

Children's Law Center of Indiana



Adoption

04/29/2008

In **In Re Adoption of L.M.R.**, 884 N.E.2d 931 (Ind. Ct. App. 2008), the Court affirmed the trial court's granting the adoption petition of the child's foster mother (Foster Mother) and denying the adoption petition of the child's paternal grandparents (Grandparents). The child is the second of three children born to Mother and Father out-of-wedlock. The last two children tested positive for drugs and were removed by DCS at the times of their births. Two days after her birth on February 12, 2005, the child was placed in the custody of Foster Mother, a single parent, college graduate, and Indianapolis television news producer. Initially, the child exhibited withdrawal symptoms requiring substantial attention to keep her calm and appeared to suffer from allergies, asthma, and eye infections. As she became older, the child began hitting her head on the wall without responding to pain. After she was diagnosed with Sensory Integration Disorder (SID), Foster Mother sought guidance from First Steps, an early intervention service for children with developmental disabilities, followed their recommendations, and instructed her daycare provider to do the same. Subsequently, the child was hospitalized with Respiratory Syncytial Virus (RSV) and pneumonia for three days, during which Foster Mother never left her side and Grandmother visited once, for one hour. In August 2006, DCS, without any prior notice to Foster Mother, changed its previous recommendations that the child remain with Foster Mother and recommended that the child be placed with Grandparents where her two siblings were placed, with an eye toward eventual adoption by Grandparents. The trial court followed DCS' recommendation. On September 5, 2006, Grandparents filed to adopt the child and her older brother. On September 26, 2006, Foster Mother filed to adopt the child and her younger brother. The cases were consolidated, the child's parents and DCS consented to Grandparents' adoption of the child and her younger brother, and Grandparents amended their adoption petition to seek adoption of the child's younger brother also. After an evidentiary hearing, the trial court found, among other things, that the consent of the child's parents to her adoption by Foster Mother was not required, that DCS failed to consent to Foster Mother's adoption of the child for reasons that were not in the child's best interests, and that the adoption of the child by Foster Mother was in the child's best interests. The trial court granted the petition of Foster Mother to adopt the child. In their appeal, Grandparents focused on the trial court's determination that DCS' failure to consent to Foster Mother's adoption of the child was not in the child's best interests

The adoption consent statute, IC 31-19-9-8(a)(10), permits DCS, as the child's legal guardian, to express its opinion regarding the adoption, and, if the trial court finds that DCS' consent to the adoption was unreasonably withheld, the Court can review that determination for reasonableness. In the Matter of Infant Girl W., 845 N.E.2d 229, 241 (Ind. Ct. App. 2006). It is the prospective parent's burden to show that DCS is not

acting in the child's best interests in withholding consent. In Re Adoption of L.C., 650 N.E.2d 726, 729-30 (Ind. Ct. App. 1995). L.M.R. at 936.

Contrary to Grandparents' contention on appeal, the trial court properly determined that the DCS failed to act in the child's best interest by refusing to consent to Foster Mother's adoption of the child. Id. at 938. Regarding Grandparents' first argument, that, unlike Foster Mother, they offered a stable family unit and were experienced in raising children, the Court noted that (1) although the purpose of the adoption statute is to provide a child with a stable family unit, a "family unit" is not necessarily interpreted as a two-parent family; and (2) based on the record, the Grandparents' lengthy parental history was not necessarily the better parenting as exemplified in part by the facts that, of Grandparents' four children, aged 23 to 28, none completed high school, acquired a GED, or were employed; two of the sons had a total of five children out-of wedlock and were providing no support for them; and their only daughter never obtained a driver's license but admitted to having driven her children without a license. Id. at 936-37. The Court observed that Foster Mother who took custody of the child two days after birth, (1) studied information about caring for drug babies; (2) consulted medical experts to make the child's withdrawal as easy as possible; (3) took leave from her employment when the child exhibited withdrawal signs; (4) contacted First Steps for evaluation and advice when the child started hitting herself; (5) informed herself on the child's SID diagnosis; (5) remained by the child's bedside day and night when the child was hospitalized with RSV and pneumonia; and (6) basically altered her life to focus on the child's care and needs. Id. at 937. The Court contrasted the Grandparents' conduct including their (1) refusing to accept that the child who tested positive for drugs at birth, had special needs; (2) being unaware of the child's SID diagnosis; (3) refusing to further involve First Steps in the child's development; and (4) limiting their contact with the child while she was in the hospital with RSV to one hour of Grandmother's time. Id. In response to Grandparents' second argument, that their adoption of the child was the way to keep the three siblings together, the Court pointed to Foster Mother's actions in the past, and assurances to in the future to keep the child in close contact with her two brothers who were adopted by Grandparents. Id. at 938. The Court also stated that it was not convinced as to Grandparents' third contention, that DCS' decision to withhold consent to the Foster Mother's adoption request was based on the agency's knowledge and experience. The Court noted (1) for the first eighteen months of the child's life, DCS consistently recommended temporary placement of the child with Foster Mother and made no recommendation regarding permanent placement; (2) then, without any change in circumstances of the child's care and without any advance notice to Foster Mother, DCS changed its position and advocated for the removal of the child from Foster Mother's care and for permanent placement with Grandparents; and, (3) although the family case manager testified that he complied with DCS policy to review the child's medical records, he admitted he did not contact First Steps or discuss the child's SID diagnosis. Id.

The Court concluded that it sympathized with Grandparents, but agreed with the trial court that the child's adoption by Foster Mother was in the child's best interest in that, not only was Foster Mother able to provide the child with a loving and nurturing environment, but she also accepted "the child's developmental hurdles, encouraging her every step of the way." Id.