



Adoption

9/15/20

In **Adoption of N.I.D.**, 156 N.E.3d 667 (Ind. Ct. App. 2020), the Court affirmed the trial court's order denying Biological Mother's motion to set aside the adoption of the child.

The child was born to Biological Mother in April 2008 in California, and in 2016, Mother decided to place the child for adoption. Biological Mother contacted an adoption agency in Texas, and the agency identified Adoptive Parents. Biological Mother and Adoptive Parents agreed to a private adoption, and Biological Mother declined Adoptive Parents' offer to pay for an attorney for her. On February 2017, Biological Mother and the child drove to Indiana to meet Adoptive Parents; Biological Mother signed a Limited Durable Power of Attorney giving Adoptive Parents the ability to make decision for the child. Biological Mother also signed a consent to the adoption and a waiver of notice of hearing. The consent provided that Biological Mother had received the petition for adoption, that she believed the adoption was in the child's best interests, that she did not know who the father was and that there was no legally established father for the child, and that she consented to the adoption and waived all further notice. Adoptive Parents filed a Petition for Adoption along with the consent. At some point, Biological Mother and Adoptive Parents signed a "Visitation and Media Understanding" which set forth limited visitation between Biological Mother and the child and required Adoptive Parents to provide pictures and videos. The agreement provided "Birth mother understands this understanding is wholly voluntary and is not legally admissible in court." The trial court granted the adoption; Biological Mother did not attend even though she was in Indiana at the time.

In October 2017, issues arose regarding the agreement about visitation and Adoptive Parents ceased contact between Biological Mother and the child. In April 2018, Biological Mother filed a motion to set aside the adoption; Biological Mother alleged it should be set aside due to fraud, duress, or material mistake of fact. Biological Mother argued: (1) she did not have informed consent regarding the adoption and the termination of her parental rights; (2) the ICPC applied Biological Mother was not an Indiana resident and did not reside in Indiana for six months; (3) Biological Mother did not knowingly consent to the termination of her parental rights; (4) Adoptive Parents told Biological Mother that statutory requirements could be avoided or manipulated, and that they made promises regarding post adoption contact to get her consent; and (5) Adoptive Parents were not relatives and had not been appointed as the child's legal guardians. Adoptive Parents filed motion to dismiss, strike, and a response to Biological Mother's pleading. They argued that (1) Biological Mother failed to file her motion within the timelines provided at IC 31-19-14-2 and IC 31-19-14-4; (2) the ICPC did not apply; (3) the Understanding should be stricken from the record because the agreed that it was inadmissible; (4) the parties did not enter into a statutory postadoption contact agreement, and (5) setting aside the adoption was not in the child's best interests.

The trial court held hearings in July and October 2018. It ultimately denied Adoptive Parents' Motion to Dismiss, finding that it was within the time allowed if considered from the adoption decree, and that it was best to decide the issue on its merits. The trial court denied Biological Mother's motion to set aside the adoption; the trial court found that (1) the motion was timely; (2) the ICPC did not apply to the adoption; (3) Biological Mother's consent was voluntary and she failed to show fraud, duress, or material mistake of fact; (4) Biological Mother failed to show that noncompliance with the Visitation Understanding justified setting aside the adoption; and (5) the adoption was in the child's best interests.

Because Biological Mother's motion to set aside the adoption did not comply with the time limitations set forth in IC 31-19-14-4, the trial court should have granted Adoptive Parents' Motion to Dismiss. Adoptive Parents argued that the trial court erred by denying their motion to dismiss Biological Mother's motion to set aside the adoption based on timeliness. IC 31-19-14-2 operates as a statute of limitations which prevents direct or collateral attacks on adoption decrees. The statute does not define custody, but provides that

Except as provided in section 3 of this chapter, if a person whose parental rights are terminated by the entry of an adoption decree challenges the adoption decree not more than the later of:

- (1) six (6) months after the entry of an adoption decree; or
 - (2) one (1) year after the adoptive parents obtain custody of the child;
- the court shall sustain the adoption decree unless the person challenging the adoption decree establishes, by clear and convincing evidence, that modifying or setting aside the adoption decree is in the child's best interests.

IC 31-19-14-4 also places limits on a person's ability to challenge an adoption by providing:

After the expiration of the period described in section 2 of this chapter, neither a person whose parental rights are terminated by the entry of an adoption decree nor any other person may challenge the adoption decree even if:

- (1) notice of the adoption was not given; or
- (2) the adoption proceedings were in any other manner defective.

Biological Mother was barred from challenging the adoption after one year from the time Adoptive Parents gained custody of the child; Biological Mother argued that this was the date of the adoption decree, while Adoptive Parents argued that this was February 2017, when Biological Mother left the child in their care and signed the power of attorney. Biological Mother's argument placed her within the time frame allowed by IC 31-19-14-2, while Adoptive Parents' interpretation of custody placed Biological Mother outside the allotted timeframe. The Court noted that both parties ignored IC 31-19-14-3, which provides:

- (a) A person who consents to an adoption may not withdraw the consent to adoption after the entry of the adoption decree under IC 31-19-10-4.
- (b) A person who is served with notice of an adoption under IC 31-19-10-4 may not:
 - (1) contest the adoption; or
 - (2) establish paternity;

more than thirty (30) days after the date of service of notice of the adoption.
(c) A person who receives actual notice of an adoption under IC 31-19-10-3 may not:
 (1) contest the adoption; or
 (2) establish paternity;
more than thirty (30) days after the date of receiving actual notice of the adoption.
(d) A person who is prohibited from taking action by subsection (a), (b), or (c) may not challenge an adoption decree.

The Court noted that Biological Mother consented to the adoption; therefore, withdrawal of consent had to be done before an adoption decree was issued, not after. IC 31-19-14-3(d) explicitly prevented Biological Mother from challenging the adoption decree. Since Biological Mother did not seek to withdraw her consent until after the adoption decree was issued, Mother was prohibited from challenging the adoption decree.

The Court acknowledged prior case law where a biological parent was permitted to challenge an adoption decree despite being outside allow time limitations. However, the Court noted that (1) Biological Mother made no arguments with respect to her constitutional rights, and (2) even analyzing Biological Mother's arguments under a Trial Rule 60(B) analysis, her arguments failed. Biological Mother did not attempt to fit her arguments into a Trial Rule 60(B) framework, but instead, argued her consent was involuntary because it was premised on postadoption contact, and because the ICPC was not followed.

The Court opined that while the trial court had erred in not granting Adoptive Parents' Motion to Dismiss, the trial court correctly denied Mother's Motion to Set Aside the Adoption. Even if Biological Mother was able to challenge the decree, she had to show by clear and convincing evidence that the modifying or setting aside the adoption was in the child's best interests. The Court noted that Biological Mother made no arguments challenging the trial court's determination that the adoption was and remained in the child's best interests

Biological Mother's consent was voluntary; the breakdown in communication between Biological Mother and Adoptive Parents did not invalidate her consent or the adoption decree. Biological Mother argued her consent was involuntary because she relied on their promises of postadoption contact in making the decision to sign the consent, calling this a ruse to obtain her consent. The Court noted the acknowledgement in the agreement indicating it was voluntary and not admissible in court; the Court also noted that this agreement did not comply with statutory requirements to be an enforceable postadoption contact agreement. It was not filed with or approved by the trial court and did not contain required language. "Because the post-adoption contact agreement here did not comply with the statutes, a judicial determination of the best interests of the Child was not necessary to terminate contact." The Court further noted that even if there was a valid agreement, a failure to comply with an agreement cannot invalidate an adoption.

Adoptive Parents were acting as non-agency guardians and as such, the ICPC did not apply. Biological Mother argued the adoption should be set aside because Adoptive Parents failed to comply with the ICPC, but the trial court determined, and the Court agreed, that the Biological Mother failed to prove the ICPC applied. The Court noted the ICPC does not apply to

the “sending or bringing of a child into a receiving state by the child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or guardian and leaving the child with any such relative or nonagency guardian in the receiving state.” The Court noted this was a private adoption, and. Biological Mother left the child with Adoptive Parents with a power of attorney which gave them the same powers and duties a guardian would have. The Court found this made them non-agency guardians to whom the ICPC did not apply.