

Children's Law Center of Indiana



Adoption

12/31/2009

In ***In Re Adoption of S.A.***, 918 N.E.2d 736 (Ind. Ct. App. 2009), the Court affirmed the trial court's denial of Foster Parents' petition for adoption and the trial court's granting of Adoptive Mother's petition for adoption. The child had been removed from Biological Mother by the Department of Child Services (DCS) when the child was six days old, and a Child in Need of Services petition was filed. The child was placed with Foster Parents. Adoptive Mother, who lived in Chicago, had adopted Biological Mother's teenage children. Adoptive Mother contacted DCS when she learned that the child had been placed in foster care and requested that the child be placed with her, but Adoptive Mother was informed that the child would not be placed with her because the initial plan was for reunification with Biological Mother. The child's permanency plan was later changed to placement with Adoptive Mother because Biological Mother's other children were living with Adoptive Mother. DCS petitioned to terminate the parental rights of Biological Mother and alleged father to the child. Prior to the final termination hearing, Biological Mother attempted to consent to Adoptive Mother's adoption of the child. DCS representatives informed Biological Mother that she could only give consent to Adoptive Mother's adoption if she also consented to an adoption by Foster Parents. Because Biological Mother did not want to consent to Foster Parents' adoption of the child, Biological Mother did not consent to adoption by either party. Biological Mother's and alleged father's parental rights to the child were terminated by the court. DCS then changed the original permanency plan for the child to adoption by Foster Parents. Adoptive Mother and the teenage children had several supervised visits with the child in Indiana throughout the CHINS, termination, and adoption proceedings.

Foster Parents and Adoptive Mother both filed petitions to adopt the child. DCS consented to Foster Parents' adoption of the child and recommended Foster Parents' adoption in its adoption summary. The court heard evidence on both petitions for adoption, denied Foster Parents' petition, determined that adoption of the child by Adoptive Mother was in the child's best interest and set Adoptive Mother's petition for final hearing. Foster Parents and DCS appealed.

Trial court's adoption decisions will not be disturbed by Indiana Appellate Court unless the evidence at trial led to but one conclusion and the trial court reached the opposite conclusion. *Id.* at 741. The Court considers the evidence most favorable to the trial court's decision and the reasonable inferences therefrom to determine whether the evidence is sufficient to support the judgment. *Id.*, citing *Irvin v. Hood*, 712 N.E.2d 1012-13 (Ind. Ct. App. 1999).

The trial court was not required to include the specific findings of fact and conclusions of law with regard to IC 31-19-11-1 in denying Foster Parents' adoption petition. *Id.* at 742. The Court was not persuaded by the claim of Foster Parents and DCS that the adoption decree must be set aside because the trial court's order was devoid of the statutory findings required at IC 31-19-11-1 when an adoption is granted. The Court said that the trial court was clarifying that, as between Foster Parents and Adoptive Mother, adoption by Adoptive Mother was in the child's best interests. The trial court then denied Foster Parents' petition for adoption, and set the matter for a final adoption hearing at a later date. The Court opined that, under these circumstances, the Court could not say that the trial court should have included specific findings of fact and conclusions of law regarding the provisions of IC 31-19-11-1 in denying Foster Parents' adoption petition. *Id.* at 741-42.

Adoptive Mother did not need DCS's consent for her petition for the child's adoption to be granted because DCS failed to consent for reasons that were not in the child's best interest. *Id.* at 743. The Court was not persuaded by Foster Parents' contention that the adoption decree must be set aside because DCS had consented to Foster Parents' adoption but had not consented to Adoptive Mother's adoption. The Court, quoting Stout v. Tippecanoe County Dep't. of Pub. Welfare, 182 Ind. App. 404, 411, 395 N.E. 2d 444, 448 (1979), stated that the trial court is solely responsible for making the determination of the child's best interest in an adoption, and DCS is not granted the unbridled discretion to refuse consent. *S.A.* at 742. The Court further noted: (1) DCS initially consented to Adoptive Mother's request for adoption, but later withdrew its consent and consented to Foster Parents' adoption; (2) the DCS case manager could not explain why DCS had withdrawn consent for Adoptive Mother's adoption of the child; (3) the DCS case manager could not identify any information that would warrant the DCS's determination that Adoptive Mother's home might have been inappropriate for the child. *Id.*

Adoptive Mother established by clear and convincing evidence that all requirements of the Interstate Compact on Placement of Children (ICPC) were satisfied. *Id.* at 744. The Court opined that Foster Parents and DCS had offered no evidence to support their contention that Adoptive Mother was not in compliance with the ICPC. *Id.* The Court quoted In Re Adoption of Infants H., 904 N.E. 2d 203, 207 (Ind. 2009), in which the Indiana Supreme Court observed that the ICPC is "among the most important safeguards for children whom it is contemplated will be sent to live with adoptive parents in another state." *S.A.* at 744. The conditions for placement set forth in the ICPC are meant to provide complete and accurate information to the sending state to ensure that children are placed in a safe environment. *Id.* The Court noted that the trial court issued a subsequent order directing Adoptive Mother to obtain an updated home study and to comply with all requirements of the ICPC after determining that it was in the child's best interests to grant Adoptive Mother's petition for adoption. *Id.* The Court stated that the Illinois Department of Children & Family Services (IDCFS) had completed two positive home studies on Adoptive Mother in December 2007 and September 2007 and recommended that the child should be placed with Adoptive Mother in a home study conducted in the summer of 2009. The Court opined that the Illinois Department of Children & Family Services' written report filed in the trial court clearly satisfied the requirements that the receiving state (Illinois) notify the

sending state “that the proposed placement does not appear to be contrary to the interest of the child.” Id., quoting In Re Adoption of Infants H., 904 N.E. 2d at 207.

The child met the requirements of a “hard to place child” in accordance with IC 31-9-2-51; therefore Adoptive Mother, a nonresident of Indiana, had standing to file her adoption petition. Id. at 745. The Court said that IC 31-19-2-3 provides that an individual who is a non-resident of Indiana is granted an exception to the residency standing requirement to adopt a “hard to place” child. Id. at 744.

A “hard to place child” is defined as “a child who is or children who are disadvantaged: (1) because of: (A) ethnic background; (B) race; (C) color; (D) language; (E) physical, mental, or medical disability; or (F) age; or (2) because the child or children are members of a sibling group that should be placed in the same home.” IC 31-9-2-51.

The Court noted the following evidence which made it clear that the child fit into one of the statutory categories: (1) the child is African-American; (2) the child is a member of a sibling group that should be placed together; (3) the child has bonded with her biological siblings who currently live with Adoptive Mother. Id. at 745.

There was sufficient evidence for the trial court to properly determine that granting Adoptive Mother’s petition was in the child’s best interest. Id. at 746. The Court opined that Foster Parents’ request to set aside the adoption order in Adoptive Mother’s favor and enter judgment for Foster Parents amounted to a request for the Court to reweigh the evidence, which the Court will not do. Id. The Court noted that the evidence established: (1) Adoptive Mother is able to support the child financially; (2) the child’s biological siblings who live with Adoptive Mother do well in school, aspire to attend college in the Chicago area, and spend time together as a family; and (3) the child had interacted with her siblings on a number of occasions. Id.