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Adoption

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In **In Re Adoption of M.L.L.**, 810 N.E.2d 1088 (Ind. Ct. App. 2004), the Court affirmed the trial court's grant of the cousins' petition to adopt the child. Fourteen months after the child was born out of wedlock in Tennessee, the mother filed a petition to establish the paternity of the child. In the same month, the mother asked her cousin, the adoptive father and an Indiana resident, whether he would "take care of" the child. But, later in the month, the mother told him she had changed her mind. Two months later, the mother was arrested for drug possession and told the sheriff's deputy she would be a confidential informant (CI). Afraid that her informing would put the child in danger and after the deputy told her that, if she went to jail she could lose her child to child protective services, the mother inquired as to whether the adoptive father and his wife would still be interested in adopting the child. The adoptive parents immediately drove to Tennessee. The mother executed a Consent to Adoption and a Consent to Guardianship in front of a notary, helped pack the child's belongings, and gave the adoptive parents the child's birth certificate and social security card. The adoptive parents returned to Indiana with the child and filed a Petition for Adoption and the mother's Consent to Adoption with the Madison Circuit Court. Thereafter, the mother signed revocations of the consents which were later filed with the Madison Circuit Court and obtained a temporary restraining order in a Tennessee juvenile court requiring the adoptive parents to surrender the child to the mother. A Tennessee court then entered an order establishing the child's paternity and noting that an adoption might be pending in Indiana and it "has not addressed any right [the father] may have to visitation or custody." Subsequently, the Tennessee juvenile court heard the mother's petition for return of the child and ruled, among other things, that the child should be immediately returned to the mother. The child remained in Indiana with the adoptive parents. The mother then filed an emergency petition with the Madison Circuit Court which ordered that the adoptive parents retain custody and granted the mother visitation with the child. After multiple hearings the Madison Circuit Court granted the petition to adopt the child, almost two years after its filing. The mother appealed the grant of adoption, arguing that the trial court did not have jurisdiction under the Uniform Child Custody Jurisdiction Act (UCCJA) and that her consent to adoption was not voluntarily and validly executed.

The Indiana trial court had jurisdiction in the adoption matter where the adoption petition was filed in that court; the child was physically present in Indiana and the child had been abandoned within the meaning of the UCCJA at IC 31-7-3-3(a)(3); the action to determine the paternity of the child pending in Tennessee did not concern

the child's custody; and the Compact for the Placement of Children did not apply because the mother sent the child to live with the adoptive parents in Indiana. The UCCJA provides that an Indiana court which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if "the child is physically present in this state and the child has been abandoned...." IC 31-7-3-3(a)(3). "Abandonment exists when there is such conduct on the part of a person which evidences a settled purpose to forego all parental duties and relinquish all parental claims to the child..." In re the Adoption of Force, 131 N.E.2d 157, 159 (Ind. Ct. App. 1956). The Court held that the mother's request that the adoptive parents take the child to live in Indiana, her signing a consent to guardianship and a consent to adopt, and her helping them pack the child's belongings, including the child's birth certificate and social security card, was sufficient to show that the mother intended to forego her parental duties and relinquish her parental rights. Thus, the trial court did not err when it found that the mother had abandoned the child for the purposes of the UCCJA, and the trial court had jurisdiction over the matter. M.L.L., at 1092-93.

Contrary to the mother's contentions, the Court also held that the trial court was not deprived of jurisdiction under IC 31-17-3-6(a) or the Compact on the Placement of Children (the Compact). IC 31-17-3-6(a) prohibits an Indiana court from exercising its jurisdiction "if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction...." Although a paternity action regarding the child was pending in a Tennessee court, that court's order establishing paternity expressly stated that it had not determined visitation or custody. Id. at 1093. The Court held that it need not address the jurisdictional rules under the Compact because it did not apply to "[t]he sending or bringing of a child into a receiving state by the child's parent ... and leaving the child with ...[a] non-agency guardian in the receiving state." IC 12-17-8-1, Article VIII. The Court found that because the mother sent the child to Indiana to live with the adoptive parents as guardians, the Compact did not apply. Id.

The trial court did not err in finding that the mother's consent to the adoption was voluntary and validly executed where the Court could not say that the only conclusion to be gleaned from the evidence was that pressure on the mother overcame her volition with regard to the adoption, and where Indiana rather than Tennessee law governed. The mother contended on appeal that the consent was not voluntary because it was the result of the deputy sheriff's "threats and pressure." For a parent's consent to an adoption to be valid it must be voluntary. A parent's consent is voluntary if it is an act of the parent's own volition, free from duress, fraud or any other consent-vitiating factor, and if it is made with knowledge of the essential facts. Bell v. A.R.H., 654 N.E.2d 29, 32 (Ind. Ct. App. 1995). The Court opined that it could not say that the only conclusion to be gleaned from the evidence was that the deputy's pressure on the mother to serve as a CI overcame her volition with regard to the adoption. M.L.L., at 1093-94. Contrary to the mother's contention, the Court also held that the validity of the consent's execution was governed by Indiana rather than Tennessee law and that its execution in the presence of a notary public met the requirements of Indiana law. Id. at 1094-95.