

Children's Law Center of Indiana



Adoption

6/22/16

In **In Re Adoption of S.O.**, 56 N.E.3d 77 (Ind. Ct. App. 2016), the Court reversed the trial court's order granting Stepmother's petition to adopt the three children. *Id.* at 84. The Court remanded with instructions to consolidate the paternity action with the adoption case and to order a statutorily compliant background check. *Id.* Birth Mother and Father had three children out of wedlock. On May 4, 2012, a hearing was held and a paternity order was issued establishing Father's paternity, granting Father physical and legal custody of the three children, and outlining parenting time and child support for Birth Mother. Birth Mother did not attend the paternity hearing. Birth Mother also did not receive a copy of the order because her address was unknown. Father did attempt to serve Birth Mother by publication. Birth Mother did not visit the children according to the court ordered parenting time schedule. Birth Mother gave birthday presents to the children and visited the children when they visited with Maternal Grandmother about once per month. Father and Stepmother married in 2009.

Stepmother filed a petition to adopt the children on May 27, 2015, and served Birth Mother by publication. Birth Mother filed an objection to the adoption petition on August 13, 2015. On August 28, 2015, Birth Mother also filed a motion in the paternity court requesting that the paternity order be set aside. Birth Mother argued that the paternity order was void for lack of personal jurisdiction over her. On June 4, 2015, the adoption court issued an "Order Upon Filing of Petition for Adoption" requiring, among other things, that Stepmother submit a request for a waiver of a report made by a licensed child placing agency and submit a self-produced report comparable to such report, which includes information on education, family background, family relationships, financial information, a criminal records check, and a check regarding any investigations for child abuse from the Department of Child Services. Stepmother did provide a criminal records check for herself from the Johnson County Sheriff's Office and an Indiana Child Protective Services (CPS) History Check for herself. The Johnson County Sheriff's Office report did not find any criminal records, but noted that the information was limited to arrests made by the Johnson County Sheriff's Office and to those persons who had been incarcerated in the Johnson County Jail. The CPS History Check confirmed that Stepmother did not have a record of child abuse or neglect in Indiana.

On September 14, 2015, the adoption court held a hearing on Stepmother's adoption petition. At the beginning of the hearing, the parties discussed other cases that were pending in other courts. Birth Mother's attorney noted Mother's arguments in the paternity court, and indicated the intention to have the paternity case transferred to the adoption court after the hearing. The adoption court said there is a statute that says it is mandatory that the paternity case be

consolidated into the adoption case. All of the parties and witnesses were gathered, and the court continued on with the adoption hearing without consolidating the paternity case.

On September 30, 2015, the adoption court granted Stepmother's adoption petition over Birth Mother's objection. The court did not find clear and convincing evidence that Birth Mother failed to communicate with the children for over one year, but found that she had failed to meaningfully support the children for over one year. The court found that Birth Mother's consent to the children's adoption was not necessary. Birth Mother appealed the adoption decree, arguing that Stepmother did not complete a statutorily required criminal background check, and that the adoption court erroneously did not consolidate the paternity action with the adoption proceeding, which prohibited Mother from challenging the paternity court's order.

The Court found that it was error for the adoption to occur without any involvement from either a child placing agency or DCS. Id. at 81. The Court observed that both IC 31-19-18-1 and IC 31-19-8-5 require the involvement of either a licensed child placing agency for children who are not adjudicated as CHINS or DCS for children who are adjudicated as CHINS in any adoption. Id. at 80. The Court held that the adoption court erred by instructing Stepmother that, by filing a self-produced report, she could waive the involvement of either the licensed child placing agency or DCS. Id. at 81.

The Court held that a background check that complies with IC 31-9-2-22.5 is an essential particular of the adoption process, and its absence renders an adoption petition fatally deficient. Id. at 83. The Court opined that Stepmother's Johnson County and CPS checks complied with only two of the five requirements of a criminal history check under IC 31-9-2-22.5. Id. at 82. The Court noted that Stepmother's criminal history check did not comply with the statute because there was no check of state and national records using fingerprints, there was no check of the national registry containing reports of child abuse and neglect, and there was no check of the national sex offender registry. Id. The Court observed that IC 31-19-2-7.3 provides that no part of a criminal history check can be waived. Id. The Court noted that an adoption is about more than the rights of the biological parent; it is also about the safety and best interests of the adopted child. Id.

The Court held that the paternity action should have been consolidated with the adoption proceeding prior to the adoption court's issuance of the adoption decree. Id. at 84. The Court did not opine on the merits of Mother's challenge to the original paternity court order, but observed that the trial court violated IC 31-19-2-14(a) by not consolidating the paternity action with the adoption proceeding. Id. at 83.