

Children's Law Center of Indiana



Adoption

07/13/2009

In **In Re Adoption of J.L.S.**, 908 N.E.2d 1245 (Ind. Ct. App. 2009), the Court reversed and remanded the trial court's judgment denying the petition to adopt the child. Before the child was born March 31, 2008 in Florida, arrangements were made for the child's maternal uncle and his wife to adopt the child because his biological mother could not care for another child at home. Within twenty-four hours of the child's birth, the biological parents terminated their parental rights to him. The prospective parents took him home to Indiana from the hospital and on April 18, 2009, filed a petition to adopt him in Lake Superior Court. The prospective father's 1996 conviction for attempted murder in Illinois came to the attention of the court, but the adoption proceedings continued. The Villages prepared a Home Study for Service Adoption which was very positive which argued that the prospective father "has resolved to live a life that reflects his choice to become a responsible family man, and recommended that the petitioners be allowed to adopt. A GAL was appointed to look into the criminal record of prospective father. The GAL reported that the home was wonderful and loving, recommended the adoption, and argued that if the adoption petition were denied because of the prospective father's criminal record, the procedural and substantive due process rights of the child and the prospective father would be violated. The trial court, however, found that IC 31-19-11-1(c) clearly precluded her from granting the adoption because the prospective father had been convicted of aggravated battery. The trial court encouraged that its determination be appealed, stated that it believed it was in the child's best interests to be raised by the petitioners, awarded the petitioners custody for the next 60 days, and asked the attorney for the petitioners to file for guardianship if the petitioners wished to have guardianship of the child. The GAL appealed.

The Court on appeal determined that, although the jury found the prospective father guilty of aggravated battery, he was sentenced only for, and the judgment of conviction was entered only for attempted murder, which IC 31-19-11-1(c) does not list as a conviction prohibiting a court from granting an adoption. Therefore, because, his conviction "does not appear to impede the prospective parents' adoption petition as the law now stands," the Court reversed and remanded the case to determine whether adoption was still in the best interests of the child and whether the prospective parents were of sufficient ability to rear the child and furnish suitable support and education pursuant to IC 31-19-11-1(a)(1) and (2). *Id.* at 1250.