



Adoption

3/17/2006

In **In Re Adoption of J.B.S.**, 843 N.E.2d 975 (Ind. Ct. App. 2006), the Court reversed and remanded the case to the trial court to set aside and revoke its order setting aside the Decree of Adoption and Amended Decree of Adoption. The maternal step-grandfather married the maternal grandmother of the child, and helped her raise her three small children, including the mother and maternal aunt of the child. In 1994, the child was born out of wedlock and paternity was never established. Soon thereafter the mother was convicted of illegal activities and jailed. The maternal step-grandfather and grandmother took the child into their home and, in 1995, they were appointed the child's legal guardians. After the maternal grandmother passed away in 2003, the maternal aunt petitioned to become successor guardian. The court denied her petition, retained the maternal step-grandfather as guardian, and provided that maternal aunt could visit the child two Thursdays and one Sunday a month. In August 2004, the step-grandfather filed to adopt the child and an Adoption Report, including a home study, was filed with the trial court recommending "that the Petition to adopt be granted." During the hearing the trial court conducted on the petition: (1) the court confirmed that the adoption would effectively do away with the maternal aunt's visitation; and (2) maternal step-grandfather testified that he had informed maternal aunt of the adoption petition and that the maternal aunt had not visited with the child since the summer of 2004 which was not true. The adoption was granted in December 2004, and an Amended Decree of Adoption was entered in January 2005 to correct the spelling of the child's name. In February 2005, the maternal aunt filed a Verified Motion to Set Aside Adoption Order. The trial court (1) held a hearing on the issue, in June 2005; (2) found that the step-grandfather had falsely testified that the maternal aunt had abandoned her visitation rights; (3) concluded that the adoption would not have been granted had the step-grandfather been truthful; and (4) set aside the Decree of Adoption on the basis that it had been procured through fraud. The step-grandfather appealed.

The Verified Motion to Set Aside Adoption Order filed by the child's maternal aunt should have been denied as a matter of law inasmuch as the aunt was not a party in interest to the adoption and had no standing to participate in the adoption proceedings, and certainly no standing to object to those proceedings once final. *Id.* at 978. Contrary to the aunt's argument that she had a constitutional right to notice of the adoption proceeding because she "had a court-approved and court-ordered right of visitation," the Court noted: (1) standing refers to the question of whether a party has an actual demonstrable injury for purposes of a lawsuit (In Re Visitation of J.D.G., 756 N.E.2d 509, 511 (Ind. Ct. App. 2001)); (2) the main purpose of standing is to insure that the party before the court has a substantive right to enforce the claim that is being made; and (3) unlike a grandparent who, under certain

circumstances, can obtain standing to petition the court for visitation of a grandchild (In Re the Visitation of J.P.H., 709 N.E.2d 44, 46 (Ind. Ct. App. 1999)), a maternal aunt has no comparable standing. The Court (1) noted that the trial court set aside the adoption on the basis of fraud; and (2) explained that, although caselaw has indicated that fraud may be a reason for setting aside an adoption, those cases, unlike here, dealt with a person whose consent was required for the adoption. Adoptive Parents of M.L.V. v. Wilkens, 598 N.E.2d 1054, 1057 (Ind. 1992) (citing cases where consent for adoption required). The Court emphasized that this decision in no way condones the practice of a party failing to provide a court with accurate testimony, and noted that, here, information contained in the Adoption Report filed with the trial court, provided it sufficient information to ascertain the truth on the issue of the aunt's relationship and visits with the child. J.B.S. at 979.