

Children's Law Center of Indiana



ADOPTION

6/11/15

In ***In Re Adoption I.B.***, 32 N.E.3d 1164 (Ind. 2015), the trial court considered two adoption petitions concerning the same two children. One of the petitions was filed by Maternal Grandmother and Fiancé and the other petition was filed by Paternal Grandmother. The trial court granted the adoption petition filed by Maternal Grandmother and Fiancé and denied Paternal Grandmother's adoption petition. The Indiana Supreme Court reversed the trial court's orders. The two children, a toddler (the older child) and a newborn (the younger child), were removed from Mother's home in May of 2011 because the younger child tested positive at birth for marijuana and Mother tested positive for methamphetamine. The younger child has extensive special medical needs, including cerebral palsy and a gastrostomy tube (G-tube), and was hospitalized for the first six months of his life. The two children's early adolescent half-brothers (Half-Brothers) were also removed at the same time. The children and Half-Brothers were adjudicated CHINS. From May until October of 2011, the older child and both Half-Brothers were placed in the home of Maternal Grandmother and Fiancé while the younger child stayed in the hospital. Maternal Grandmother and Fiancé tested positive for marijuana and were initially uncooperative with services, so the older child was briefly placed with Paternal Grandmother. When the younger child was released from the hospital, the children and Half-Brothers were returned to Mother and the children's father (Father) for a trial home visit. The trial home visit failed, and the children went to a foster home. Half-Brothers went to another foster home.

In mid-2012, the children and Half-Brothers transitioned back to the home of Maternal Grandmother and Fiancé. Maternal Grandmother and Fiancé petitioned to adopt the children and Half-Brothers with Mother's consent to the adoptions. Half-Brothers' father was deceased, and their adoption was not contested. Half-Brothers' adoption by Maternal Grandmother and Fiancé was granted in October 2013. Half-Brothers' adoption was not appealed and was not at issue in the children's case.

The trial court determined that Father's consent to the children's adoption was not required under Indiana law. Paternal Grandmother cross-petitioned to adopt the children, and the court heard testimony in a two day long contested hearing. DCS and the children's Court Appointed Special Advocate recommended that the children be adopted by Maternal Grandmother and Fiancé instead of by Paternal Grandmother. DCS and the Court Appointed Special Advocate also emphasized the importance of preserving the sibling relationship between the children and Half-Brothers. DCS and the Court Appointed Special Advocate believed it would be detrimental to the children and Half-Brothers if they were separated. DCS and the Court Appointed Special

Advocate also had reservations about Paternal Grandmother as the adoptive parent for the children, despite her good relationship with the children.

The Court summarized the following evidence about the situation of Maternal Grandmother and Fiancé: (1) they had proactively sought out G-tube training early in the case; (2) their house had three bedrooms; (3) because they worked different schedules, they needed third-party childcare only three half-days per week; (4) both of their employers offered significant flexibility for accommodating the younger child's frequent doctor appointments; (5) they had attended substance abuse counseling, and had been drug-free for nearly two years, confirmed by random testing; (6) Fiancé had a felony conviction for armed robbery in Iowa in 1989, and had also been convicted of burglary twice in Illinois, serving prison time in both states; (7) Maternal Grandmother had pled guilty in 1997 to Class D felony neglect of a dependent, resulting in a two-year suspended sentence, for failing to report her ex-husband's molestation of the children's Mother. *Id.* at 1166-68. The Court observed that both Maternal Grandmother and Fiancé testified on direct and cross-examination about their criminal histories, but none of the parties specifically argued that Maternal Grandmother's conviction was an absolute bar to her adopting the children. *Id.* at 1168. (IC 31-19-11-1(c)(15) states that a trial court may not grant an adoption if the petitioner has been convicted of neglect of a dependent).

The Court summarized the following evidence about Paternal Grandmother's situation: (1) she had been passive and disengaged during the CHINS case, never obtaining G-tube training, nor attempting to do so until it became an issue in the case; (2) as a working single parent, she would need to rely heavily on third-party childcare, but had not adequately investigated her options, especially because childcare would be particularly challenging since any provider would need G-tube training; (3) at least once she had lacked adequate food; (4) her home had only two bedrooms; (5) her work schedule was generally less suited to raising children in that her ability to take important phone calls at work was restricted and she received only five days' paid leave per year so that accommodating the younger child's frequent medical appointments would be difficult. *Id.* at 1167. The Court observed that the trial court's greatest concern, reflected three times in its findings, was with Paternal Grandmother's poor judgment about the children's Father. *Id.* The Court noted: (1) in the fall of 2012, Father had beaten Mother so severely that Mother could barely breathe and needed emergency medical care, but Paternal Grandmother, who arrived at the motel where Mother and Father were staying after the beating, did not call the police; (2) Maternal Grandmother and Fiancé reported the beating after Mother showed up at their home in a severely injured state and they took Mother to the hospital; and (3) Paternal Grandmother had briefly allowed Mother and Father to live together with her despite her knowledge of a protective order. *Id.* The Court observed the trial court's findings reflected its concern that Paternal Grandmother would permit the children to have detrimental contact with Father, and that Paternal Grandmother would fail to preserve the children's relationship with Maternal Grandmother and Fiancé. *Id.*

The trial court entered sua sponte findings of fact and conclusions of law, finding that it was in the children's best interests to be adopted by Maternal Grandmother and Fiancé, based partly on their success in working with the younger child's special needs and the desirability of keeping the children and Half-Brothers in the same home. The trial court also found that Maternal Grandmother's 1997 criminal neglect of a dependent conviction was not dispositive of her ability

to care for the children. The trial court granted the adoption petition filed by Maternal Grandmother and Fiancé and denied Paternal Grandmother's adoption petition. Paternal Grandmother appealed, arguing for the first time that Maternal Grandmother and Fiancé were barred from adopting the children because of their disqualifying felony convictions. (IC 31-19-11(c) states that a court may not grant an adoption if a petitioner has been convicted of neglect of a dependent (IC 35-46-1-4(a)(1) and IC 35-46-1-4(a)(2)) or if a petitioner has a felony conviction involving a weapon unless the conviction did not occur within the past five years). In response, Maternal Grandmother and Fiancé argued that the best-interests analysis favored them, that Fiancé's criminal convictions were not an absolute bar because they were more than five years old, and that the trial court specifically determined that Maternal Grandmother's neglect of a dependent conviction was not dispositive. DCS responded that the statutory bar on Maternal Grandmother's adoption constituted an "irrebuttable presumption" that, as applied, would violate the due process rights of Maternal Grandmother, Fiancé, and the children, and also would frustrate the best-interests purposes of the adoption statutes.

The Court of Appeals affirmed the trial court's judgment at In Re Adoption of I.B., 19 N.E.3d 784 (Ind. Ct. App. 2014), holding that IC 31-19-11-1(c) was unconstitutional as applied, amounting to an irrebuttable presumption in violation of due process. Id. at 790-91. Paternal Grandmother sought transfer, which the Indiana Supreme Court granted. The Court of Appeals opinion was vacated.

The Supreme Court found that IC 31-19-11-1 is constitutional because its prohibitions are rationally related to the classifications they draw. Id. at 1169. The Court noted the trial court's constitutional challenges must be reviewed de novo, citing Lock v. State, 971 N.E.2d 71, 74 (Ind. 2012). I.B. at 1169. The Court opined that the Court of Appeals' inclination to keep the children and Half-Brothers together in the only long-term home they have ever known was understandable, but its rationale could not be squared with controlling United States Supreme Court precedent. Id. at 1170. Quoting Michael H. v. Gerald D., 491 U.S. 110, 122, 109 S.Ct. 2333, 105 L.Ed.2d 91 (1989), the Supreme Court noted that "the Due Process Clause affords only those protections so rooted in the traditions and conscience of our people as to be ranked as fundamental." I.B. at 1170. The Court found that IC 31-19-11-1 does not target a "fundamental" right. Id. The Court said that declaring IC 31-19-11-1 violated Due Process because it lacked an *ad hoc* best-interests exception would effectively elevate best interests into a constitutional doctrine, which was a step the Court was unwilling to take. Id.

The Court opined that the United States Supreme Court has tacitly abandoned the "irrebuttable presumption" doctrine and last used it to invalidate a statute over forty years ago (multiple citations omitted). Id. at 1170 n.2. The Court found there was no constitutional defect in barring adoptions by petitioners with felony child-neglect convictions. Id. at 1170. Quoting Lindley for Lindley v. Sullivan, 889 F.2d. 124, 132 (7th Cir.1989), the Court observed that statutory classifications that neither violate a fundamental right nor discriminate against a suspect class are reviewed only for "whether the statute is rationally related to legitimate legislative goals." I.B. at 1170. The Court noted that "there is no fundamental right to adopt" because the adoption process depends on so many variables, and that convicted felons are not a protected class, citing Baker v. State, 747 N.E.2d 633, 638 (Ind. Ct. App. 2001), *trans. denied*. I.B. at 1170-71. The Court opined that distinguishing between child-neglect felons and non-felons was rationally related to

the legitimate legislative goal of ensuring that children will not be adopted into a neglectful home. Id. at 1171.

The Court observed that the children's crucial interest in remaining in the same home with Half-Brothers had been jeopardized in this case only because Half-Brothers' adoption violated IC 31-19-11-1. Id. The Court said that this irregularity had caused serious collateral consequences for the children, but it did not give them a due process right to be adopted in violation of the same statute. Id. The Court noted that this case demonstrated why, even in unopposed proceedings, trial courts must be vigilant not to overlook any controlling law. Id.

The Court reversed the trial court's judgment on both adoption petitions and remanded with instructions to vacate the adoption decree within thirty days of the opinion being certified. Id. at 1172. The Court found that even though the evidence presented could have *supported* a conclusion in favor of Paternal Grandmother's adoption petition, by no means did it *compel* that result (emphasis in opinion). Id. at 1171. The Court discussed other possible permanent plans for the children, including adoption of the children by Fiancé alone or a joint guardianship of the children by Maternal Grandmother and Fiancé, since a joint adoption was statutorily impermissible. Id. at 1171-72. The Court remanded for the trial court to reconsider both adoption petitions to the extent they are not barred by statute, including whether a non-adoptive placement may be in the children's best interests. Id. at 1172. The Court also noted that the trial court on remand need not limit itself to the evidence heard a year and a half ago, and could choose to receive supplemental evidence. Id.