

Children's Law Center of Indiana



Adoption

5/20/2014

In **In Re Adoption of J.M.**, 10 N.E.3d 16 (Ind. Ct. App. 2014), the Court affirmed the trial court and held: (1) the trial court did not err when it conducted a consent hearing; (2) after finding that Mother's and Father's consents were not necessary, the trial court was not required to determine whether Mother's and Father's prior consents were in the child's best interests, and (3) the trial court was not required to reevaluate parental fitness at the time of the adoption hearing.

The child and her three siblings was removed from Mother's and Father's care when she was less than one year old because of the parents' alcoholism, drug use, the conditions in the home, the child's three older siblings' school absences, and domestic violence. At that time, Father was incarcerated. The child and her three siblings were placed with Foster Parents, and family members did not request placement until after petitions to terminate parents' rights had been filed. While the CHINS proceeding was pending, Mother failed at least two different drug and alcohol programs, consumed alcohol while having a trial home visit with the child, and was on probation for driving while intoxicated at the time of the consent hearing. Father was on probation throughout the CHINS case, continued to use alcohol and drugs, and denied having an alcohol problem at the consent hearing despite his criminal history. Mother and Father had ongoing problems with stable housing and domestic violence. At least two DCS caseworkers noticed bruising on Mother, Mother appeared in court with unexplained bruising, Mother and Father failed to attend required domestic violence classes and couples therapy, and one of Mother's and Father's other children had behavioral problems from witnessing the domestic violence. DCS filed a petition to terminate parents' rights to the children.

Relatives of Mother's three older children filed petitions for guardianships over those children, and Grandparents filed a petition for guardianship over the child. Mother and Father consented to all guardianships. Foster Parents did not object to the guardianships over the three older children, but did object to Grandparents' guardianship over the child, and filed a petition to adopt the child. Grandparents filed a competing petition to adopt the child, and Mother and Father filed consents to Grandparents adopting the child. The trial court ordered a consent hearing to determine whether parental consent was necessary before proceeding to the contested adoption hearing. Grandparents and their attorney were not permitted to be at the consent hearing, and following the consent hearing, the trial court concluded that Mother's and Father's consent was unnecessary due to their unfitness. The trial court permitted Mother and Father to intervene and

participate in the adoption hearing over Foster Parents' objections. The Guardian ad Litem recommended that Grandparents be permitted to adopt the child, and DCS filed consents for both Grandparents and Foster Parents. The trial court granted Foster Parents' petition to adopt the child, denied Grandparents' adoption petition, and found: (1) that both parties were appropriate caregivers for the child; (2) the child viewed Foster Parents as her parents, and Grandparents as her grandparents; (3) the child had lived with Foster Parents for three years; (4) to move the child from Foster Parents to Grandparents would take her from the only life she could remember; and (5) Both parties filed postadoptive agreements, which ensured that the child would continue to have a relationship with Grandparents and Foster Parents. Grandparents did not appeal. Natural Parents appealed the trial court's decision that their consent was unnecessary.

A consent hearing was necessary before the trial court could procedurally address the competing adoption petitions. *Id.* at 20. Mother and Father argued that the trial court erred in conducting a consent hearing, because they had already consented to Grandparents adopting the child. *Id.* The Court noted there are exceptions to the general rule that parents must consent to an adoption, and cited IC 31-19-9-8(a)(11), which provides that consent to an adoption is not necessary from a parent if the adoption petitioner proves by clear and convincing evidence that the parent is unfit and the adoption is in the child's best interests. *Id.* When Foster Parents filed their petition for adoption of the child, Mother's and Father's rights had not yet been terminated, and Mother and Father had not consented to Foster Parents adopting the child. *Id.* Consequently, parental consent was an issue that the trial court was required to address in a consent hearing. *Id.*

The trial court was not required to determine whether Mother's and Father's prior consents were in the child's best interests, because the trial court determined that Mother's and Father's consent was not necessary. *Id.* at 21. Mother and Father argued that the trial court erred when it failed to determine whether their prior consents were in the child's best interests. *Id.* at 20. The Court noted that IC 31-19-9-8(a)(11)(B) provides that the trial court can determine whether "the best interests of the child sought to be adopted would be served if the court dispensed with the parent's consent." *Id.* at 21. The trial court was not required to determine whether Mother's and Father's prior consents were in the child's best interests. *Id.* The Court went on to opine that the trial court had made findings about the child's best interests, and it had found that the "parents are unfit to be parents and the best interest of the child would be served if the Court finds that the parents' consent should be dispensed with." *Id.*

Since the trial court concluded that Mother and Father were unfit at the time of the consent hearing, this terminated Mother's and Father's parental rights; the trial court did not need to reconsider Mother's and Father's fitness again at the adoption hearing. *Id.* at 22. Mother and Father argued that the trial court erred because it failed to consider their fitness at the time of the consent hearing and again at the adoption hearing. *Id.* at 21. The Court noted previous case law, which held that evidence of a historical pattern of serious drug abuse was sufficient to show that a parent was unfit. *Id.* (citing *In Re K.F.*, 935 N.E.2d 282, 289 (Ind. Ct. App. 2010)). The *J.M.* Court opined that, given the evidence and the trial court's findings on Mother's and Father's historical difficulty with alcohol, drug use, and domestic violence, it could not say that the trial court erred when it determined that Mother and Father were unfit parents at the time of the consent hearing. *J.M.* at 21. The Court determined that Mother's and Father's

“argument that the trial court should have reevaluated their fitness at [the time of the adoption hearing] is merely a request for a second bite at the proverbial apple. Once the trial court concluded that the Natural Parents were unfit at the consent hearing...the effect was the termination of their parental rights.” Id. The Court lastly noted that the child would not be completely severed from the family tree, since Foster Parents had agreed to let Grandparents remain in the child’s life; the Court opined that it encouraged these agreements, where appropriate, for the benefit of children. Id.