

# Children's Law Center of Indiana



## Adoption

5/31/2007

In **Adoption of J.D.B.**, 867 N.E.2d 252 (Ind. Ct. App. 2007), the Court affirmed the probate court's granting of the adoption petition, where the probate court had found that the biological father's consent was not required pursuant to I.C. 31-19-9-8(a)(4)(C) which provides that consent is not required from the biological father of a child born out of wedlock who was conceived as a result of sexual misconduct with a minor. The fourteen-year-old mother and the biological father had intercourse which resulted in the birth of the child on August 20, 2003. On January 12, 2004, the mother was in the Juvenile Detention Center and the Marion County Department of Child Services (DCS) filed a petition alleging that the child was a CHINS. The child was placed in foster care with the adoptive parent where he remained. In November 2004 (1) the biological father, who initially denied paternity, admitted paternity; (2) DCS filed to terminate the mother's parental rights; (3) the juvenile court suspended the biological father's visitation with the child; and (4) DNA testing indicated a 99.99% probability that the biological father was the child's biological father. In March 2005, DCS approved the foster parent's adoption of the child. In May 2005, the juvenile court terminated the mother's parental rights. In June 2005, the foster parent filed a petition for adoption of the child in probate court which alleged that the biological father's consent was not required because the child was born out of wedlock and was conceived as a result of the biological father's sexual misconduct with a minor. Sometime in the summer of 2005, DCS filed a petition to terminate the biological father's parental rights. On August 4, 2005, the biological father filed a motion to contest the child's adoption in which he stated that he was challenging whether his consent to adoption was unnecessary in a pending TPR proceeding, and requested that the probate court stay all proceedings until the juvenile court and/or the Court of Appeals had determined his rights. The biological father filed a petition to establish paternity, and on October 11, 2005 the paternity court issued a judgment of paternity and support, establishing his paternity. On February 24, 2006, DCS requested that the probate court hold a hearing on whether the biological father's consent to adoption was required. On March 2, 2006, DCS filed its consent to the foster parent's adoption of the child. Pursuant to a consent hearing held March 21, 2006, on August 7, 2006, the probate court issued an order finding that the biological father's consent was not required. The probate court, on September 25, 2006, held a hearing on the adoption petition and, subsequently, issued its decree of adoption affirming its August 7 order and granting the foster parent's petition to adopt.

**Probate court had jurisdiction to rule on the adoption petition despite the pendency of CHINS and TPR proceedings in juvenile court with regard to the same child.** *Id.* at 258. (The Court, citing *K.S. v. State*, 849 N.E.2d 538, 541 (Ind. 2006), stated: "Our reading of *K.S.* suggests that the jurisdictional issue raised here might be more properly explored in

terms of comity. However, we address the issue as the parties' have argued it." J.D.B. at 255 n.5.). The Court noted: (1) I.C. 31-19-1-2 gives the probate court exclusive jurisdiction in all adoption matters; (2) I.C. 31-30-1-1, with some exceptions, gives the juvenile court exclusive original jurisdiction over CHINS cases; and (3) I.C. 31-35-2-3 gives probate courts concurrent original jurisdiction with juvenile courts in proceedings on a petition to terminate the parent-child relationship involving a CHINS. J.D.B. at 255. The Court relied on and discussed Matter of Adoption of T.B., 622 N.E.2d 921 (Ind. 1993) and In Re Infant Girl W., 845 N.E.2d 229, 241 (Ind. Ct. App. 2006), *trans. denied*, and distinguished In Re Adoption of E.B., 733 N.E.2d 4, 6, (Ind. Ct. App. 2000), which was relied upon by the biological father. The Court noted that in T.B. the "jurisdictional overlap" was resolved by focusing on the nature of the proceedings. J.D.B. at 255. In T.B., a case involving the attempted revocation of an adoption, the Indiana Supreme Court noted that adoption and a CHINS proceeding are separate actions which affect different rights: (1) the CHINS proceeding is to help the child directly by assuring necessary assistance is provided to the child; and (2) adoption establishes a family unit and severs the child entirely from its own family tree and engrafts it upon that of another.. The Supreme Court continued:

The legislature established the jurisdiction of juvenile courts and probate courts. The juvenile court was expressly given jurisdiction over CHINS proceedings and, similarly, a court with probate jurisdiction was expressly given jurisdiction over adoption matters. The power to adjudicate either matter does not divest the other court of its respective jurisdiction. Consequently, a court with probate jurisdiction may adjudicate an adoption matter simultaneously with the juvenile court's adjudication of a CHINS proceeding. Id. at 924 (citations and quotation marks omitted).

J.D.B. at 256. The Court, here, distinguished E.B. in which the court had found that its "specific fact situation carried the case outside the holding in T.B." E.B. at 6 "The E.B. court explained that the CHINS proceeding was directed at reunifying father and daughter, whereas the adoption proceeding involved a third party attempting to adopt a child when the father's parental rights had not been terminated. Id." J.D.B. at 256. The Court found that, here, contrary to the biological father's contentions, the factual situation was not as that presented in E.B. The Court noted that in E.B. the OFC was actively pursuing reunification and was not seeking to terminate the father's parental rights; whereas, here, DCS was not pursuing reunification, had filed a petition to terminate the biological father's parental rights, and had consented to the adoption of the child. J.D.B. at 256. The Court concluded "there are simply no circumstances present that carry this case outside the ambit of T.B." J.D.B. at 257.

In In Re Infant Girl W., a same-sex couple filed a joint petition to adopt a CHINS; the probate court granted the petition over the objection of OFC; the OFC appealed; and the court of appeals held that the probate court properly exercised jurisdiction over the adoption petition. Infant Girl W. at 241. Here, the Court noted regarding In Re Infant Girl W. and its approach:

In so holding, the Infant Girl W. court distinguished T.B., observing that T.B. involved a revocation of a previously granted adoption. The Infant Girl W. court agreed that the outcome of E.B. was correct. However, rather than focusing on the respective goals of the pending actions, the Infant Girl W. court relied upon [I.C.] 31-19-9-1, sometimes referred to as the consent statute, to support its determination that the probate court had jurisdiction to grant the adoption petition.

[I.C.] 31-19-9-1 provides in relevant part, “Except as otherwise provided in this chapter, a petition to adopt a child who is less than eighteen (18) years of age may be granted only if written consent to adoption has been executed by ... [e]ach person, agency, or county office of family and children having lawful custody of the child whose adoption is being sought.”

Further, if OFC refuses to consent to the adoption, the probate court must determine whether the OFC is acting in the best interests of the child in withholding its consent. [I.C.] 31-19-9-8(a)(10). The Infant Girl W. court observed that the consent statute permitted OFC, as the child’s legal guardian, to express its opinion regarding the adoption, and, if the probate court found that OFC’s consent to adoption was unreasonably withheld pursuant to [I.C.] 31-19-9-8(a)(10), this Court could review the probate court’s determination for reasonableness.... The Infant Girl W. court concluded, “the mere fact that there were pending CHINS and TPR proceedings did not in any way divest the Probate Court of its exclusive jurisdiction over the Adoption Case, inasmuch as the consent statute enabled OFC, as[the child’s] legal guardian and as petitioner in the TPR Case, to voice its concerns and opinions about the Parents’ petition to adopt.” Infant Girl W. 845 N.E.2d at 241.

J.D.B. at 257-58. The Court observed that, notwithstanding that in this case the DCS consented, whereas the OFC in Infant Girl W. opposed the adoption, I.C. 31-19-9-1 “supports the same conclusion we reached in our analysis focusing on the goals of the CHINS, TPR, and adoption proceedings....because the consent statute permitted [the biological father] to participate in the adoption proceedings.” J.D.B. at 258. The Court noted that: (1) the adverse outcome, that his consent was not needed, did not negate the fact that the biological father had the opportunity to present evidence to show that his consent was required and to appeal the probate court’s decision that it was not; (2) the consent statute permitted DCS to voice its assessment of the adoption; (3) DCS consented to the adoption; and (4) the case manager testified in both the consent and the adoption hearings. J.D.B. at 258.

**Probate court’s decision that Father’s consent to adoption was not required, was not contrary to law.** Id. at 259. Citing I.C. 31-19-10-1.2 (b)(2) and I.C. 31-19-10-0.5, the Court noted that, contrary to the biological father’s contention, the burden of proof, by clear and convincing evidence, regarding whether the child was conceived as a result of sexual misconduct with a minor, was his rather than the adoptive parent’s burden, and the absence of a criminal prosecution was insufficient to satisfy that burden of proof. Id. at 258. Biological father also contended that “he did not commit sexual misconduct with a minor because he did not knowing or intentionally perform or submit to sexual intercourse with” the 14-year old mother, because the mother “had sexual intercourse with him while he was asleep, he did not wake up, and he had no knowledge of having had sex with [her].” Id. at 529. The mother’s testimony at the consent hearing was consistent with the biological father’s contention. The Court noted, however, that the biological father “presented no evidence that the medication he had taken was capable of causing him, a 180-pound man, to remain asleep while a teenage girl, weighing only 120 pounds, removed his pants and had sexual intercourse with him,” and held that “the fact that a twenty-nine year old man and a fourteen-year old girl had sexual intercourse and conceived a child solidly supports an inference that the man intended and/or knew that he was engaging in sexual intercourse.” Id. The Court further declined the biological father’s “invitation to reweigh the evidence.” Id.