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Adoption

12/15/21

Matter of the Adoption of R.D.H. and R.K.H., 181 N.E.3d 983 (Ind. Ct. App. 2021), the Court held that the trial court abused its discretion in purporting to reopen the adoption case and ordering postadoption visitation.

Father and Birth Mother, who were never married, had twin girls together. Father gained custody of the twins when they were 2 years old as part of a CHINS proceeding stemming from Birth Mother's drug abuse. Father married Adoptive Mother, who quickly filed petitions to adopt the twins. Birth Mother did not consent to the stepparent adoption; but had not contacted the twins for more than a year and had never paid court-ordered child support. Birth Mother failed to appear at the final adoption hearing, but her mother (Maternal Grandmother), grandfather (Maternal Great-Grandfather) and her counsel were present. At the start of the adoption hearing, the parties discussed postadoption contact between the twins and Maternal Grandmother and Maternal Great-Grandfather, the latter of whom had custody of the twins' half sibling. Adoptive Mother and Father never specifically consented on the record to postadoption contact. The adoptions were granted without mentioning any of Birth Mother's extended family or any alleged postadoption contact agreement. Neither Birth Mother nor her relatives ever submitted a written agreement on postadoption contact, and no one appealed the adoption decree.

Fourteen months later, Birth Mother filed a "Motion to Establish a Postadoption Contract," alleging that Adoptive Mother's counsel stated at the final hearing that an agreement would be entered for postadoption contact to start one year from the adoption being granted; and that this statement induced her not to contest the adoption. The court ordered the parties to reach an agreement within 30 days, but no one acted for over a year. Eighteen months after Birth Mother filed her Motion and nearly three years after the adoptions were finalized, Maternal Great-Grandfather and Maternal Grandmother petitioned the court to establish contact with the twins. The court ordered monthly contact with Maternal Grandmother, excluding Birth Mother, finding that postadoption agreement for visitation had been formed based on an exchange during the adoption hearing where Birth Mother's counsel mentioned she would prepare a postadoption contract within the next year, but would like to proceed with finalizing the adoption that day. Father and Adoptive Mother appealed.

Maternal Grandmother's argument for visitation relies on the Postadoption Agreement Statutes, which fails because this law applies only to "a birth parent" who has consented to the adoption or voluntarily terminated the parent-child relationship under I.C. 31-19-16-1. Id. at 7. Maternal Grandmother is not the twins' birth parent, and the type of contact discussed at the adoption hearing concerned extended relatives and specifically excluded Birth Mother. Id. at

8. Arrangements with extended family do not fall within the meaning of the postadoption contract statutes at I.C. 31-19-16-1, -2. Id.

While the parties did discuss contact with the twins and signing an agreement so that the twins could have contact with their half-sibling, these agreements must be filed *before* entry of the adoption decree under IC 31-19-16.5 *et. seq.* Id. Here, the trial court purported to enter a visitation order 4 years after the adoption decree in contravention of the Birth Siblings Postadoption Contact statutes. Id. Further, I.C. 31-19-16.5-1(1) sets forth that the trial court must expressly determine that the postadoption contact between the siblings would serve their best interests. Id. The trial court's visitation order does not even mention the twins' half-sibling and only grants visitation to Maternal Grandmother who does not even have custody of the half-sibling. Id.

The motions to establish contact were filed by Birth Mother, and later by Maternal Grandparents. They are not among the people listed in IC 31-19-16,5-4 who may enforce a sibling postadoption contact agreement. Id. at 9. Under the statute, only a sibling, adopted child, or adoptive parent may file a petition to vacate, modify, or enforce postadoption contact orders between a sibling and adopted child. Id.

The trial court abused its discretion in ordering postadoption visitation to Maternal Grandmother because Grandparent visitation rights must be established before entry of the adoption decree as established in I.C. 31-17-5-3(b), -9. Id. Here, the trial court ordered grandparent visitation 4 years after the adoption decree was issued and failed to issue findings of fact and conclusions of law to show that Maternal Grandmother's visitation was in the twin's best interest as required by I.C. 31-17-5-2(a) and I.C. 31-17-5-6. Id. Nor did the trial court consider whether Maternal Grandmother had attempted to have meaningful contact with the twins as allowed by I.C. 31-17-5-2(b). Id. It had been over 6 years since Maternal Grandmother had seen the twins at the time the order was issued. For these reasons, the trial court abused its discretion in purporting to reopen the adoption and ordering postadoption visitation of any type. Id.