



Adoption

11-13-2003

In **In the Matter of the Adoption of T.J.F.**, 798 N.E.2d 867 (Ind. Ct. App. 2003), decided November 13, 2003, the Court reversed and remanded the trial court's approval of the Guardian ad Litem's and the Office of Family and Children's motion to permit biological sibling visitation between an adopted child and her biological sister with instructions to grant the adoptive parents Motion to Dismiss the Guardian ad Litem and Office of Family and Children's Motion to Permit Biological Sibling Visitation. The adoptive parents filed a Petition for Adoption of the child on April 1, 1997. The trial court ordered visitation established between the child and her biological sister who was a ward of Catholic Charities. This visitation did not ever take place. On September 2, 1997, a Post-Adoption Visitation Agreement was filed which allowed for visitation between the child and her biological sister. The adoptive parents were responsible for scheduling of the visitation. Again, no visitation took place. On December 19, 1997, the Decree of Adoption was entered into between the child and the adoptive parents. The Decree of Adoption was silent regarding the Post-Adoptive Visitation Agreement despite the fact that the adoptive parents reminded the trial court about the visitation agreement. On August 12, 1998, an Amended Post-Adoption Visitation Agreement was filed. There was never an order approving the Amended Post-Adoption Visitation Agreement. In 2001, Catholic Charities contacted the adoptive parents in order to start visitation between the child and her biological sister. The adoptive parents refused to allow visitation. The Office of Family and Children, along with the biological sister's Guardian ad Litem, filed a Motion to Permit Biological Sibling Visitation. The adoptive parents filed a Motion to Dismiss the Motion to Permit Biological Sibling Visitation. The adoptive parents' motion was denied. The adoptive parents then filed a Motion to Modify and/or Terminate Sibling Visitation. After an evidentiary hearing, the trial court denied the adoptive parents' oral motion to dismiss and granted the Guardian ad Litem's and the Office of Family and Children's Motion to Permit Biological Sibling Visitation. **IC 31-19-16.5-1 states post-adoption contact between a child and her biological siblings may be provided for in the adoption decree if the court determines that the post-adoption contact would serve the best interests of the child and the adoptive parents consent.** The Court applied this statute and decided that based on the trial court's silence in the Decree of Adoption regarding visitation with the child's biological sister coupled with the fact that at the time of the entry of the final adoption decree the adoptive parents reminded the trial court about the Post-Adoptive Visitation Agreement shows that the trial court determined that it was not in the best interests of the child to have visitation with her biological sister. *Id.* at 873. The Court states this conclusion is

more likely given the fact that the visitation might be disruptive to the integrity of the adoptive family unit. Id. The Office of Family and Children and the Guardian ad Litem unsuccessfully argued that the trial court expressly authorized the sibling visitation at a hearing six months prior to the final adoption hearing. Id. at 872. The Court opined that the order authorizing sibling visitation was not final and conclusive, but instead an interlocutory order involving issues that merged into the final judgment. Id.

Recitation of the evidence presented at a hearing will not be considered a finding of fact and will be remanded to the trial court to supply an evidentiary basis upon which the trial court used for the ultimate finding. In Perez v. U.S. Steel Corp., 426 N.E.2d 29, 33 (Ind. 1981) the Court held that something is not a fact by merely reciting that it was testified to by a witness. The trier of fact must adopt the witness' testimony before it may become a finding of fact. Id. Additionally, the Court held that although neither party raised the specificity of the finding in the appeal, the Court was unable to affirm the decision of the trial court in light of the inadequate findings made by the trial court. Id. at 874.