



This Case Law Update Provided by:

The Children's Law Center of Indiana

Adoption

10/18/02

In re Adoption of G.W.B., 776 N.E.2d 952 (Ind. Ct. App. 2002)

In In re Adoption of G.W.B., 776 N.E.2d 952 (Ind. Ct. App. 2002), the Court reversed the trial court's order, which granted the stepfather's petition for adoption and terminated the father's parental rights, holding that the father had not knowingly, intelligently, and voluntarily waived his right to counsel.

When the father and mother divorced, the mother was awarded custody of their two children. The mother subsequently re-married, and her new husband filed a petition to adopt the children. The father filed a motion contesting the adoption, and the trial court set the matter for a hearing. At the hearing, the father was not represented by counsel. He asked the court for a postponement until he could retain an attorney. The trial court refused to grant a continuance, insisting that the father had had ample opportunity to hire an attorney between the time he filed his motion contesting the adoption and the present hearing. Later in the hearing, the father informed the trial court that the reason he didn't have an attorney was because he could not afford one. After the hearing, the trial court denied the father's motion contesting the adoption and granted the step-father's petition to adopt.

Statutory notice of right to be represented by counsel and right to have counsel appointed at public expense granted to parents in termination proceedings extends to biological parents whose parental rights are being terminated by adoption proceedings that biological parents are contesting; in adoption proceeding, biological father did not knowingly, intelligently, and voluntarily waive his right to counsel. The father contended that the trial court erred in failing to inform him of his right to counsel in an adoption proceeding that could terminate his parental rights. The Court began by noting that in Indiana parents have a statutory right to counsel in termination of parental rights proceedings. Id. at 953 (quoting Taylor v. Scott, 570 N.E.2d 1333, 1334 (Ind. Ct. App. 1991) (citing predecessor statute now re-codified at I.C. 31-32-2-5)). Additionally, under statute, if parents in termination proceedings do not have attorneys, and have not lawfully waived their right to counsel, the juvenile court must appoint counsel for them at the initial hearing or at any earlier time. I.C. 31-32-4-3. Furthermore, parents in termination proceedings must be advised that they have a right to be represented by counsel and that counsel may be provided by the state if necessary.

I.C. 31-35-1-12(7).

The Court noted that it has previously held that the statutory right to counsel afforded parents in termination proceedings also exists when a biological parent's rights are being terminated by an adoption that the parent is contesting. Id. (See In re McClure, 549 N.E.2d 392, 394 (Ind. Ct. App. 1990) The advisement of rights found in I.C. 31-35-1-12(7) also applies in cases of termination of parental rights by adoption over the objection of the birth parents. Id. at 954.



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The Court summarized by stating that parents whose parental rights are being involuntarily terminated have three rights: (1) “the right to be represented by counsel”; (2) “the right to have counsel provided if (they) could not afford private representation”; and (3) “the right to be informed of the two preceding rights.” *Id.* at 954 (quoting *Taylor v. Scott*, 570 N.E.2d at 1335). In the present case, the trial court did not advise the father of these rights. Additionally, because there was only one hearing, there was no opportunity for the trial court to impress upon the father the ramifications of representing himself. As a result, the father did not knowingly, intelligently, and voluntarily waive his right to counsel.
