



Adoption

10/18/05

In **In Re Adoption of T.L.W.**, 835 N.E.2d 598 (Ind. Ct. App. 2005), the Court affirmed the St. Joseph County Probate Court's denial of the birth mother's Ind. Trial Rule 60(B) motion to enforce a visitation agreement following her voluntary relinquishment of her parental rights. In August 2002, the birth mother voluntarily relinquished her parental rights of two children ages three and five twenty-two months after the Office of Family and Children (OFC) had removed the children from her home. The mother had negotiated an agreement for visitation and correspondence with the OFC and the adoptive parents prior to terminating her parental rights. A year later, in August 2003, an adoption of the children was granted by the court. Fourteen months following the adoption, in October 2004, the birth mother filed a Motion to Intervene in the adoption and then a month later filed a T.R. 60(B) Motion to Enforce Visitation Agreement. In April 2005 the trial court, following a hearing, denied the birth mother's motion based upon a finding that the biological mother had failed to file her T.R. 60(B) motion timely, that there was no visitation provision in the adoption decree, and the best interest of the children was to have permanency. The birth mother appealed pursuant to T.R. 60(B)(2) or T.R. 60(B)(8) claiming that the trial court erred in failing to review the adoption order and denying her Motion to Enforce Visitation Agreement.

The trial court did not err in refusing to review the adoption decree and denying the birth mother's motion to enforce the visitation agreement when the birth mother's requests were filed fifteen months after the entry of the adoption decree. Id. at 602. Under T.R. 60(B)(2) relief from a court order is expressly available only if such a motion is filed within one year from the date of the order. D.D.J. v. State, 640 N.E.2d 768, 769 (Ind. Ct. App. 1994), trans. denied. The adoption of the children was in August 2003, and the Motion to Enforce Visitation Agreement was not filed until fifteen (15) months later in November 2004. The Court concluded that the birth mother was not due relief under T.R. 60(B)(2).

The birth mother alternatively argued that relief should have been granted under T.R. 60(B)(8) which allows the trial court to set aside a judgment within a reasonable time for any reason justifying relief, other than those specifically set out in T.R. 60(B)(1)-(4). What constitutes a reasonable period of time is dependent upon the circumstances of the case, and the burden is on the moving party to show that relief is both necessary and just. In re Adoption of T.L.W. at 601, citing Gipson v. Gipson, 644 N.E.2d 876, 877 (Ind. 1994). The Court has held previously that the party seeking relief under T.R.60(B)(8)

must show that its failure to act was not merely due to an omission involving mistake, surprise, or excusable neglect. Indiana Ins. Co. v. Insurance Co. of North America, 734 N.E.2d 276, 279-80 (Ind. Ct. App. 2000). The birth mother argued that her delay in seeking relief was a result of her recent awareness of the adoption. The Court did not find the circumstances rose to the level of extraordinary. The Court opined that the trial court was required to weigh the alleged injustice suffered by the birth mother against the interests of the children's permanency and the greater good of society. The Court determined that the potential adverse impact to the two children outweighed the alleged injustice suffered by the birth mother. The Court did not find fifteen months to be a reasonable period for delaying the commencement of an action. The demand for prompt action in such a case is neither arbitrary nor punitive, but is instead a logical and necessary outgrowth of the State's legitimate interest in children's need for permanence and stability. Id. at 602.