“The child may be made a party to the action. If the child is a minor and is made a party, a general guardian or guardian ad litem shall be appointed by the court to represent the child. The child’s mother or father may not represent the child as guardian or otherwise.”
\end{quote}

Children’s interests in having paternity adjudicated may differ from their parents’ interests. The fact that a putative father’s paternity action is time-barred [for example] is no reason to forbid appointment of a guardian ad litem to bring such an action [for adjudication of paternity] for the child when it is in the child’s best interests.
\end{itemize}

\begin{itemize}
\item \textsuperscript{49} 447 N.W.2d 205 (Minn. Ct. App. 1989) (father alleged violations of his constitutional rights and privileges when the county removed his seven-year old daughter from her classroom to question her about intimate sexual details without his knowledge or consent).
\item \textsuperscript{50} The court pointed to the fact that the United States Supreme Court has determined that “parents have a constitutionally protected liberty interest in their children. Parents’ rights to the companionship, care, custody and management of their children is a constitutionally protected interest that ‘undeniably warrants deference and absent a powerful countervailing interest, [warrants] protection.’” \textit{Id.} at 210 (quoting \textit{Lassiter v. Department of Social Servs.}, 452 U.S. 18, 27 (1981)).
\item \textsuperscript{51} \textit{Id.} at 210 (emphasis in original) (quoting \textit{MINN. STAT.} § 626.556, subd. 1 (Supp. 1989)).
\end{itemize}
persons’ rights get overridden when someone says, “but we’re protecting little children.” No matter how heinous the crime, it is antithetical to our judicial system that the innocent can be punished lest an occasional guilty one escape.

In other words, the question before us can be reduced to, “what controls are there on the power of the state to interrogate young children about their parents without first notifying the parents?” The statute appears to authorize this serious measure only when the child lives, or has lived, with someone alleged to be the abuser.  

The court balanced the constitutional rights of the parents to control and enjoy a harmonious family unit with the rights of the child to be free from abuse. The court then held that children cannot be interviewed without the consent of a parent unless probable cause exists to show that abuse occurred and that a parent was the perpetrator of the abuse.  

In R.S., the court noted that the state cannot ignore the Bill of Rights when child abuse is reported. The court stated that the philosophy, “‘ends justifies means’ ultimately leads to proper ends not being obtained, as the improper means subvert the process.”  

C. The Rights of Third Parties  

In Smith v. Organization of Foster Families for Equality and Reform, the United States Supreme Court implied that foster parents have a legally cognizable interest in a foster child, but that this interest is secondary to the biological parents’ interest.  

The Minnesota Supreme Court in In re the Dependency and Ne-

52. Id. at 212. In R.S. v. State, an anonymous phone call precipitated the investigation. There was no indication that the possible victim “lived or had lived with an alleged perpetrator.” Id. at 211.  

53. Id. at 212.  

54. Id.  

55. Id. at 212 n.1 (referring to inappropriate actions taken by civil servants and educators when performing mandated reporting duties).  


57. Id. at 844-47. Cases such as Pierce v. Society of Sisters, 268 U.S. 510 (1925), and Meyer v. Nebraska, 262 U.S. 390 (1923), also require the court to give primary consideration to the natural parents. See also Hayes & Morse, Adoption and Termination Proceedings in Wisconsin: Straining the Wisdom of Solomon, 66 MARQ. L. REV. 439, 449 (1983).
glect of Klugman\textsuperscript{58} held that natural parents always have the first right to the care and custody of their children.\textsuperscript{59} In order for a third party to obtain custody of a child over the objections of the natural parent, that custody arrangement must be in the child’s “best interests.”\textsuperscript{60}

D. The Role of the Social Service Agency

Social service agencies need supervision from the court to ensure that the needs and interests of children in the court system are being addressed.

Lawyers and judges abdicate their professional roles when they allow a court hearing to be limited to rubber stamping (or, for that matter, to rejecting automatically) proposals made by child welfare agencies or local authorities. One of the arguments for providing a child with independent counsel in such cases is that the state cannot be presumed to represent the interests of the particular child.\textsuperscript{61}

Unfortunately, “[e]ven child care agencies which are delegated responsibility for safeguarding the welfare of children often have conflicts of interest between their need to safeguard some agency policy and the needs of the specific child to be placed.”\textsuperscript{62}

58. 256 Minn. 113, 97 N.W.2d 425 (1959).
59. Id. at 118–19, 97 N.W.2d at 428–29.
60. Id. at 120, 97 N.W.2d at 429–30.
61. J. Goldstein, A. Freud, A. Solnit & S. Goldstein, In the Best Interests of the Child 49–50 (1986) [hereinafter In the Best Interests].

This conflict arose in a case in which I was a guardian ad litem. In that case, the father was the more interested and the more stable of the two parents. However, the children had been removed from his home, in part, because he was not willing to cooperate with the county social service agency.

After a few months of supervised visitation, unsupervised visitation, and counseling sessions, the social worker assigned to the case was able to get him to complete the case plan she had prepared for him. She then became this father’s advocate, sometimes to the detriment of the children. For example, the social worker allowed the father (or the father’s girlfriend) to supervise the children’s visitation with their mother. The case plan, however, listed the social worker as the supervisor of the visitations.

In this case, the advocacy of a guardian ad litem was necessary if the children’s interests and needs were to be addressed by the court system. As guardian ad litem, I felt that the visitation arrangement was inappropriate. The father’s psychological report showed a lack of ego strength that could affect his ability to parent. The father’s
IV. STANDARDS

The most difficult decision the guardian ad litem must make is whether to recommend termination of parental rights. Minnesota has adopted a best interests standard to determine whether parental rights should be terminated. An alternative to a best interest standard is a standard based on the fitness of the parent.

A. Parental Unfitness Standard

A parent who abandons her children, neglects her children, abuses her children, or who is incapacitated due to mental illness or physical illness may be an unfit parent under the traditional parental unfitness standard. The court stated in In re the Dependency and Neglect of Klugman: [T]he presumption is that the parent is a fit and suitable person to be entrusted with the care of his child, and the burden is upon him who asserts the contrary to prove it by satisfactory evidence. We have recently said that in order to justify depriving a parent of the custody of a child in favor of third persons, there must be a grave reason growing out of neglect, abandonment, incapacity, moral delinquency, instability of character, or inability to furnish the child with needed care.

The parental unfitness standard has been criticized as a standard that is almost impossible to apply without the interjection of personal bias by the court. It has been suggested that [i]ntervention into the family on behalf of such collective social interests as morality and order often represents nothing more than an attempt by state officials to impose their personal and class biases upon parents. For example, the common usage of neglect proceedings to punish parents for such behaviors as promiscuity and tavern-hopping, absent any proof that their children are either aware of or harmed by their conduct, represents a distortion of the child-welfare family conflicts revolved around issues of control over the children. I expressed the concerns I had to the judge.

64. Minnesota Adopts, supra note 63 at 1269.
65. Id. at 1269–71.
66. 256 Minn. 113, 97 N.W.2d 425 (1958).
67. Id. at 118–19, 97 N.W.2d 428–29.
laws to further society's collective interest in morality.68

In the past, factual evidence used by the judge to make a finding of parental unfitness came haphazardly from social workers, doctors, psychologists, and other professionals involved in the child's life.69 The guardian ad litem can organize and interpret this evidence with the child's best interests in mind. However, the competent guardian ad litem must be aware of the possibility of personal bias and, to the best of his ability, be nonjudgmental when collecting facts and assessing parenting ability.

B. Best Interests of the Child

In the case of In re the Welfare of J.J.B.,70 the Minnesota Supreme Court adopted a "best interests" standard when it terminated J.J.B.'s mother's parental rights. The court stated:

We see no basis for distinguishing among the various child placement procedures, whether temporary or permanent, and adopt the best interest of the child standard as a paramount consideration in termination of parental rights proceedings. We have previously observed the importance of emotional and psychological stability to a child's sense of security, happiness and adaptation, as well as the degree of unanimity among child psychologists regarding the fundamental significance of permanency to a child's development.71

Although this mother had been in contact with J.J.B. quite often during his life, the court found that she was unable to provide adequate care for the child.72

The court specifically noted the importance of considering the psychological and emotional needs of the small child.73 The court stated:

The trauma initially attendant upon the separation of the child from his family is sometimes followed by physical and

69. Cf. id. at 1397.
70. 390 N.W.2d 274 (Minn. 1986).
71. Id. at 279.
72. Id. at 280.
73. Id. at 279. The Task Force found addressing this concern to be an essential part of the guardian ad litem's job—to ask questions such as, "[h]ow long has this child been in placement?" and "[h]ow long has the child been with this foster family?" and "[i]s the placement appropriate for this child's culture?" See TRAINING MANUAL, supra note 31, at unit 6.
emotional harms associated with prolonged out-of-home care. Foster care, originally intended as a system of temporary care for children who would ultimately return to their natural families, has, in many instances, become a system of long-term care characterized by considerable instability for the children.74

In In re the Welfare of D.F.B. and M.A.B.,75 the court terminated the mother’s parental rights, in part, because of the mother’s “repeated unwillingness, over the course of two years, to assume responsibility for care of her children.”76 Repeated broken attachments can be extremely damaging to a young child.77 It is in the “best interests” of a child “to live in [a] famil[y] that offer[s] a safe, permanent relationship with nurturing parents or caretakers and [to] have the opportunity to try to establish lifetime relationships.”78 The psychological and emotional needs of young children must be acknowledged by the court.

C. Deciding What is Best for the Child

It is in the best interest of the child for all of the professional participants to recognize that neither separately nor together do they make or make up for a parent—even an ordinary, imperfect one. Their special knowledge is general to all children, and their function in the placement process is to enhance each child’s opportunity to have a parent whose knowledge is general but to whom the child is special.79

The expertise of a professional is most valuable when that professional remains within the areas of her expertise.80

For the guardian ad litem in juvenile court, the social worker will normally be the main contact person for the case. The social worker is able to provide such things as names, phone numbers, and medical reports, usually having the most current and complete information. However, the guardian ad litem should remember that the social worker is part of an agency

74. J.J.B., 390 N.W.2d at 279.
75. 412 N.W.2d 406 (Minn. Ct. App. 1987).
76. Id. at 412.
77. Id. at 408–09 (referring to expert testimony on the effects of broken attachments on young children). See TRAINING MANUAL, supra note 31, at unit 5.
78. J.J.B., 390 N.W.2d at 279.
79. IN THE BEST INTERESTS, supra note 61, at 123.
80. Id.
and owes primary allegiance to the policies and goals of that agency.

Information from a child’s therapist can be important in discerning a child’s emotional and psychological well being. However, a guardian ad litem can provide to the court observations of the child in a variety of situations, interacting with a variety of people—observations that may validate or invalidate a therapist’s report.

It is often useful for a guardian ad litem to have access to a psychological report on the parent. Whether or not the guardian ad litem has any psychological expertise, a psychological report concerning the parent can sometimes alert the guardian ad litem to the reasons behind certain behaviors the child might exhibit.

Foster parents are best able to observe the child day to day. However, foster parents generally become emotionally involved with the child. Observation of the child interacting with the foster parent by the guardian ad litem allows the guardian to evaluate the subjective information provided by the foster parent.

V. RESPONSIBILITIES OF THE GUARDIAN AD LITEM

Guardians ad litem or court appointed special advocates must have an interest and concern for children, their needs and their rights. The Ramsey County program specifically defines the roles that are appropriate for the volunteer guardian ad litem to play, setting forth expectations and responsibilities. In Ramsey County, the guardian ad litem acts as:

- An advocate responsible to see that all the relevant facts and options regarding the child’s best interests are before the Court at all hearings.
- A data-gatherer whose task it is to find all of the relevant facts.
- A facilitator to see the information gathered is shared with the professionals involved and brought to the attention of the Court.
- A monitor by updating the Court regarding changes in circumstances that may require modification of the court order.81

It is usually not necessary that the advocate be an attorney. However, the judge may decide it is appropriate to appoint a lawyer in a particular case if legal expertise is necessary. A trained guardian ad litem, who is also a lawyer, has an advantage in that she will not be intimidated by the judicial process. This can facilitate settlement of the legal issues which inevitably arise in any court proceeding.

CONCLUSION

By gathering factual information designed to serve the best interests of the child and by assisting the court in decision making, a guardian ad litem can have an impact in the life of a child. Whether or not the guardian ad litem is an attorney, whether she is paid or volunteer, a guardian ad litem can speak for a child who is not able to speak for himself.

82. Wisconsin requires that a guardian ad litem be a licensed attorney. Wis. Stat. § 757.48(1)(a)(1987).

In a recent study, different types of guardian ad litem program models were evaluated under various criteria. Because of the higher case loads, the low rate of reimbursement, and the lack of training and support, private attorneys often failed to do the following: (1) conduct adequate investigations, (2) become involved in placement decisions, or (3) follow-up after disposition. This model, the private attorney model, was rated the lowest. Because of the strength of the investigation, mediation, and follow-up performed by nonattorney volunteers, the lay volunteer model was found to be excellent. Grimm, Study of Guardian Ad Litem Programs Suggests Need for Further Research, YOUTH LAW NEWS, Jan.-Feb. 1989, at 17.

83. The judge may decide, in a particular case, that a registered nurse would be most appropriate as guardian ad litem.

84. When it is to the benefit of one or both parents to delay resolution of a custody matter, for example, the attorney guardian ad litem would be more likely than a volunteer without legal training to ask for an Order to Show Cause why visitation is not occurring.

Legal advice is available to the nonlawyer guardian ad litem, if needed, from court appointed counsel. If there is a conflict of interest between the guardian ad litem and the child, a child and the guardian may each have an attorney appointed. Interview with Jo Prouty, director, Ramsey County Guardian Ad Litem Program (May 28, 1990); telephone interview with Inta Sellars, director, Washington County Volunteer Guardian Ad Litem Program (March 5, 1990).