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The Children's Law Center of Indiana

Adoption

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In In Re Adoption of M.M.G.C., 785 N.E.2d 267 (Ind. Ct. App. 2003)

In In Re Adoption of M.M.G.C., 785 N.E.2d 267 (Ind. Ct. App. 2003), the Court reversed and remanded the trial court's denial of a petition by a domestic partner to adopt her same sex partner's children. The Court held that Indiana law does not require the adoption petitioner be a legal relative of the child's adoptive parent and that Indiana common law permits a second parent to adopt a child without divesting the rights of the first adoptive parent.

In 1999, the petitioner's domestic partner adopted three foreign children as a single parent through the international adoption process. The following year, the petitioner and her domestic partner jointly filed three adoption petitions for each one of the adopted children. The trial court denied the petitions, stating that all foreign adoptions must be domesticated without modification. In March 2001, the petitioner filed petitions to adopt all three children as a second parent. The county OFC submitted a written summary endorsing all three adoptions. In June, the adoptive parent filed consents to her partner's adoption of all three children as a second parent. The consents all stated that they should not be deemed to affect the adoptive parent's parental rights to each of the children.

The trial court denied the petition to adopt as a second parent. It determined that in order for the petitioner to adopt the children, she had to be a legal relative of the adoptive mother. The only way she could become a relative of the adoptive mother would be to marry the adoptive mother, and, under I.C. 31-11-1-1, that would be impossible because in Indiana only a female can marry a male and only a male can marry a female. In view of the fact that the petitioner and the adoptive mother could not be legally married, the trial court construed the petition as one for adopting the children as a single parent. But if it were to grant the adoption under that theory, the trial court would have to terminate the parental rights of the adoptive mother, which was not the intent of the petitioner or the adoptive mother. The intent of the petitioner, according to the trial court, was to give the relationship between the petitioner and her domestic partner the status of marriage. Because the trial court could not do this, it denied the adoption petition. The petitioner appealed, contending the trial court erred in denying her petition to adopt the children as a second parent.

Standard of Review. On review, the Court will not disturb a trial court's ruling in adoption proceedings unless the evidence would lead to but one conclusion and the trial judge reached the opposite conclusion. Id. at 269 (quoting C.H. v. E. W., 713 N.E. 2d 873, 875 (Ind. Ct. App. 1999)).

Indiana law does not require that a petitioner for adoption be a legal relative of the child's adoptive parent nor that the rights of the adoptive parent with respect to the child be divested in the event of a second-parent adoption. The Court stated that the trial court's legal conclusions were not supported by statutory law. I.C. 31-19-2-2(a) requires only that a prospective adoptive parent be a resident of Indiana. The petitioner was a legal resident of the state. Furthermore, I.C. 31-19-15-1 provides that an adoption divests all rights of a biological parent with respect to a child except in the case of a stepparent adoption. The adoptive mother in this case was not the biological parent of the children.

Indiana's common law permits a second parent to adopt a child without divesting the rights of the first adoptive parent; allowing a second parent to share in the financial, spiritual, educational and emotional well-being of the child is in the child's best interest. Because the Indiana adoption statute does not expressly permit two unmarried adults to simultaneously exercise parental rights with respect to an adopted child, the Court turned to the common law for guidance. It noted that changes in the common law "should be consonant with the evolving body of public policy adopted by the General Assembly." Id. at 270 (quoting Bartrom v. Adjustment Bureau, Inc., 618 N.E.2d 1, 7 (Ind. 1993)). Regarding the General Assembly's enacted statutes permitting adoptions by married couples, stepparents, and single adults, the Court noted that the primary concern in every adoption proceeding is the best interest of the child.

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