



Adoption

6/1/21

In **In re K.T.**, 172 N.E.3d 326 (Ind. Ct. App. 2021) *trans. denied*, the Court held that the trial court did not err as a matter of law when it ruled that Mother's and Father's consent to Child's adoption was not required, despite the ongoing CHINS proceeding; and further, there was sufficient evidence to support that dispensing with Father's consent is in the Child's best interest.

Mother became pregnant with Child after knowing Father for a couple of weeks. Child was born addicted to heroin and was turned over to Foster Parents, with whom she has lived since being released from the hospital. DCS filed a CHINS petition, and the CHINS court approved a primary permanency plan of reunification and a secondary permanency plan of adoption. Foster Parents then filed a petition to adopt the Child in Hamilton County. DCS moved to intervene and to have the adoption action transferred to Fulton County where the CHINS matter was pending. Both motions were granted. During the CHINS proceeding, DCS informed the court that Mother was not in compliance with services, but Father was and thus, DCS's primary permanency plan remained to be reunification with adoption as the secondary plan. One week after this hearing, Foster Parents moved, in the adoption proceeding, to bifurcate that proceeding on the grounds that the court should first consider whether Mother and Father's consent is required before proceeding on the adoption petition. The court held a fact-finding hearing on the consent issue and found that Father's seven criminal convictions, ongoing criminal matters, frequent incarceration, unstable living arrangements, failure to provide and financial support since the Child's birth revealed that Father is too unfit to parent, and it would be in the Child's best interest to dispense with Father's consent to the pending adoption. Mother appeared from jail and the Court found that Mother's drug use, incarceration, five criminal convictions, and plans to reside with Grandfather, who is a registered sex offender after her release, renders her too unfit to parent, and it would be in the Child's best interest to dispense with Father's consent. Thus, the court concluded that Foster Parents had met their burden to show that Mother and Father were unfit and that dispensing with their consents was in the Child's best interest. DCS timely notified the court that should the court's order on the consent issue survive appeal, DCS would not withhold its consent to the adoption. Likewise, in the CHINS proceeding the court modified the primary permanency plan from reunification to adoption. Mother and Father appealed.

The trial court did not err as a matter of law when, despite there being an ongoing CHINS matter, the court concluded that Mother and Father's consent was not required to proceed on the adoption petition. Id. at 19. CHINS proceedings and adoption proceedings may be considered simultaneously if the goals of the proceedings are the same. Id. at 17. Mother argued that because the primary permanency plan was reunification, the holding in In re Adoption of E.B., 733 N.E.2d 4 (Ind Ct. App. 2000) directs that the adoption proceeding be dismissed. Id. at 18. However, unlike in In re Adoption of E.B., there is no final judgment on the adoption petition, but rather only an interlocutory order on Mother and Father's consents to the adoption. Id. Further, in this case DCS was moving on two tracks in the CHINS proceeding by engaging Mother and Father with services in an effort to reunify them with the child; but also laying the groundwork to have an adoption lined up for the Child in the event that reunification efforts

failed. Id. Thus, the Court concluded that the goals of the CHINS and adoption proceedings were in alignment and the trial court did not err as a matter of law. Id. at 19.

The trial court did not err when it concluded that Father’s consent to the adoption was not required. Id. at 20. Indiana law generally requires natural parents to consent to adoptions; however, a natural parent’s consent is not required if the trial court finds by clear and convincing evidence that the parent is unfit and the best interests of the child would be served if the court dispensed with the parents’ consent. Id. at 21. Father argues that the trial court overemphasized his criminal record and lack of stable housing months prior to the hearing rather than his circumstances at the time of the hearing. Id. at 23. The Court explained that it relied on the fact that Father was arrested for domestic battery in the presence of a minor one week before the hearing and released from jail on the day before the hearing. Id. Father also was arrested for OWI a few weeks prior. Id. As to the issue of unstable housing, Father had been relying on various family members for housing and those family members had their own legal and substance abuse issues and were not likely to provide Father with stable housing. Id. at 24. Therefore, the Court did, in fact rely on circumstances at the time of the hearing in arriving at its decision. Lastly, Father argued that because at the time of the hearing on consent, DCS was opposed to the as the primary permanency plan, the evidence was insufficient to support the trial court’s dispensing of his consent. Id. However, DCS’s position on an adoption is not the end of the matter; as Indiana law squarely places the task of finding whether dispensing with parental consent is in the child’s best interest. Id.