Children's Law Center of Indiana

Adoption

04/08/2009

In **In Re Adoption of Infants H.**, 904 N.E.2d 203 (Ind. 2009), the Court reversed and remanded with directions, the adoption order granted to a New Jersey resident for children brought to Indianapolis for their birth to a South Carolina woman who had been inseminated with biological material from California. Twin girls (the twins) were born at Methodist Hospital in Indianapolis. A few days later, an attorney filed a petition for adoption on behalf of Petitioner, which petition described the children as "white females" and asserted that Petitioner was an Indiana resident, born in Indiana, and employed as a teacher. The woman who gave birth attached an affidavit saying that she was inseminated with combined sperm from Petitioner and an unknown donor and she was waiving her rights with regard to the newborns. On the same day the petition was filed, the trial court held a hearing at which Petitioner testified that the woman who gave birth had been inseminated with sperm from him and from another donor; and he was "currently residing in Indianapolis" but worked as a school teacher in Union City, New Jersey. The trial court indicated orally it would approve the adoption, released the children to Petitioner pending a final hearing, and declared that the statutory requirement of prior written approval of a licensed placement agency or the Marion County DCS (MCDCS) was waived (IC 31-19-7-1). The adoption attorney subsequently provided the court with a document called an "Adoption Summary" prepared by "Paralegal on Call, Inc.," generated on April 27, which indicated that (1) the babies were born prematurely, but were progressing, and that they were "not considered 'hard to place' as defined by IC 31-9-2-51;" (2) Petitioner was born in New York; (3) Petitioner had lived for the last ten years in an apartment in Union City; and (4) the mother was a 23-year-old Caucasian. The trial court received the report and issued an adoption order two days later on April 29. In the meantime, personnel of Methodist Hospital, where the children were in the Newborn Intensive Care Unit, became concerned about Petitioner's ability to appropriately care for the twins and asked MCDCS to investigate because Petitioner appeared in the ICU carrying a bird, which hospital personnel thought represented a risk of infection; on a separate occasion he had come to visit with bird feces on his clothing; and he told hospital staff that he planned to drive the two, three-pound premature infants back to New Jersey in his automobile, alone, and had not yet thought about how he would manage for their care while he worked. The Marion County juvenile court determined that the twins were CHINS and ordered them into the custody of MCDCS on May 2, observing, among other things, that the requirements of the Interstate Compact on the Placement of Children, IC 31-28-4, were not being followed. On May 4, the adoption attorney moved to amend the adoption court's order to add a finding that the children were hard to place, as defined by IC 31-9-2-51(1)(B), on grounds that the woman who gave birth was African-American and that the children were therefore biracial. This motion was neither supported by affidavit nor otherwise verified under penalties of perjury. It turned out that the woman who gave birth had received donor eggs, so the grounds on which

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the attorney asserted the children to be biracial were untrue. The earlier representation that Petitioner was a sperm donor likewise turned out to be untrue. The adoption court observed that the petition to adopt and counsel's subsequent submissions reflected "lack of candor and mass confusion of crucial factors..." and, in July 2005, vacated the original decree of adoption and an amended version that had been entered *Nunc Pro Tunc.* In November 2005, Petitioner moved again to amend the petition for adoption and requested a final hearing, asserting that the twins were hard to place because they were part of a sibling group. In January 2006, the adoption court held its last hearing and ordered a six-month period of supervision over the placement of the twins with Petitioner. On October 17, 2006, the adoption court entered a final decree of adoption, dismissed the CHINS case, and found that consent to adoption by DCS was not required. The Court of Appeals affirmed at 878 N.E.2d 331.

The Court left open the question of whether Indiana courts have authority to grant adoption requests made by non-residents for children who are not residents, because a number of problems make this case a difficult one in which to resolve that question. Id. at 206. The problems as listed by the Court are: the convoluted nature of the submissions of counsel, the delay associated with sorting them out in the trial court and on appeal, and the potential effect on the twins, in that a declaration that there is no subject matter jurisdiction, after all, would put two small children into legal limbo. Id.

Faced with situations like the instant case, the adoption court should transfer the matter to the county where the children are located. Id. at 206-07. The Court noted that, (1) in accordance with IC 31-19-2-2, when the petitioner is not a resident of Indiana, venue lies only in the county in which the licensed child placing agency or governmental agency having custody of the child is located, or in the county where the child resides; (2) venue is not jurisdictional but courts should still observe the directives of the statute; and (3) here, the disconnect between the adoption and the CHINS proceedings as respects the twins underscores the importance of honoring the legislative judgment about venue. Id.at 206.

The adoption court erred by dispensing with DCS' statutory role before DCS even knew of the adoption, based solely on Petitioner's request. Id.at 207. The Court noted that IC 31-19-7-1(a) requires that, before a child may be placed in a proposed adoptive home, DCS or a child placing agency licensed by DCS must give prior written approval; and that this legislative directive obviously is designed to protect children, certainly including infants like those who are the subject of this case. Id.

The Court reversed the final order of adoption for want of compliance with the Interstate Compact and remanded with directions to comply with the Compact, and thereafter to issue further judgment accordingly. Id. at 208-09. The Court noted that (1) the most important safeguards for children, whom it is contemplated will be sent to live with adoptive parents in another state, is the Interstate Compact on the Placement of Children (IC 31-28-4); (2) DCS contends and Petitioner does not dispute that the adoption court did not comply with the Compact; (3) both Indiana and New Jersey are parties to the Compact; (4) two of the large objectives of the Compact which Indiana has embraced are ensuring that the appropriate authorities in a state where a child is to be placed "have full opportunity to ascertain the circumstances of the proposed placement" and providing the sending state with "the most complete information on the basis of which to evaluate a projected placement

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before the placement is made;" and (5) the Compact's conditions for placement are designed to provide complete and accurate information regarding children and potential adoptive parents from a sending state to a receiving state and to involve public authorities in the process in order to ensure children have the opportunity to be place in a suitable environment. According to the Court, here, (1) the adoption court was on the right track when it indicated early on that it would not grant the adoption without complete Compact compliance; (2) MCDCS set this process in motion by notifying Indiana's central Compact office, which requested New Jersey's Compact office to evaluate Petitioner's suitability as an adoptive parent; (3) New Jersey officials contacted Petitioner, who declined to participate, saying that he was a resident of Indiana; (4) the adoption court appointed a guardian ad litem who supplied a home study from a person in New Jersey, but there is nothing in the record that the adoption court had been notified in writing by New Jersey state authorities that the "proposed placement does not appear to be contrary to the interests of the child;" and (5) the Adoption GAL never expressed an opinion on whether the adoption was in the best interests of the twins, though she did testify that she saw no reason the court should not grant the adoption. Id.at 207-08.

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