



Termination of Parental Rights (TPR)

12/1/2005

In **In Re K.H.**, 838 N.E.2d 477 (Ind. Ct. App. 2005), the Court affirmed the trial court's order granting Marion County Office of Family and Children's (MCOFC) motion to set aside a consent to adoption and agreement for post-adoption privileges executed by Mother. MCOFC filed a petition alleging the child to be a child in need of services (CHINS) following Mother's arrest for the battery of her boyfriend. About a year later, MCOFC filed a petition for the involuntary termination of Mother's parental rights. Mother signed a consent for maternal grandmother to adopt the child, as well as an agreement for post-adoption privileges. Neither the maternal grandmother nor the trial court signed the agreement. A year after Mother's execution of the consent, MCOFC filed a motion to set aside the consent and agreement stating, among other things, that (1) Mother had not consented to maternal step-grandfather's adoption of the child and had refused to do so; (2) maternal grandmother and maternal step-grandfather were married at all times relevant; (3) I.C. 31-19-2-4 provides that a petition for adoption by married persons may not be granted unless the husband and wife join in the action, and that the child's adoption was being held in abeyance because of the lack of consent by Mother for step-grandfather to adopt the child; (4) attempts to contact Mother by her attorney and by MCOFC had been unsuccessful; (5) Mother had not visited the child in more than one year; and (6) Father's parental rights had been terminated and if the trial court granted this motion to set aside the consent and agreement, MCOFC would proceed to trial to terminate Mother's parental rights, which would free the child for adoption by maternal grandmother and step-grandfather. Mother's attorney objected stating, among other things, that (1) she had been unable to contact Mother and it was unclear Mother knew that she could visit the child prior to the adoption or that Mother was refusing to sign a consent specific to step-grandfather; (2) Mother would be prejudiced by the revocation of the consent and agreement because she would not have an opportunity to negotiate an post adoption contact with the child and might be denied contact by the adoptive parents; (3) I.C. 31-19-2-4 says that a petition for adoption by a married person may not be granted unless the husband and wife join in the petition; but there is no apparent obligation for the biological parent to consent to the adoption by both spouses to effectuate privileges; and (4) the trial court should modify the post-adoption contact agreement to bind the maternal step-grandfather as is permitted by I.C. 31-19-16-46. The trial court held a hearing on MCOFC's motion, granted it, proceeded with the hearing to terminate Mother's parental rights, and entered an order terminating Mother's parental rights. Mother appealed the order granting MCOFC's motion to set aside the consent to

adoption and agreement for post-adoption privileges, but did not appeal the termination of her parental rights.

On appeal, the Mother failed to carry her burden of showing the trial court committed reversible error by granting the motion to set aside the consent to adoption and post-adoption privileges agreement. Id. at 480. Mother alleged that the trial court's decision rested on several factual allegations which MCOFC asserted but did not present any evidence to prove. The Court acknowledged that counsel's arguments may not be considered when making factual determinations, but found that Mother's counsel had admitted that the maternal grandparents were married at all relevant times and that attempts to contact Mother had been unsuccessful. The Court opined that regardless of whether Mother refused to execute the consent in favor of maternal step-grandfather, the fact remained that she did not do so and that the adoption and termination proceedings were pending simultaneously. The Court also noted that Mother did not argue that the consent was valid as a matter of law, nor did she challenge the denial of the request for continuance or the merits of the termination order. Id.