

Children's Law Center of Indiana



Adoption

10/14/10

In **In Re Adoption of K.F.**, 935 N.E.2d 282 (Ind. Ct. App. 2010), the Court affirmed the Lawrence Circuit Court's (trial court's) grant of Stepmother's petition to adopt Mother's two children, who were ages ten and nine at the time of the adoption. The two children were born during Mother's marriage to Father. When the parents divorced in 2002, Monroe Circuit Court granted Father physical custody of both children, and Mother was awarded parenting time and ordered to pay \$47.00 per week in child support. Father married Stepmother in 2006, and since then, the children have lived with Father and Stepmother. On April 26, 2007, the Monroe Circuit Court ordered Mother's parenting time to be supervised by maternal grandmother. Mother's visitation time with the younger child consists of eight hours on three Saturdays each month. The older child comes with the younger child on one of those Saturdays. On the day when both children are visiting, Mother visits with the children for only two hours. The Monroe Circuit Court also ordered Mother to undergo drug screens. Mother tested positive for benzodiazepenes and methadone in 2007, tested positive for cocaine and opiates in February 2008, and tested positive for morphine and codeine, with a diluted urine sample, in September 2008. In April 2009, Mother was arrested and charged with dealing in heroin. Mother was four months pregnant at the time, but did not know she was pregnant. As a result of that criminal charge, Mother is participating in the Monroe County adult drug court program which she is scheduled to complete in June 2011. One March 19, 2010, Mother failed a drug screen and admitted to taking Percocet and snorting heroin.

Stepmother filed her petition to adopt the children on May 2, 2008. Stepmother alleged that Mother's consent to adoption was not necessary. At the hearing on Stepmother's adoption petition, Mother testified that she lives with the maternal grandmother, had obtained temporary employment as a house painter, and continues to have only supervised visitation with her children. Father and Stepmother testified that the children are stressed before and after their visits with Mother, but are otherwise happy and well-adjusted. The trial court granted Stepmother's petition for adoption and found that Mother's consent to the adoption was unnecessary pursuant to IC 31-19-9-8(a)(2)(B) (parent of a child in custody of another person if for at least one year, the parent knowingly fails to provide for the care and support of the child when able to do so as required by law or judicial decree) and IC 31-19-9-8(a)(11) (adoption petitioner proves by clear and convincing evidence that parent is unfit and child's best interests would be served if court dispensed with parent's consent). The trial court's findings included detailed information from Monroe Circuit Court dissolution and drug courts. The findings

included: (1) Mother's positive drug test results for cocaine, Hydromorphone, Oxycodone, Oxymorphone, Morphine, and Codeine in 2008; (2) Mother's admitted Percocet and heroin use in 2010; (3) the children were not capable of understanding why Mother does not come on time to visits and why she does not spend more time with them or prioritize them during visits; (4) Mother was \$14,095.00 in arrears on child support as of June 30, 2009; and (5) Monroe Circuit Court's contempt findings against Mother on three occasions for failure to pay child support. The trial court's conclusions of law included that: (1) clear, cogent, and indubitable evidence showed that Mother, for a period of at least one year, failed to prove care and support of her children when able to do so; (2) it is in the children's best interest that the adoption be granted; (3) Petitioner (Stepmother) has proven by clear and convincing evidence that Mother is unfit to be a parent because of Mother's poor work history, her historical inability and difficulty staying off drugs even while the adoption proceeding was pending, her lack of support provided for the children, and failure to cooperate in any drug rehabilitation. Mother appealed, contending that the evidence is insufficient to support the trial court's conclusion that her consent to the adoption was not required.

The Court held that the evidence is sufficient to prove that Mother had the ability to pay but failed to pay child support for at least one year. Id. at 288. The Court observed that Stepmother had the burden to prove that Mother had the ability to make the child support payments ordered by the dissolution court but that Mother failed to do so, citing In Re Adoption of Augustyniak, 508 N.E.2d 1307, 1308 (Ind. Ct. App. 1987), trans. denied. K.F. at 288. The Court noted that Mother testified she has struggled to maintain employment and has been mostly unemployed but did not testify regarding her wages or living expenses. Id. The Court also noted Stepmother's evidence that Mother had entered into three agreed orders in the Monroe Circuit Court dissolution case for contempt in 2006, 2007, and 2009 for Mother's failure to pay child support. Id. Those agreed orders included Mother's concessions that she had "knowingly and intentionally failed to pay child support as ordered[.]" Id. There is no indication in the agreed orders or elsewhere that Mother ever petitioned to modify her child support obligation. Id. The Court held that the agreed orders for contempt, whereby Mother admitted to having knowingly and intentionally failed to pay child support, are sufficient evidence that Mother had the ability to make those payments. Id. The Court noted Mother's contentions that she suffers from bipolar disorder and that Stepmother did not prove Mother's ability to work despite that mental illness. Id. The Court said that Mother's admission in agreed entries of her knowing and intentional failure to pay her child support obligation for years cannot now be contradicted, after the fact, with an allegation of a debilitating mental illness. Id.

The Court opined that the evidence is sufficient to prove that Mother is unfit to be a parent. Id. at 289. The Court noted the following evidence in support of the trial court's unfitness conclusion: (1) Mother has battled a serious substance abuse problem since her divorce from Father; (2) as recently as March 19, 2010, Mother tested positive for drugs and admitted to having taken Percocet and heroin prior to the test; (3) Mother is currently participating in a drug court program, which involves regular drug screening, as a result of her arrest for dealing in

heroin; (4) Mother has had only supervised visitation with the children since 2007 and has not sought unsupervised visitation; (5) the children's visits with Mother cause the children stress. Id.

The Court opined that the trial court did not err when it granted Stepmother's adoption petition without Mother's consent. Id. at 289. The Court noted that Mother's struggle with drug addiction has persisted for most of the children's lives, and the children are thriving in the loving and caring home provided by Father and Stepmother. Id.