Adoption

07/18/2008

In **In Re Adoption of N.J.G.**, 891 N.E.2d 60 (Ind. Ct. App. 2008), the Court reversed and remanded for further proceedings the trial court's order to the extent that it concluded that Mother consented to and may not contest the child's adoption, but noted that its holding did not terminate the adoption proceedings "inasmuch as under certain circumstances, the biological mother's consent may not be required for the adoption to occur. *See [IC 31-19-9-8].*" Id. at 67. On February 8, 2007, when Mother was pregnant with the child, Mother and Adoptive Parents (Mother's aunt and uncle) entered into an agreement pursuant to which Adoptive Parents indicated their desire to adopt the child in exchange for about $2,600 to cover some of Mother's debts and car insurance, $276 a month for the duration of the pregnancy, and a vehicle. The funds and the car were styled as a loan which would be forgiven if the adoption went through successfully. On May 7, 2007, Mother went to the office of the Adoptive Parents' attorney where she signed an undated non-notarized "Consent to Adoption Proceedings," which indicated Mother's consent to the adoption of the child by Adoptive Parents. Three days later, the child was born and, unbeknownst to Mother, Adoptive Parents filed a petition to adopt the child and for temporary custody of the infant, which temporary custody was granted by the trial court on the same day. On May 11, 2007, Mother signed (1) a Discharge Authorization which authorized the hospital to discharge the child to the care of Adoptive Parents; (2) a document which gave Adoptive Parents authority to make healthcare decisions for the child; and (3) a document which gave Adoptive Parents the right to spend time with and care for the child while he was still in the hospital, but which explicitly stated that it was not a consent to adoption. On May 22, 2007, Mother filed a letter with the trial court explaining that she had changed her mind about the adoption. On May 29 2007, Adoptive Parents filed a second letter purportedly written by Mother which was similar to one filed by Mother June 1, 2007, but with several differences. Mother testified that Adoptive Mother had actually drafted the letter which indicated that Mother had again changed her mind and she now favored of the adoption. At the July 26, 2007 hearing, Mother objected to the adoption. The trial court set a hearing on the adoption and Mother's objections for September 6, 2007, but the judge recused himself on August 29, 2007 and was replaced on September 18, 2007. On September 5, 2007, Mother filed a petition for sole custody of the child and to dismiss the adoption proceedings. On November 8, 2007, the trial court held a hearing on Mother's petition, and, on November 27, 2007, denied the petition, finding, among other things, that Mother's request to withdraw her adoption consent was denied. The trial court certified its order for interlocutory appeal, and Mother appealed.

Mother's pre-birth consent to the child's adoption was void because it was executed pre-birth, as well as because it did not meet the requirement of IC 31-19-9-2(a) that it be executed in the presence of the court, a notary public, or an authorized agent of the state

department of family and children, a county office of family and children, or a licensed child placing agency. Id. at 65. The Court quoted IC 31-19-9-2(a), as well as IC 31-19-9-2(b) which was added in 2005, and which states: "the child's mother may not execute a consent to adoption before the birth of the child." Previously subsection 2(b) had stated that "[a] consent to adoption may be executed at any time after the birth of the child [in the presence of named parties]." In 1993, the court in Matter of Adoption of H.M.G., 606 N.E.2d 874, 875 (Ind. Ct. App. 1993) held that the intent of the statute was best served by finding a pre-birth consent to adoption to be voidable rather than void, and therefore one that can be ratified by a post-birth act which sufficiently manifests a present intention to give the child up for adoption. Id. at 64-65. Relying on H.M.G., Adoptive Parents argued that Mother's pre-birth consent was voidable rather than void and documents Mother signed and actions she took after her son's birth sufficiently manifested her intent to give the child up for adoption such that the pre-birth consent was ratified. However, the Court held that when the legislature amended IC 31-19-9-2 in 2005, it explicitly provided that "[t]he child's mother *may not* execute a consent to adoption before the birth of the child," and that this new language "indicates a clear legislative intent that pre-birth consents to adoption are *void*, rather than voidable." Id. at 65.

None of the documents in the record that were signed after the child's birth meet the requirements of IC 31-19-9-2 to be valid consents to the adoption. Id. at 65-67. The Court reviewed each document in evidence which was executed by Mother after the child's birth. The Court concluded that none of them constituted valid adoption consents for reasons including that they were not executed in the presence of a court, notary public, a representative of the department of family and children, or a licensed child placing agency as required by IC 31-19-9-2(a). Id.

The Court noted that it was extraordinarily troubled by the parties' arrangement, pursuant to which the adoptive parents "loaned" Mother approximately $2600 to cover certain debts and expenses and provided her with a vehicle but agreed to forgive the loan if the adoption was successful. According to the Court, "At the worst, this contract veers uncomfortably close to an agreement to buy [Mother's] baby and, at the least, it exerted financial pressure on a single mother with limited means to give her baby up for adoption to avoid what would be a nearly crushing debt." Id. at 67 n.3. The Court noted that, in view of its findings, it need not address Mother's argument that the initial agreement between Mother and Adoptive Parents violates policy, but stated that it felt "compelled to note that we do not countenance this arrangement." Id.