

# Children's Law Center of Indiana



## Adoption

09/08/2009

In **In Re Adoption of A.S.**, 912 N.E.2d 840 (Ind. Ct. App. 2009), the Court affirmed the trial court's judgment granting the Second Foster Mother's adoption of one child and the adoption of the three remaining children by the Second Foster Mother's adult daughter. The four children (Children), ranging in age from thirteen to three years, were removed from Mother's care and made wards of Marion County DCS (MCDCS) because several of the Children tested positive for cocaine at birth. The Children were placed with First Foster Mother who had three adopted teenage children, two girls and one boy, living in the home. Initially, Mother, the Children's various fathers, and MCDCS consented to the adoption of the oldest three of the Children by First Foster Mother. (The youngest of the Children was not yet eligible for adoption.) In February 2006, First Foster Mother filed a petition to adopt the oldest three of the Children and later amended it to include the youngest of the Children. Before the adoption hearing, MCDCS received a report alleging that First Foster Mother's three adopted children were inappropriately touching the Children and two other minors, a niece and nephew of First Foster Mother, at the First Foster Mother's home as well as elsewhere. In response, MCDCS removed the Children and placed them with Second Foster Mother who shares a home with her adult daughter and teenage granddaughter. Second Foster Mother filed a petition to adopt one of the Children and her adult daughter filed a petition to adopt the other three of the Children. Subsequently, MCDCS consented to these adoptions as did the Mother and the assorted fathers. Before the adoption proceedings concluded, a petition was filed in juvenile court alleging First Foster Mother's adopted son to be delinquent for committing three counts of child molesting. These counts resulted in the juvenile court entering a not true finding because the judge did not find the First Foster Mother's niece to be credible. After obtaining briefs and arguments on the issue of the validity and effect of the numerous and varied consents, the probate court issued an order ruling that both First Foster Mother's petition and the petition(s) of Second Foster Mother and her daughter were supported by the necessary parental consents. Following evidentiary hearings, during which much of the testimony focused on allegations of incidents that occurred in the First Foster Mother's home, the court took the matter under advisement. However, the presiding judge died about seven months later, before issuing a final ruling. Thereafter, the successor probate judge, after having reviewed the evidence and arguments presented, issued a final adoption decree granting the Second Foster Mother's petition to adopt one of the Children, and her daughter's petition to adopt the other three of the Children. First Foster Mother appealed.

**Because First Foster Mother failed to demonstrate that she had made an objection to the probate court about the authority of the successor probate judge to issue the final adoption decree, the Court concluded, based on the circumstances in this case, that this issue is waived.** *Id.* at 846. The Court opined that the general rule in a case where a trial judge dies or resigns before making findings or ruling on the evidence presented is that his successor cannot decide, or make findings in the case without a trial de novo; however, an appellant waives any

claims in regard to a judge's authority to rule on a case by failing to object to the trial court. The Court noted that, here, (1) there was no indication in the record on appeal that the appellant had objected to the authority of the successor judge to issue the final adoption decree; (2) the appellant did not submit a motion under Indiana Trial Rule 53.2, which provides for the transfer of the case to a special judge when a cause has been under advisement for ninety days without a ruling, as was the case here; (3) the appellant did not otherwise ask for a new trial after the first judge's death; (4) rather the appellant sat back and waited without taking action until the judgment turned out to be unfavorable, and then appealed without having ever challenged the authority of the judge in the probate court to issue the final ruling. Id. at 845-46.

**The Court concluded that parties whose consent is required for an adoption to be granted may execute subsequent consents, and, here, the biological parents and MCDCS executed subsequent consents allowing the Second Foster Mother and her adult daughter to adopt the children, which resulted in their petitions being supported by the necessary consents.** Id. at 850. First Foster Mother argued that since she received the initial consents to adopt the Children and they were not withdrawn, only she may adopt the Children. The Court reviewed the statutes governing adoption, which provide, among other things, that before the court may grant a petition to adopt a child, certain consents may be required, unless the Adoption Code provides otherwise. Id. at 846-50. Contrary to First Foster Mother's contention, the Court found (1) no basis in the Adoption Code for holding that all subsequent consents are void; (2) the Adoption Code says nothing that indicates a limitation on the ability to file additional consents, although the Code limits the ability to withdraw a consent or to substitute a petitioner; and (3) public policy does not dictate a contrary result, in that 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. The Court found that, here, there was no withdrawal or substitution, but instead, the biological parents and MCDCS executed subsequent consents allowing the Second Foster Mother and her daughter to adopt the Children. Id. at 850.

**The trial court's adoption decree was supported by the evidence and was therefore not clearly erroneous.** Id. at 853. Contrary to appellant's contentions, a trial court's adopting a party's proposed findings verbatim is not prohibited and, consequently, the trial court's adoption of the findings proposed by the Second Foster Mother and her daughter was not in and of itself improper. The Court agreed that the probate court erroneously found that the case against First Foster Mother's adopted son remained open at the time of the ruling, but held that an examination of the judgment revealed that, even without this particular finding, the evidence supported the judgment. Thus, the Court recited (1) the other evidence of molestation having occurred in First Foster Mother's home; (2) evidence that First Foster Mother's adopted daughters held down the Children while she would spank them with her hand, a belt, a paddle, or an extension cord; (3) evidence that First Foster Mother would not let the Children see their biological family and the bonding assessor's testimony that the relationships between biological parents and their children play an important role in healthy development; and (4) other evidence which supported that it was in the best interest of the Children to be adopted by Second Foster Mother and her daughter. The Court also found that the adoption decree was not erroneous based on First Foster Mother's contentions that it results in splitting up the sibling group and "creates anomalous inheritance relationships." Id. at 850-52.