DIVISION ONE
FILED: 03-18-2010
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BY: DN

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

KAYLA P.	)	
	)	No. 1 CA-JV 09-0190
Appellant,	)	
	)	DEPARTMENT E
v.	)	
	)	**MEMORANDUM DECISION**
MORGAN C., THOMAS P.,	)	
	)	(Not for Publication –
Appellees.	)	103(G) Ariz.R.P. Juv. Ct.;
	)	Rule 28 ARCAP
	)	

Appeal from the Superior Court in Maricopa County

Cause No. JA509533

The Honorable Bernard C. Owens, Commissioner

AFFIRMED

Sandra L. Massetto — Phoenix
Attorney for Appellant

Robert D. Rosanelli — Phoenix
Attorney for Appellee

G E M M I L L, Judge

¶1 Kayla P. appeals from the juvenile court's order denying her petition to revoke her consent to the adoption of her son Thomas. For the reasons that follow, we affirm the

juvenile court's decision.

Facts and Procedural Background

¶2 We view the facts in the light most favorable to upholding the juvenile court's order. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 207, ¶ 2, 181 P.3d 1126, 1128 (App. 2008). Kayla is the biological mother of Thomas, who was born on June 28, 2008. She is eighteen-years old; she was seventeen-years old when Thomas was born. Her relationship with Thomas's biological father, Jonathan Karmeris, ended three months into her pregnancy. Three weeks after Thomas's birth, on July 20, 2008, Karmeris was killed in an automobile accident.

¶3 Morgan C. is a twenty-six-year old woman and was unmarried at the time of the juvenile court proceedings. She first met Kayla when Morgan's mother began dating Kayla's uncle in 2004. While Kayla was pregnant, Morgan often offered to provide her with rides to her doctor's appointments and to help purchase supplies she would need for the baby. After Thomas was born, Morgan babysat him two or three nights per week and Thomas often spent the night at her house.

¶4 In early-August 2008, Morgan learned that Kayla was considering letting Thomas be adopted. On August 6, she and Kayla agreed that Morgan would adopt Thomas. Morgan consulted attorney Kristy Blackwell on August 29. An appointment was made for Morgan and Kayla to go to Blackwell's office on September 12

for Kayla to sign the adoption papers.

¶5 On September 12, Morgan picked up Kayla and they drove to Blackwell's office. Prior to the meeting, Blackwell had prepared for Kayla's signature a Consent of Birth Parent to Adoption and an affidavit stating that Karmeris is Thomas's biological father.[1] Blackwell placed these documents on her desk and explained: "[T]his is the consent for the adoption where you're giving your permission for the baby to be placed for adoption." They then discussed the affidavit, which Blackwell explained was necessary because "we also had to deal with the biological father."

¶6 Kayla took several minutes to read through the consent, a three page document, and the affidavit, which was one page. Blackwell asked her if she had any questions, and she said she did not. Blackwell then prepared in their presence a medical power of attorney that authorized Morgan to take Thomas to his doctor's appointment the next day. After Morgan and Kayla reviewed the healthcare power of attorney, Kayla signed all three documents in the presence of two witnesses and a notary public.

¶7 Morgan left the office with Thomas in her custody and

[1] Kayla's boyfriend at the time of the hearing, Leroy Gonzalez, was named as Thomas's father on the birth certificate. Kayla testified she named Gonzalez as Thomas's father "so it would be harder for Johnny to fight with me over [Thomas]."

drove Kayla home. Over the following two months, Thomas spent time in both Morgan and Kayla's care. On November 5, 2008, Morgan filed a petition in the juvenile court to adopt Thomas. On November 25, she sought and obtained an order for temporary custody of Thomas. Morgan has had custody of Thomas since that time.

¶8 In February 2009, Kayla sent a letter to the juvenile court stating she was revoking her consent to the adoption. She asserted she had not known she was giving her consent to an adoption when she signed the documents and she had been "under post-partum depression and duress."[2] In March, she filed a Petition to Revoke Consent. The juvenile court appointed counsel to represent Kayla and scheduled a hearing to determine the merits of her petition.

¶9 During the four-day hearing, the juvenile court heard testimony from Kayla, Morgan, Thomas's paternal grandmother Marie Karmeris, Blackwell, and the witnesses and notary public from Blackwell's office. Kayla testified she had thought she was signing only a medical power of attorney and had believed Thomas would be returned to her when she turned eighteen-years old. The court found Kayla had failed to prove by clear and convincing evidence that her consent to the adoption had been

[2] Kayla filed a similar letter in January 2009, but the juvenile court refused to consider it because it was an ex-parte communication.

procured by duress, undue influence, or fraud, and it denied her petition. Kayla timely appealed, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 8-235(A) (2007), 12-120.21(A)(1) (2003), and 12-2101(B) (2003).

Analysis

¶10 The grounds for setting aside a consent to an adoption are set forth in A.R.S. § 8-106(D) (Supp. 2009). That statute provides: "A consent to adopt is irrevocable unless obtained by fraud, duress, or undue influence." *Id*. These grounds must be proven by clear and convincing evidence. *See* Ariz. R.P. Juv. Ct. 82(G). The minority of a parent does not affect the parent's competency to give consent. A.R.S. § 8-106(C) (Supp. 2009).

¶11 Kayla contends her consent to the adoption was procured by duress and undue influence. In support of this claim, she points out the following facts: she was a minor when she gave her consent; she had only a tenth grade education; she had no legal advice or counsel prior to consenting; the child's father had died fourteen months earlier; none of her family members were with her at Blackwell's office; she had not seen the documents prior to the day she signed them; Blackwell reviewed the documents with her for only ten minutes; Blackwell did not read the documents aloud to her; and Blackwell did not tell her that Blackwell represented only Morgan or advise her to

seek her own counsel.

Consent was not Obtained by Duress

¶12 Duress sufficient to set aside a consent to adoption requires proof of

> [a] wrongful act of one person that compels a manifestation of apparent assent by another to a transaction without his volition, or . . . any wrongful threat of one person by words or other conduct that induces another to enter into a transaction under the influence of such fear as precludes him from exercising free will and judgment, if the threat was intended or should reasonably have been expected to operate as an inducement.

Anonymous v. Anonymous, 23 Ariz. App. 50, 51-52, 530 P.2d 896, 897-98 (1975) (quoting *Lundvall v. Hughes*, 49 Ariz. 264, 267, 65 P.2d 1377, 1378 (1937)).

¶13 Kayla has not alleged that either Blackwell or Morgan committed a wrongful act or issued a threat that overcame her free will or volition to induce her to give her consent to the adoption. She testified specifically that neither Blackwell nor Morgan had threatened her to compel her to give her consent. And although Kayla testified she felt "rushed" and felt "pressure" to sign the documents, she also testified she was unable to explain why she felt this way and her feelings were not caused by anything Blackwell or Morgan told her -- she explained she "felt [rushed] through emotions, not words."

¶14 Contrary to Kayla's suggestion, Blackwell committed no

wrongful act by not reading the documents aloud to her and by not telling her she could seek counsel. Kayla testified she was able to read the documents, she did read the first page of the consent and spent approximately two minutes per page reading the document. She also knew the meanings of operative words in the document, such as "adoption," "consent," "relinquish," and "irrevocable." We find no support for the proposition that Blackwell had an affirmative legal duty to advise Kayla that she should retain counsel in this matter, and Kayla has provided us none. On this record, we conclude that the evidence permitted the trial court to find that Kayla did not prove by clear and convincing evidence that her consent to the adoption was obtained by duress. *See Anonymous*, 23 Ariz. App. at 51-53, 530 P.2d at 897-99.

Consent was not Obtained by Undue Influence

¶15 Kayla next argues her consent was obtained by undue influence. She contends she "had the right to assume Ms. Blackwell was acting in her best interest" and Blackwell did not do so because she did not explain "the legal and long term consequences" of Kayla giving her consent to the adoption. She states: "[W]hen Ms. Blackwell sought the signing of the consent[] by a minor there is a presumption of undue influence by the attorney." We disagree.

¶16 "Undue influence" is the unfair persuasion of a party

who is under the domination of the person exercising the persuasion or who, by virtue of the association between them, is justified in assuming that that person will not act in a manner inconsistent with his welfare. Restatement (Second) of Contracts § 177(1) (1981); *see also Parrisella v. Fotopulos*, 111 Ariz. 4, 6, 522 P.2d 1081, 1083 (1974); *Evans v. Liston*, 116 Ariz. 218, 220, 568 P.2d 1116, 1118 (App. 1977).

¶17 Here, there is no evidence Blackwell persuaded Kayla to consent to the adoption, a necessary component in establishing undue influence. "Persuasion" is defined as "[t]he act of influencing or attempting to influence others by reasoned argument; the act of persuading." Black's Law Dictionary 1164 (7th ed. 1999). And to "persuade" is "[t]o induce (another) to do something." *Id*. Blackwell met Kayla for the first time on the day Kayla signed the documents. She explained who she was to Kayla and the purpose of their meeting and then presented the documents for Kayla's signature. There was no testimony tending to show that Blackwell attempted to persuade Kayla to give her consent to the adoption and sign the documents.

¶18 There is also no evidence that Kayla was under Blackwell's "domination" or that there was an "association between them" that justified Kayla believing that Blackwell would not "act in a manner inconsistent with [her] welfare." Restatement (Second) of Contracts § 177(1). At the start of the

meeting, Blackwell informed Kayla that she was Morgan's attorney, stating: "Morgan's hired me to help her with the adoption of the baby." There is no evidence that Kayla believed Blackwell was both her and Morgan's attorney or that Blackwell was necessarily acting in her interest. Kayla was asked during the hearing why she had not asked Blackwell any questions about the documents she was signing, and Kayla answered:

> A: I guess I had a lot going on in my head. I thought that I was –- I thought that I could trust her and I felt –-
>
> Q: Trust who? The attorney or Morgan?
>
> A: No, Morgan.

Thus, Kayla does not appear to have been placing her trust in Blackwell, in contrast to what would be expected if she thought Blackwell was her attorney.

¶19 In sum, there was evidence that Kayla knowingly gave her consent to the adoption free from duress or undue influence. Although she testified she was unaware she was giving her consent to an adoption when she signed the documents, Morgan testified that she and Kayla had discussed the adoption on the car ride to Blackwell's office and that, while waiting in the lobby, Kayla had asked her about the type of adoption they would be executing. The document she signed is entitled in bold letters "Consent of Birth Parent to Adoption" and states on the first page: "I hereby relinquish and give up all my rights to

the care, custody, control and visitation of the child, to Morgan [C.]." At the start of the meeting, Blackwell told Kayla that Morgan had hired her "to help her with the adoption of the baby," and Kayla told Blackwell that her father approved of the adoption.

¶20 Moreover, in light of Arizona's strong public policy favoring finality of adoptions and the exclusive language of A.R.S. § 8-106(D), it is very doubtful that Kayla's consent to the adoption could be lawfully revoked, absent fraud, duress, or undue influence, even if the trial court had found she did not know the exact nature of the documents she was signing. *See Acedo v. Dep't of Pub. Welfare*, 20 Ariz. App. 467, 471, 513 P.2d 1350, 1354 (1973) (finding strong public policy favoring finality of adoptions prevented biological mother from revoking her consent where mother had not understood legal significance of consent).

No Violation of Right to Due Process

¶21 Kayla next argues her right to due process was violated because she "was not afforded the right to counsel when she signed the consent to adoption." She argues: "Arizona statutes do not provide a right to legal counsel or a right to legal advi[ce] for a minor executing a consent to terminate parental rights. This violates fundamental principles of procedural due process."

¶22 We perceive this to be an argument that Kayla was entitled to court-appointed counsel to advise her prior to giving her consent to the adoption. In support of this claim, she cites *Daniel Y. v. Arizona Department of Economic Security*, 206 Ariz. 257, 77 P.3d 55 (App. 2003), for the proposition that due process requires that courts appoint counsel for indigent parents during termination proceedings.

¶23 This court rejected this argument in *Matter of Navajo County Juvenile Action No. JA-691*, 171 Ariz. 369, 374, 831 P.2d 368, 373 (App. 1991). We cited *Brown v. McLennan County Children's Protective Services*, 627 S.W.2d 390 (Tex. 1982), in which the court found due process did not require court-appointed counsel when a parent gives her consent to the adoption of her children. The court found as follows:

> The cause before this Court is not one where the State is actively interfering with the integrity of the family. Brown voluntarily gave consent to the termination of her parental rights by executing an affidavit of relinquishment. This termination is not comparable to the forced taking of parental rights by the State. The affidavit before this Court is clear and unambiguous. There is no allegation that Brown misunderstood the terms or effects of her execution. There is also no allegation of how an attorney would have been of assistance under these facts. Beyond that, Brown's asserted right to an attorney has never before been recognized and we hold there is no such right under these circumstances.

Id. at 394. We agree that Kayla was not deprived of her right

to due process here.[3]

Conclusion

¶24 For the foregoing reasons, we affirm the juvenile court's ruling.

__/s/_____
JOHN C. GEMMILL, Judge

CONCURRING:

____/s/_____
SHELDON H. WEISBERG, Presiding Judge

____/s/_____
PHILIP HALL, Judge

[3] We note that a few states have enacted a requirement that minors be advised by counsel before consenting to an adoption, the consent being otherwise invalid. *See* Kan. Stat. Ann. § 59-2115 (1994); Md. Code Ann., Fam. Law § 5-339(a)(3)(vi) (2005); Mont. Code Ann. § 42-2-405(2) (2003); Vt. Stat. Ann. tit. 15A, § 2-405(c) (2002); *see generally* Ala. Code § 26-10A-8 (Supp. 2004) (requiring appointment of guardian ad litem for minor birth parent); Ark. Code Ann. 9-9-220(b) (Michie 2002) (same); Me. Rev. Stat. Ann. tit. 18-A, § 9-106(b) (1998) (requiring court to appoint counsel for indigent birth parent who is a minor, unless birth parent refuses or "the court determines that representation is unnecessary"); N.H. Rev. Stat. Ann. § 170-B:5(II) (2005) (stating court may appoint counsel if birth parent incompetent, mentally ill, or retarded). In contrast, Arizona has no such statute.