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Adoption

7/22/03

In **In re Adoption of B.C.S.**, 793 N.E.2d 1054 (Ind. Ct. App. 2003), decided July 22, 20003, the Court of Appeals affirmed the order of the Cass Circuit Court which granted putative father's petition for adoption and dismissed the maternal aunt and uncle's petition for adoption. The child was born out of wedlock when mother was in a relationship with the putative father. The putative father was present at the child's birth and gave her his last name. He believed she was his biological daughter and physically and financially cared for her. When the child was two years old, the putative father moved out of the mother's house, due in part to her drug habit. The putative father continued to spend four hours each evening with the child and took care of the child every weekend. He continued to provide money for the child even though there was no court order. When the child was four years old, mother became ill and moved into her aunt and uncle's house with the child. The aunt and uncle had already adopted one of the mother's children, and the child met her half-brother for the first time. A few months after moving in with the aunt and uncle, the mother died of a drug overdose. Within a week of the mother's death, the father filed an emergency petition in Madison Superior Court to establish temporary custody and a petition to establish paternity. The putative father was granted emergency custody. A month later, the aunt and uncle filed a petition to intervene in the Madison Superior Court paternity case and requested a paternity test. Paternity testing revealed the putative father was not the biological father. The putative father continued to maintain physical custody over the child. The Madison Superior Court named a court appointed special advocate ("CASA") for the child. The aunt and uncle then filed a petition to adopt the child in the Cass Circuit Court. The aunt and uncle, who lived in Michigan, filed a petition for a home study. The putative father notified the Cass Circuit Court of the Madison Superior Court case. The putative father filed a motion to contest the aunt and uncle's adoption petition and a counter-petition for adoption in the Cass Circuit Court. He also petitioned for a home study, which was granted. The Cass Circuit Court granted the putative father custody of the child during the proceedings and ordered visitation with the aunt and uncle. The Madison Superior Court CASA report was submitted to the Cass Circuit Court. The aunt and uncle filed their home study report with the court. After hearing evidence, the trial court granted the putative father's counter-petition for adoption and denied the aunt and uncle's petition for adoption. On appeal, the aunt and uncle raised three issues: whether the court acted appropriately in not appointing a guardian ad litem to represent the child's best interests; whether the trial court abused its discretion by considering hearsay reports when making

its decision regarding the adoption of the child; and whether the trial court erred in not giving preference to blood relationships nor placing siblings together.

The trial court's failure to appoint a guardian ad litem in an adoption proceeding was not reversible error where a CASA had already been appointed in the paternity proceeding and had filed a report with the trial court. The aunt and uncle argued it was reversible error that a guardian ad litem had not been appointed to represent the child's interests in the Cass Circuit Court adoption proceedings, as required by IC 29-3-2-3 and Ind. Trial Rule 17(C). A CASA had been appointed during the paternity proceedings and her report had been admitted into evidence by the Cass Circuit Court. The Court stated the trial court has the discretion to determine whether a minor is adequately represented in the proceedings such that no guardian ad litem is necessary. *Id.* at 1060. IC 31-9-2-50 defines the role and qualifications of a guardian ad litem, and IC 31-9-2-28 defines the role and qualifications of a CASA. The Court stated that under the statutory definitions, a CASA and a guardian ad litem function in the same capacity at the trial court, each one representing and protecting the best interests of the child by researching, examining, and advocating, facilitating, and monitoring a child's situation. The report from the CASA appointed by the Madison Superior Court was essentially the same report that the trial court would have received from a guardian ad litem.

The trial court did not abuse its discretion by considering hearsay reports when making its decision regarding the adoption of the child. The aunt and uncle argued that the trial court abused its discretion by considering the hearsay reports of the CASA appointed by the Madison Superior Court and home studies of the putative father's and the aunt and uncle's homes when making its decisions. The aunt and uncle failed to object to father's home study being part of the record, and they themselves offered into evidence the CASA report and their home study. Citing *Smith v. Miller Builders, Inc.*, 741 N.E.2d 731, 739 (Ind. Ct. App. 2000), the Court stated it is well settled that a party may not sit idly by at trial allowing an error to occur without objection and then raise such error on appeal. In citing *Beeching v. Levee*, 764 N.E.2d 669, 674 (Ind. Ct. App. 2002), the Court stated a party may not appeal invited error.

The trial court did not err in not placing siblings together and not giving preference to blood relationships. The aunt and uncle argued that the trial court erred because it was in the child's best interests to be placed in a family with her half-brother and other "blood family." The aunt and uncle stated "blood is thicker than water" and that IC 31-19-8-6 indicates siblings should be kept together when possible. The Court stated that while IC 31-19-8-6 could be read as implying a preference for placing sibling groups in the same home, it by no means indicates that siblings must be placed in the same home. *B.C.S.* at 1062. The Court further stated that the child and her half brother were not a typical sibling group, as they interacted only once before the death of their mother and have only spent visitation time since then; they were not children who grew up in the same household for a number of years. Nor was the Court swayed by the argument blood is thicker than water. First, Indiana law does not give preferential treatment to blood relatives who seek to adopt a child. *Id.* See e.g., *In re R.L.R.*, 784 N.E.2d 964, 970 (Ind. Ct. App. 2003)(ordering grant of step-mother's petition to adopt child despite biological mother's renewed desire to establish a relationship with the child.). Second, the "water" in this case was a man who accepted responsibility for the child before she was born, was

at her birth, gave her his name, fed, clothed, and cared for her when she was sick. He cared for her after he separated from her mother, and he cared for her after her mother's death. Even after he found out she was not his biological child, he continued his quest to adopt her. The Court declined to hold that biology was more important than a child's relationship with a man who had been the father in terms that matter most. B.C.S. at 1063.