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ATTORNEY FOR APPELLANT:

MARK SMALL
Indianapolis, Indiana

ATTORNEY FOR APPELLEE:

CHRISTA L. WEST
Montgomery, Elsner, & Pardieck, LLP
Seymour, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE ADOPTION OF B.H.K.	)	
C.K.,	)	
Appellant-Respondent,	)	
vs.	)	No. 47A04-0902-CV-112
R.P. & L.P.	)	
Appellee-Petitioners.	)	

APPEAL FROM THE LAWRENCE CIRCUIT COURT
The Honorable Andrea K. McCord, Judge
Cause No. 47C01-0807-AD-23

August 7, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

C.K. ("Mother") appeals the trial court's denial of her motion to withdraw her consent to the adoption of her child by her mother and stepfather, L.P. ("Grandmother"), and R.P. ("Stepfather"), respectively.

We affirm.

ISSUE

Whether the trial court erred in denying Mother's motion to withdraw her consent to the adoption.

FACTS

The evidence most favorable to the trial court's decision is as follows: Mother is the biological parent of B.H.K. (born out-of-wedlock on July 27, 2007). B.H.K.'s paternity has not been established and Mother does not know the identity of the child's father. At the time of the underlying incident, Mother and B.H.K were living with Grandmother and Stepfather. In March of 2008, while the entire family was in Florida, Mother asked Grandmother and Stepfather to adopt B.H.K. because Mother "didn't know how to take care of [B.H.K.] and she didn't know how she could make it, and she was concerned about [B.H.K.]'s safety" due to a prior abusive relationship with a man in Indiana. (Tr. 44).

After the family returned to Indiana in April of 2008, Grandmother contacted Lois Ritter of Healthy Families at the Bedford Medical Center and inquired about formal adoption proceedings. During a subsequent site visit to provide services to Mother at Grandmother and Stepfather's home, Ms. Ritter provided Grandmother, Stepfather, and

Mother with information regarding adoption proceedings. In Ms. Ritter's presence, Mother stated that she wanted Grandmother and Stepfather to adopt B.H.K. Thereafter, Grandmother contacted her attorney, who drafted a Consent to Adoption. (App. 9).

Notary public Diana Voorhies is employed at Hoosier Hills Credit Union in Bedford, Indiana. On July 16, 2008, Mother and Grandmother went to the credit union and asked Voorhies to notarize the Consent to Adoption. Mother voluntarily signed the Consent to Adoption in Voorhies' presence.

On July 28, 2008, Grandmother and Stepfather filed their petition to adopt B.H.K. and attached Mother's signed and notarized Consent to Adoption. (App. 8-9, Exh. A). That same day, the trial court ordered a home study. Subsequently, Mother and Grandmother had a bitter argument over Mother's relationship with her new boyfriend, whom Grandmother had observed engaged in what she perceived as inappropriate behavior with B.H.K. Grandmother told Mother not to bring her new boyfriend back to their home; however, Mother defied Grandmother and Stepfather's instructions and brought her boyfriend back against their wishes. Mother's defiance precipitated a verbal confrontation between Mother, Grandmother, Stepfather, and Mother's boyfriend.

On August 6, 2008, Grandmother and Stepfather filed a verified petition for temporary custody of B.H.K. The trial court conducted a hearing on Grandmother and Stepfather's verified petition on the same day. On August 28, 2008, Mother filed a letter with the trial court, wherein she alleged that her signature had been "falsif[y]ed" [sic] on the Consent to Adoption and that she had not knowingly given consent to B.H.K.'s

adoption by Mother and Stepfather. (App. 21). At Mother's request, the trial court appointed counsel to represent her.

On September 27, 2008, the trial court issued an order granting temporary custody of B.H.K. to Grandmother and Stepfather. On October 30, 2008, the trial court conducted a hearing on Mother's objection to B.H.K.'s adoption and her request to set aside the petition for adoption. Grandmother, Ms. Voorhies, and Ms. Ritter testified to the foregoing facts.

On December 17, 2008, the trial court issued an order denying as untimely Mother's motion to withdraw her consent to B.H.K.'s adoption. The order stated, in pertinent part, the following:

> 1. Pursuant to I.C. 31-19-10-3, [Mother]'s motion to withdraw her consent is not timely, at [sic] it was filed more than 30 days after the consent to adoption was signed.
> 2. [Mother] has failed to prove by clear and convincing evidence that her consent to the adoption was obtained involuntarily or as a result of fraud or duress.
>
> [3]. [Mother]'s motion to withdrawal [sic] her consent is denied.

(Order 1). On January 15, 2009, the trial court issued an adoption decree granting Grandmother and Stepfather's petition to adopt B.H.K. Mother now appeals.

DECISION

Mother does not dispute that her motion to set aside her consent to B.H.K.'s adoption was filed more than thirty days after it was executed. Rather, she argues that her consent to B.H.K.'s adoption was not voluntarily given, and that Grandmother obtained her signature by misrepresenting the Consent to Adoption as an advisement of adoption procedures.

We will not disturb the trial court's decision in an adoption proceeding unless the evidence at trial led to but one conclusion and the trial court reached the opposite conclusion. *Bell v. A.R.H.*, 654 N.E.2d 29, 32 (Ind. Ct. App. 1995). We will neither reweigh the evidence, nor assess the credibility of witnesses, but instead will examine the evidence most favorable to the trial court's decision. *Id.*

As a general rule, a petition to adopt a child who was born out of wedlock may be granted only if the child's mother executes a written consent. Ind. Code § 31-19-9-1(a)(2). Indiana Code section 31-19-9-2 sets forth the requirements that must be met for such a consent to be effective:

> (a) The consent to adoption may be executed at any time after the birth of the child either in the presence of:
> (1) the court;
> (2) a notary public or other person authorized to take acknowledgments; or
> (3) an authorized agent of:
> (A) the department;
> (B) a county office of family and children; or
> (C) a licensed child placing agency.

Further, to be deemed valid, a parent's consent to adoption must be voluntary. *In re Adoption of M.L.L.*, 810 N.E.2d 1088, 1093 (Ind. Ct. App. 2004). "Consent is voluntary if it is an act of the parent's own volition, free from duress, fraud, or any other consent-vitiating factors, and it if is made with knowledge of the essential facts." *Id.* The issue of an invalid consent may be raised by a petition to withdraw consent and the burden of proof by clear and convincing evidence[1] falls on the petitioner. I.C. § 31-19-10-0.5.

[1] Mother asserts that the trial court improperly required that her evidentiary burden must be by clear and convincing evidence. We disagree and direct her attention to Indiana Code section § 31-19-10-0.5, which

At the hearing, Mother testified that she would never have consented to B.H.K.'s adoption, and that she had signed the Consent to Adoption under the belief that she was, in fact, signing only an advisement of adoption procedures. She testified that before she and Grandmother went to the notary public's office, Grandmother had showed her an advisement of "basically what adoption is." (Tr. 13). Mother testified that later, at the notary public's office, Grandmother substituted the Consent to Adoption in lieu of the advisement, "had it covered to where [Mother] couldn't read it," and pressured Mother into signing the document by insisting that they "were in a hurry." (Tr. 13).

Grandmother, on the other hand, testified that after Mother had asked her and Stepfather to adopt B.H.K., Grandmother first asked Lois Ritter of Healthy Families for information about adoption proceedings. Grandmother testified that Ms. Ritter brought the adoption information to their home, and that in Ms. Ritter's presence, Mother reiterated her desire that Grandmother and Stepfather adopt B.H.K. Grandmother testified that although Ms. Ritter discussed temporary as well as permanent placement options, Mother had insisted on adoption.

Grandmother testified further that her attorney drafted the Consent to Adoption, which Grandmother gave to Mother along with the telephone number for an adoption support legal hotline. Grandmother testified that Mother read the Consent to Adoption document and, in Grandmother's presence, conferred with an adoption hotline counselor about "what adoption was and what [her] other options might be." (Tr. 49).

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expressly provides that for proceedings brought under chapter 10, "Withdrawal of Consent to Adoption; Contest of Adoption," the applicable standard is proof by clear and convincing evidence.

Grandmother testified that afterwards, Mother maintained that she wanted to proceed with the adoption. Grandmother testified that only then did she and Mother go to notary public Voorhies' office to execute the Consent to Adoption form. Grandmother testified that she did not interfere with Mother's ability to read the Consent to Adoption form before she signed it. She also testified that even after they left Voorhies' office, Mother again reviewed the Consent to Adoption and allowed Grandmother to attach it to the adoption petition to be filed with the trial court.

Ms. Ritter of Healthy Families testified that during a site visit to Mother and Grandmother's home, they asked her for information regarding how Grandmother and Stepfather could go about legally adopting B.H.K. She testified that on a subsequent visit, she provided both Grandmother and Mother with details of adoption proceedings. She testified further that both Mother and Grandmother expressed support for B.H.K.'s adoption. She testified that she left Grandmother's home with the understanding that Mother was in favor of B.H.K.'s adoption.

Notary Public Voorhies testified that Mother and Grandmother asked her to notarize a document. She testified that Mother did not indicate that she had not read or that she did not fully understand the provisions of the document. Voorhies also testified that Grandmother did not conceal any part of the document or otherwise act in any way to obstruct Mother's view of the document she signed.

Based upon the foregoing, we cannot disturb the trial court's judgment. Mother presented her claim to the trial court, which, after an evidentiary hearing, ruled in favor of Grandmother and Stepfather. Given that the trial court was in the best position to observe

the demeanor and to judge the credibility of the testifying witnesses, we defer to its determinations in this regard. Mother now asks that we reweigh the evidence; this we cannot do. We cannot say that the evidence presented at trial led only to the conclusion that Mother's consent to B.H.K.'s adoption was obtained through fraudulent means; the trial court did not abuse its discretion herein.

Affirmed.

ROBB, J., and MATHIAS, J., concur.