Termination of Parental Rights

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In Re Adoption of R.L.R., 784 N.E.2d 964 (Ind. Ct. App. 2003)

In In Re Adoption of R.L.R., 784 N.E.2d 964 (Ind. Ct. App. 2003), the Court reversed the denial of the wife's adoption petition, finding that the trial court's denial of the petition was based upon an invalid nunc pro tunc entry and that sufficient evidence existed to support a finding that adoption was in the child's best interest.

The child was born in 1991. The father and mother divorced in 1993 with the mother being awarded custody. In 1997 custody of the child was given to the father after the mother became dependent on drugs. The father married his current wife in 1998. The mother's drug use worsened, and she moved to Kansas, where she was eventually arrested and incarcerated for six months. After her release, she returned to Indiana and entered a treatment program. She then remained drug free and sober for approximately three years. During the time she was in Kansas, and the first year following her return to Indiana, she made no effort to contact her child. The time without any contact amounted to approximately three years. The mother also failed to pay any child support until Sept. 2000. During the time the mother was out of contact, the father's wife functionally assumed the role of the child's mother. By all accounts, the two developed a close and nurturing relationship.

In Sept. 2000, the mother filed a petition to modify visitation. The father filed a motion to suspend visitation, and his wife filed a petition for adoption, to which the father consented while the mother did not. The trial court denied the petition for adoption without any findings of fact or conclusions of law. The wife appealed the decision, arguing that the trial court erred in failing to make a determination as to whether or not the mother's consent was needed to permit the adoption. The Court ruled, in this first appeal, that there was clear and cogent evidence that the mother had failed to communicate with her child for a period longer than one year when she was able to do so. Therefore, under I.C. 31-19-11-1, the mother's consent was not required in order for the adoption proceeding to take place. The Court remanded the case to the trial court to make that finding. The Court declined the wife's request to further rule that the adoption would be in the child's best interest. The trial court, on remand, was to make that determination.

Two months after the Court decided the first appeal, the trial court made a nunc pro tunc entry in the record stating that, under the statute, the mother's consent to the adoption was not required. It also stated that the strong presumption that favored the natural mother's maintaining her parental rights was not overcome and that adoption by the wife was not in the child's best interest. The adoption petition was denied, and the wife appealed.

The denial of the wife's adoption petition was based on an invalid nunc pro tunc entry. The purpose of a nunc pro tunc entry is "to supply an omission in the record of action really had, but omitted through inadvertence or mistake." Id. at 968 (quoting Perkins v. Hayward, 31 N.E. 670, 672 (1898)). The trial court's record must show that the unrecorded act or event actually occurred. In order to provide a sufficient basis for the nunc pro tunc entry, there must be a supporting written memorial. The memorial: 1.) must be found in the records of the case; 2.) must be required by law to be kept; 3.) must show action taken or orders or rulings made by the court; and 4.) must exist in the records of the court contemporaneous with or preceding the date of the action described. Id. at 968 (quoting Cotton v. State, 658 N.E.2d 898, 900 (Ind. 1995)).

Based on these principles, the Court stated that the purported nunc pro tunc order before it would be appropriate only if the record showed that the trial court had determined, at the conclusion of the hearing on the adoption petition, that adoption was not in the child's best interest. The record, however, did not so indicate. According to the Court, it appeared that the trial court made the determination retrospectively, after the matter was remanded to it after the first appeal. Therefore, the trial court's denial of the adoption petition was based upon an invalid entry.

Normally, the Court, upon being presented an invalid nunc pro tunc order, would remand for further proceedings. However, there were special factors in this case that prompted the Court to proceed to address the

tissue of whether the trial court erred in denying the wife's adoption petition. First, the subject matter was time sensitive. The decision would have a profound impact on the child's life. Second, although the Court struck the trial court's nunc pro tunc entry, there was no reason to believe the trial court's decision would be different upon remand, given that it had taken evidence relevant to its determination. Third, the Court granted the wife's request that it incorporate the record and appendix from the first appeal into the appellate materials for the instant appeal. Therefore, the Court had at its disposal the materials from which the trial court made its ruling. For the sake of judicial economy, it decided to address the trial court's denial of the wife's adoption petition.

The wife's adoption petition should be granted; there was sufficient evidence in the record to support a finding that adoption of the child by the wife was in the child's best interest. The three years the child spent with the mother following the divorce were marked by the mother's drug use and deteriorating mental and emotional condition. When the child moved in with her father and his new wife, the mother dropped out of the child's life. For more than three years, the child had no contact, direct or indirect, with the mother. When the mother returned to Indiana from Kansas, she did not attempt to contact her child for at least another year. During this time, the child and the father's wife developed a healthy mother-daughter relationship. The child, who was now eleven years old, was in favor of the adoption. The child had spent the last half of her life living happily in a household where she referred to the wife as "mom." Conversely, the child had no relationship with the biological mother. The Court stated that these facts led to but one conclusion: The wife's petition for adoption should be granted. The trial court erred in concluding otherwise.