

Children's Law Center of Indiana



Adoption

12/28/2007

In In Re Adoption of Z.D., 878 N.E.2d 495 (Ind. Ct. App. 2007), the Court affirmed the Benton Circuit Court's dismissal of the adoption petition filed by Karen Dawson (former paternal grandmother of the child) and the Tippecanoe Circuit Court's denial of Dawson's motion to correct error and motion to intervene in the adoption proceeding filed by the child's foster parent. In 2004, a CHINS petition was filed in Tippecanoe Superior Court and the child was removed from her parents and placed with a foster parent. The parents' parental rights were terminated November 28, 2005. The next day, Dawson filed a petition to adopt the child in Benton Circuit Court. Notice of the petition was filed on the Tippecanoe County Department of Family and Children (TCDFC). TCDFC moved to intervene and to dismiss Dawson's adoption petition. Benton County DCS also filed a motion to dismiss. On January 24, 2006, the child's foster parent filed a petition to adopt the child in Tippecanoe Circuit Court. Neither Dawson nor the Benton Circuit Court was notified of the foster parent's adoption petition. The Benton Circuit Court set a hearing on the motions to dismiss Dawson's petition for April 5, 2006, but the hearing was subsequently re-set for April 18, 2006 on TCDFC's motion to continue because of scheduling conflicts. On April 14, 2006, the Tippecanoe Circuit Court held a hearing on the foster parent's petition and granted the foster parent's petition to adopt the child. When Dawson appeared in Benton Circuit Court for the April 18 hearing on the motions to dismiss, counsel for TCDFC told her that the Tippecanoe Circuit Court had granted the foster parent's adoption petition. On May 15, 2006, Dawson filed a motion to correct error and a motion to intervene in the foster parent's adoption proceeding. Several hearings were set, but the hearings were all continued. On September 11, 2006, the parties notified the Tippecanoe Circuit Court that they were attempting to reach an agreement. Dawson took no further action until she filed a "Request for Hearing on Petition for Adoption" on December 5, 2006. The Tippecanoe Circuit Court denied her request for a hearing, and on February 20, 2007 found that Dawson's motion to correct error was deemed denied by operation of Trial Rule 53.3. On December 15, 2006, the Benton Circuit Court dismissed Dawson's petition stating, "an adoption has been finalized in Tippecanoe County and exceptions or errors in those proceedings, if any, should be resolved before this Court accepts or resumes jurisdiction with potentially conflicting results between two Trial Courts." Dawson appealed Benton Circuit Court's dismissal of her adoption petition and Tippecanoe Circuit Court's denial of her motion to correct error and motion to intervene, arguing that the Benton Circuit Court had exclusive jurisdiction over the child's adoption because her petition was filed before the foster parent's petition was filed in Tippecanoe Circuit Court.

Under the circumstances of this case, Tippecanoe Circuit Court was not required to divest itself of jurisdiction and render its decree of adoption void because Dawson's petition to adopt the child was pending in Benton County. *Id.* at 497. The Court noted that, in accordance with IC 31-19-2-2, adoption petitions could properly be filed in both Benton County and Tippecanoe County and, under Indiana Trial Rule 75(A), preferred venue was in Tippecanoe County. *Id.* The Court explained that, while it was sympathetic to Dawson's argument that she had not received notice of the competing adoption proceeding in Tippecanoe Circuit Court, there was no longer a statute requiring either the Tippecanoe Circuit Court or the TCDFC to provide notice of that adoption proceeding. The Court also pointed out that (1) prior to Dawson's filing of her petition for adoption, when the parental rights of the father, Dawson's son, were terminated, "any of Dawson's derivative due process rights with respect to visitation, custody, or adoption were effectively extinguished;" (2) it is well-settled that noncustodial grandparents are not entitled to intervene in adoption proceedings and (3) relatives have no preferential legal right to adopt in Indiana. *Id.* at 498. The Court also noted that (1) the TCDFC refused to consent to the adoption of the child by Dawson; (2) IC 31-19-9-1 required TCDFC's written consent in that it had lawful custody of the child; (3) in accordance with IC 31-19-9-8(a)(10), TCDFC's refusal to consent required the trial court to determine whether TCDFC was acting in the best interests of the child in doing so; (4) from the record it appeared that TCDFC was acting in the child's best interests by refusing consent in that Dawson had indicated that she would allow contact between the child and Dawson's son, a child molester whose parental rights to the child had been terminated. *Id.* at 498-99. The Court also found support for its conclusion in that Dawson no longer had a right to seek visitation with the child because the child was adopted by the foster parent who was not the child's stepparent or a person who is biologically related to the child as a grandparent, a sibling, an aunt or uncle, or a niece or nephew. *See* IC 31-17-5-9 (1998) and *In Re Guardianship of J.E.M.*, 879 N.E.2d 517, 521 (Ind. Ct. App. 2007). *Id.* at 499.