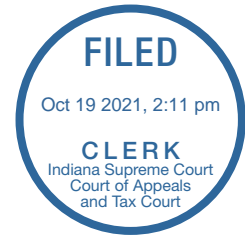


In the Indiana Supreme Court



In the Matter of the Adoption of K.T.
(Minor Child),

J.J. (Father) and C.T. (Mother),
Appellant(s),

v.

G.C. and C.B.,
Appellee(s).

Court of Appeals Case No.
20A-AD-02102

Trial Court Case No.
25C01-1912-AD-16

Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 10/19/2021.

FOR THE COURT

Loretta H. Rush

Chief Justice of Indiana

Massa, J., Slaughter, J., and Goff, J., vote to deny transfer.

David, J., dissents from the denial of transfer with separate opinion in which Rush, C.J., joins.

David, J., dissenting from the denial of transfer.

I respectfully dissent from the denial of transfer because I believe that the trial court's order dispensing with K.T.'s biological parents' consent to the adoption proceedings was inconsistent with the CHINS' primary permanency plan of reunification, and consequently, inconsistent with the purpose of the CHINS scheme at large.

The Fourteenth Amendment to the United States Constitution encompasses a fundamental right to family integrity. *Willis v. State*, 888 N.E.2d 177, 180 (Ind. 2008); *In re T.H.*, 856 N.E.2d 1247, 1250 (Ind. Ct. App. 2006). This includes the freedom for parents to make family decisions and to raise their children "without undue interference from the state." *T.H.*, 856 N.E.2d at 1250 (internal citation and quotation omitted). Of course, this fundamental right is not unlimited, and the state has the authority to intervene if the parents "neglect, abuse, or abandon their children[.]" *Id.*

The Indiana General Assembly has crafted a CHINS scheme which seeks to provide a balance between a parent's fundamental right to family integrity and the state's interest in protecting at-risk children from parental wrongdoing. If it is in the best interest of the child, CHINS proceedings provide an avenue for the state to terminate parental rights, but only if all the requirements are met as required by Indiana Code section 31-35-2-4.

Adoption proceedings follow separate procedural processes which do not have the same requirements as a CHINS. *See* Ind. Code § 31-19-2. Additionally, Indiana Code section 31-19-9-8 outlines circumstances where an adoption may be granted without the biological parents' consent, which necessarily requires terminating the biological parents' parental rights to proceed with the adoption.

Here, the CHINS court in Fulton County approved a primary permanency plan of reunification with a secondary permanency plan of adoption. Months later, K.T.'s foster parents filed an adoption petition in Hamilton County. These two proceedings were later consolidated in the Fulton County Circuit Court, and the CHINS' primary permanency plan

remained that of reunification. The trial court bifurcated the adoption proceeding, independently considering whether K.T.'s biological parents' consent was necessary.

Despite the CHINS' primary permanency plan of reunification at the time, the trial court in the adoption proceeding issued findings of fact and an order which dispensed with K.T.'s biological parents' consent to the adoption. It found that they were unfit to parent K.T. because of their criminal history (including pending charges), a history of substance abuse, that they could not provide for K.T., and that they did not have a meaningful relationship with K.T. All these circumstances were arguably being addressed in the CHINS reunification plan, which seeks to provide services to rehabilitate parents with the end goal of reuniting parents with their children.

This decision on parental consent in the adoption proceeding is entirely inconsistent with the notion that the CHINS was primarily seeking reunification. If a reunification plan eventually fails and it is in the best interest of the child to be adopted, the CHINS proceeding can change its primary permanency plan to adoption, and the adoption and the CHINS proceedings may proceed concurrently. However, having the adoption and CHINS proceedings simultaneously progress with conflicting primary goals circumvents the established CHINS procedures for terminating parental rights.

I do not believe that our Court's *In re Adoption of T.B.* precludes this interpretation. 622 N.E.2d 921 (Ind. 1993). In *T.B.*, the Lake County Circuit Court granted an adoption petition after terminating T.B.'s biological mother's parental rights. *Id.* at 922. Nearly five years later, T.B. ran away from home, and T.B.'s adoptive parent sought the intervention of the Lake County Juvenile Court, which declared T.B. to be a CHINS. *Id.* A month later, T.B.'s adoptive parent petitioned the court to revoke the adoption. *Id.* at 923–24. Our Court found that the trial court had jurisdiction to hear the adoption revocation, despite the ongoing CHINS proceeding, because the adoption revocation and the CHINS were separate proceedings which affected different rights. *Id.* at 924.

The circumstances surrounding this case differ from *T.B.*, both factually and procedurally. Importantly, in *T.B.*, it was the adoptive parent that sought the revocation of the prior adoption order. *See id.* at 923–24. The facts before us are more consistent with the Court of Appeals’ *In re Adoption of E.B.*, which concluded that CHINS proceedings and adoption proceedings may be considered simultaneously if the goals of the proceedings are the same. 733 N.E.2d 4, 5–6 (Ind. Ct. App. 2000), *trans. denied*. Here, at the time the trial court ordered that K.T.’s biological parents’ consent to the adoption were not required, the primary goals of the adoption proceeding and the CHINS proceeding were conflicting.

Accordingly, I would grant transfer and have our Court provide clarity to our trial courts on how to proceed where there are simultaneous CHINS and adoption proceedings with conflicting primary goals.

Rush, C.J., joins.