

Children's Law Center of Indiana



Adoption

5/18/2012

In **In Re the Adoption of S.J.**, 967 N.E.2d 1063 (Ind. Ct. App. 2012), the Court, without addressing the merits of Father's appeal, concluded that the trial court's order that Father's consent to the child's adoption was not required was not a final judgment, did not contain the necessary language from Trial Rule 54(B) to allow an appeal despite the lack of a final judgment, and was not an appealable interlocutory order under Appellate Rule 14. The Court *sua sponte* determined that it had no jurisdiction over Father's appeal, and dismissed the matter.

The child was born in May 2005 to Mother and Father, who were not married. Father's stepsister and her husband ("The Petitioners") were appointed as the child's legal guardians in 2008 and had continuous custody of the child from 2008 onwards. The Petitioners filed a petition to adopt the child in June 2011. Father filed a Motion to Contest Adoption, and in September 2011, the trial court held a hearing on whether or not Father's consent to the adoption was required. The trial court issued an order determining that Father's consent was not required, and it indicated in its order that "if all other statutory requirements are met, this Petition may proceed to a final hearing." Father appealed this order from the trial court finding that his consent was not needed.

The Court held that the trial court's order was not a final judgment, as it did not dispose of all of the issues as to all parties or put an end to the case, and that the trial court's order was not an appealable interlocutory order; because of this, the Court did not have jurisdiction to hear Father's appeal. *Id.* at 1065, 1066. The Court noted that its jurisdiction included appeals from final judgments, and that a final judgment is one that disposes of all claims as to all parties, and "reserves no further question or direction for future for future determination." *Id.* at 1065 (citing Bueter v. Brinkman, 776 N.E.2d 910, 912-13 (Ind. Ct. App. 2002)). Appellate subject matter jurisdiction is an issue that can be raised at any time, by any party, or by the Court itself. *S.J.* at 1065 (citing Georgos v. Jackson, 790 N.E.2d 448, 451 (Ind. 2003)). The *S.J.* Court noted that the adoption petition was neither granted nor denied; thus the trial court order that determined that Father's consent was not needed did not dispose of all issues as to all parties. *S.J.* at 1065. This led the Court to determine that the trial court's order was not a final judgment within the meaning of the Indiana Appellate Rules. *Id.*

The Court held that Father could not appeal his case under Trial Rule 54(B), as there had not been strict compliance with the rule's language. *Id.* at 1066. The Court noted that Trial Rule 54(B) provides that "A judgment as to one or more but fewer than all of the claims or parties is final when the court in writing expressly determines that there is no just reason for

delay, and in writing expressly directs entry of judgment...” Id. at 1065. However, strict compliance with this section of Trial Rule 54(B) is required before a trial court’s order disposing of fewer than all claims as to all parties will be seen as final and appealable. Id. at 1065 (citing Martin v. Amoco Oil Co., 696 N.E.2d 383, 385 (Ind. 1998)). “Thus, unless a trial court uses the ‘magic language’ set forth in Trial Rule 54(B), an order disposing of fewer than all claims as to all parties remains interlocutory in nature.” S.J. at 1066 (internal citations omitted). The trial court in the instant case did not direct the entry of a judgment and did not find there was no just reason for delay; since the trial court order did not meet the strict criteria of Trial Rule 54(B), the trial court’s order cannot be deemed to be final under that rule. Id.

Lastly, the Court held that the trial court’s order was not an appealable interlocutory order under Appellate Rule 14(A), interlocutory appeals as a matter of right, or Appellate Rule 14 (B), interlocutory appeals that are certified by the trial court and accepted by the Appellate Court. Id. at 1066. Although the trial court’s order was not a final order, Father could still appeal if the trial court’s order was an appealable interlocutory order, and the Court would have jurisdiction over an interlocutory appeal under Appellate Rule 14. Id. An interlocutory order is an order made before a final hearing on the merits of a case; it is an order that requires something to be done or observed, but it does not resolve the entire controversy. Id. (citing Bacon v. Bacon, 877 N.E.2d 801, 804 (Ind. Ct. App. 2007)). There are two ways interlocutory orders can be appealed: as a matter of right, or if the trial court certifies the interlocutory order and the Appellate Court accepts the appeal. S.J. at 1066. The Court determined that none of the grounds for an interlocutory appeal as a matter of right as provided by Appellate Rule 14(A) were present in the instant case; consequently, Father was not entitled to an interlocutory appeal as a matter of right. Id. The Court noted that Appellate Rule 14(B) provided that interlocutory orders could be appealed if the trial court certifies its order and the Court of Appeals accepts jurisdiction of the appeal; however, there was no certification of the order or acceptance of the appeal in the instant case. Id. Consequently, the trial court’s order was not appealable under Appellate Rule 14(B). Id.