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ATTORNEY FOR APPELLANTS:

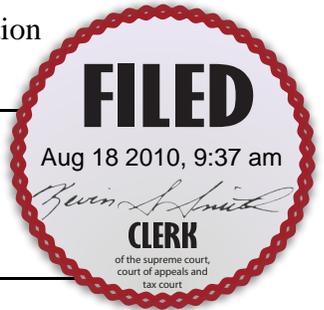
MICHAEL B. TROEMEL
Lafayette, Indiana

ATTORNEYS FOR APPELLEE:

CRAIG JONES
Department of Child Services
Lafayette, Indiana

ROBERT J. HENKE
DCS Central Administration
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**



IN RE THE ADOPTION OF N.W.,)
)
J.R. and L.R.)
)
Appellants,)
)
vs.)
)
INDIANA DEPARTMENT OF CHILD)
SERVICES,)
)
Appellee.)

No. 79A04-1003-AD-180

APPEAL FROM THE TIPPECANOE COURT
The Honorable Donald Daniel, Judge
Cause No. 79C01-0906-AD-38

August 18, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

J.R. and L.R. (collectively, Grandparents) appeal from the probate court's denial of their Petition for Adoption of N.W., the biological grandchild of L.R. Grandparents present two issues for our review:

1. Is the evidence sufficient to affirm the trial court's denial of their petition for adoption?
2. Did the trial court err in disallowing Grandparents' continued participation in the competing adoption proceeding?

We affirm.

N.W.¹ was born August 10, 2007 to M.W., the natural daughter of L.R. and E.W. In April 2008, M.W. was arrested after she was involved in an altercation in which she intentionally struck another woman with her car, pinning the other woman against a building and inflicting serious injury, all while N.W. was in the car. M.W. then fled the scene with N.W. still in the car. The incident eventually resulted in M.W. being convicted of battery resulting in serious bodily injury and neglect of a dependent. M.W. was ultimately sentenced to sixteen years, with eight years executed, four years suspended, and four years in community corrections. M.W. began serving her sentence in May 2009. After M.W.'s arrest, the Tippecanoe County Department of Child Services (DCS) removed N.W. from M.W.'s care and N.W. was eventually adjudicated to be a child in need of services.

On May 26, 2009, the Tippecanoe Superior Court terminated M.W.'s and E.W.'s² parental rights to N.W. Thereafter, on June 19, 2009, Grandparents, despite having been denied as potential relative placement during the CHINS and termination proceedings, filed

¹ N.W. is Mother's third child. Mother's parental rights to the two elder children were terminated before N.W. was born.

² E.W. was incarcerated for much of N.W.'s life and has had virtually no contact with her.

their petition to adopt N.W. The DCS, however, refused to consent to Grandparents' adoption of N.W. The trial court held a hearing on the matter on September 24, 2009.³ The following day the trial court entered an order finding that DCS consent was not unreasonably withheld and further ordered that Grandparents' petition for adoption was denied. The court's order was not distributed to the parties until October 25, 2009.⁴ Grandparents filed their notice of appeal on November 20, 2009. On December 2, 2009, Grandparents then filed a motion for continued participation, seeking to be involved in the proceedings for the DCS-sponsored adoptive parents. The court denied Grandparents' motion for continued participation, as well as the motion to correct errors relating to that denial. Additional facts will be provided as necessary.

1.

Grandparents argue that the probate court erred in denying their petition for adoption of N.W. Specifically, Grandparents argue that the court erred in determining that DCS consent was not unreasonably withheld and also that "the trial court failed to consider the close family relationship between [Grandparents] and [N.W]." *Appellant's Brief* at 8.

When we review a probate court's ruling in an adoption case, we will not disturb the ruling unless the evidence leads to only one conclusion and the probate court reached a different conclusion. *In re Adoption of H.N.P.G.*, 878 N.E.2d 900 (Ind. Ct. App. 2008),

³ As of the date of this hearing, N.W. had been in a pre-adoptive home for approximately seven weeks. N.W. had transitioned well and was happy in the home.

⁴ An entry in the chronological case summary explains that the parties were not served with the order until October because of a "clerical delay." *Appellant's Appendix* at 2.

trans. denied. ““We will not reweigh the evidence but instead will examine the evidence most favorable to the [probate] court’s decision together with reasonable inferences drawn therefrom to determine whether sufficient evidence exists to sustain the decision.”” *Id.* at 903 (quoting *In re Adoption of M.A.S.*, 815 N.E.2d 216, 218-19 (Ind. Ct. App. 2004)). The appellant bears the burden of overcoming the presumption that the probate court’s decision is correct. *In re Adoption of H.N.P.G.*, 878 N.E.2d 900.

Under Indiana law, blood relatives who seek to adopt a child are not given preferential treatment. *In re Adoption of B.C.S.*, 793 N.E.2d 1062 (Ind. Ct. App. 2003). “[T]he primary concern in an adoption proceeding is the best interest of the child.” *In re Adoption of A.S.*, 912 N.E.2d 840, 848 (Ind. Ct. App. 2009), *trans. denied.* The trial court is solely responsible for making the determination of what is in the best interest of the child guided by the factors—including consent—that are set forth in the adoption statute. *In re Adoption of S.A.*, 918 N.E.2d 736 (Ind. Ct. App. 2009), *trans. denied*; Ind. Code Ann. § 31-19-11-1(a)(7) (West, Westlaw through 2010 2nd Regular Sess.).

When parental rights are terminated, the DCS, as custodian of the adoptive child, occupies an important role in the adoption process. *Stout v. Tippecanoe County Dep’t of Pub. Welfare*, 182 Ind.App. 404, 395 N.E.2d 444 (1979). The DCS becomes in loco parentis to its ward in order to find a suitable adoptive home, and by its expertise, aids the trial court in determining the child’s best interest. *Id.* Pursuant to I.C. § 31-19-9-1(a)(3) (West, Westlaw through 2010 2nd Regular Sess.), a court may grant a petition to adopt a child who is a ward of the DCS if the DCS consents. Although DCS consent is required, the DCS is not granted unbridled discretion to withhold consent. *In re Adoption of S.A.*, 918 N.E.2d 736

(citing *Stout v. Tippecanoe County Dep't of Pub. Welfare*, 182 Ind.App. 404, 395 N.E.2d 444). Pursuant to I.C. § 31-19-9-8(a)(10) (West, Westlaw through 2010 2nd Regular Sess.) consent is not required if DCS withholds consent for reasons found by the court not to be in the best interests of the child.

Here, DCS gave several reasons for its refusal to consent to Grandparents' adoption of N.W. DCS raised concerns about Grandparents' trustworthiness. On July 21, 2009, DCS asked Grandparents to complete a home-study questionnaire and to submit fingerprints for criminal background checks. Grandparents did not immediately complete the questionnaire and as of September 24, 2009, the date of the hearing, neither had completed their fingerprint checks. With regard to the questionnaire, DCS pointed out that L.R. and J.R. were asked to self-report any involvement with the criminal justice and child welfare systems, but that they noted only a 1986 battery charge against L.R. A search revealed that L.R. and J.R. had repeated contacts with DCS and law enforcement, which in itself, was a concern for DCS.

Specifically, records revealed that in the mid-1970s, J.R. was charged with attempted manslaughter, but ultimately pleaded guilty to a misdemeanor. The DCS further identified seven substantiated reports for physical abuse by either L.R. or J.R. against their own children. In 1986, DCS substantiated abuse against L.R. for battering M.W. This incident resulted in a criminal charge and an informal adjustment with DCS. There are four other substantiated reports of physical abuse against L.R. for battering her daughters and leaving bruises, cuts, or welts. L.R. explained one incident during which she used a belt to discipline her daughter for not cleaning her room and another incident where she hit her daughter in the

mouth. In 1992, DCS substantiated abuse against J.R. for battering M.W. A second substantiated report of physical abuse was recorded in 1995 against J.R. for battering his son.

DCS also expressed concern over L.R.'s and J.R.'s intentions with regard to their role in N.W.'s life and their willingness to allow M.W. continued contact with N.W. J.R. testified that he was willing to take on the physical obligations of a father, but that he would not assume the familial role of being N.W.'s literal parent. J.R. further testified that he would allow M.W. to have unsupervised contact with N.W. L.R. continually asserted that M.W. was a good mother and defended M.W.'s conduct, asserting that the men in M.W.'s life were to blame for most of her bad decisions. L.R. testified that she would allow M.W. to have supervised contact with N.W. until such time as she could demonstrate the ability to make good decisions, especially with respect to the people with whom she chooses to associate.

Finally, DCS caseworkers expressed concern over the condition of Grandparents' home. Despite having approximately five days to get their home ready for inspection, the condition of the home raised several red flags. In several rooms throughout the house, including an upstairs bedroom and the bedroom used for their grandchildren when they came to visit, boxes were piled to nearly the ceiling. Grandparents also acknowledged that guns were in the home, but the caseworkers could not determine if they were adequately secured because they were inaccessible behind stacks of boxes. Closets were also full of boxes. Overall, the DCS caseworkers described the house and garage as cluttered and filled to the brim with boxes of stuff indiscriminately stored wherever space was available.

Based on the forgoing circumstances, the DCS concluded that adoption of N.W. by Grandparents was not in N.W.'s best interests. After reviewing the DCS's evidence and

observing L.R. and J.R.'s conduct and hearing their testimony, the probate court concluded that the DCS did not unreasonably withhold its consent to the Grandparents' adoption of N.W. We have reviewed the record and will not second-guess the probate court's determination in this regard. In this case, there is no evidence that the DCS is withholding consent to the adoption by Grandparents for reasons other than the best interests of N.W. *See* I.C. § 31-19-9-8 (consent not required if court finds reasons for DCS's failure to consent to adoption are not in the best interests of the child). Under the facts presented, DCS consent is thus required before the court can grant an adoption. Absent DCS consent, we must therefore conclude that the probate court did not err in denying Grandparents' petition to adopt N.W.

2.

Grandparents argue that the probate court erred in denying their request for continued participation in a competing adoption proceeding involving DCS-sponsored adoptive parents. Grandparents maintain that the probate court essentially denied them due process by not allowing them to confront witnesses in the competing adoption proceeding and by denying them knowledge of the identity of the competing petitioners.

Grandparents' argument in this regard is vague and undeveloped. To the extent Grandparents support their argument by citing *In re Adoption of A.S.*, 912 N.E.2d 840, we are not convinced. In their discussion of whether the evidence supported the probate court's denial of their petition, Grandparents directed us to the following excerpt from *A.S.*:

Allowing competing petitions and subsequent consents gives a probate court a choice between two families to determine if placement with one of them is in the best interest of the child, avoids a "race" to obtain a parental consent, and allows biological parents whose rights have not yet been terminated and a county DCS to address changing circumstances.

912 N.E.2d at 850. The court concluded that “parties whose consent is required for an adoption to be granted may execute subsequent consents.” *Id.* Aside from being inapposite to this case, in that the matter addressed in *A.S.* concerned subsequent consents by a party whose consent is required, Grandparents’ argument begs the question. As determined above, the probate court did not err in concluding that DCS did not unreasonably withhold consent to Grandparents’ adoption of N.W. Thus, DCS consent was required before the probate court could grant Grandparents’ petition. DCS did not consent to the adoption so the probate court properly dismissed Grandparents’ petition. There is thus no competing petition for adoption that may give rise to due process protections. The probate court did not err in denying Grandparents’ motion for participation in the DCS-sponsored adoption action.

Judgment affirmed.

BARNES, J., and CRONE, J., concur.