IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

IN THE INTEREST OF:
I.B., a child

Case No. 5D13-2796

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Opinion filed May 9, 2014

Appeal from the Circuit Court for Seminole County, Donna L. McIntosh, Judge.

Jerri A. Blair and George E. Carr, Jerri A. Blair, P.A., Tavares, for Keith and Heidi Farling.

Christine E. Arendas and Natalie Martin Weech, Arendas Law, P.A., Saint Cloud, for Sheritta Burt.

H. Kyle Fletcher, Arendas Law, P.A., Saint Cloud, for C.A.

Rosemarie Farrell, Children's Legal Services, Orlando, for Florida Department of Children and Families.

Laura E. Lawson, Tavares for Guardian Ad Litem Program.

PALMER, J.

Jerry A. Blair, in her capacity as the adoption intermediary for the prospective adoptive parents (foster parents), appeals the trial court's order striking the adoption

consent form executed by C.A., the biological mother (mother). Determining that there was sufficient evidence in the record to support the trial court's order, we affirm.

The minor child was removed from the custody of her parents and placed in foster care. During a status hearing, the biological parents advised the trial court that the parents were proceeding with a private adoption by the child's paternal aunt. Following that hearing, the foster care liaison was approached by the maternal grandmother and a maternal aunt regarding the possibility of having the foster parents adopt the child, saying that the mother did not want the child to be adopted by the paternal aunt. Subsequently, the foster care liaison was informed that the mother agreed to consent to adoption by the foster parents. As a result, at approximately 10 p.m. one evening, the liaison and a notary went to the jail where the mother was being housed to obtain her signature on the adoption consent form. The mother signed the consent form, but it was later determined that the consent form was invalid because it was not properly executed. A different notary then went to the jail to obtain the mother's execution of a second consent form. The mother signed the second consent form.

Thereafter, Blair filed a petition to terminate the mother's parental rights and an adoption petition on behalf of the foster parents. The consent form signed by the mother was attached to the petition. The paternal aunt's intermediary responded by filing a motion to strike the mother's consent to adoption by the foster parents, arguing that mother's consent had been obtained by duress. The mother thereafter adopted the paternal aunt's motion to strike her consent.

The trial court held an evidentiary hearing on the motion to strike. During the hearing, the mother testified that, on the night she signed the first consent form, her

attorney was not present. She did not know the liaison and notary were visiting her on behalf of the foster parents. According to the mother, she was told it was going to be an "open adoption," but the intermediary did not explain to her what that term meant. The mother understood the term to mean that "anybody can come in and adopt [her son]." When asked if she had an understanding about whether she would have visitation rights, the mother replied "no." She further testified that she did not understand what she was signing, although she understood the documents would terminate her parental rights and would allow her child to stay permanently with the foster parents and that, if the foster parents did not choose to allow her to have visitation with her son, there was nothing she could do about it. The mother testified that no one explained what the consent meant, she was not provided a copy of the consent form, and no one advised her of her right to revoke her consent within three days of its execution. The mother further testified that she felt pressured by her family to agree to allow the foster parents to adopt her son. When asked about her execution of an affidavit of intent to work with Blair, the mother testified that she did not understand that she had already signed the first consent form to work with the foster parents. She testified that she read through the affidavit, but did not understand that she was agreeing to work with the foster parents. When asked whether she asked her attorney any questions about the affidavit, the mother replied "yeah, but she didn't want to answer no questions." She said that her "lawyer didn't explain anything to me."

The mother was questioned about her execution of the second consent form by the paternal aunt's adoption intermediary, Attorney Christine Arendas:

> [ARENDAS]: [Mother], do you recall the people that came for the signature on the second consent, the January 26th consent?

> [MOTHER]: My lawyer was there and there was people on the other side of the glass [who] wanted me to sign it.
> [ARENDAS]: Do you know who those people were?
> [MOTHER]: No.
> [ARENDAS]: Do you know if they had any affiliation with Ms. Blair?
> [MOTHER]: No.
> [ARENDAS]: Did they actually meet with you in person?
> [MOTHER]: No, ma'am.
> [ARENDAS]: Did they speak with you?
> [MOTHER]: No, ma'am.
> [ARENDAS]: Did they explain what you were signing to you?
> [MOTHER]: No, ma'am.
> [ARENDAS]: Did you understand what you were signing at the time?
> [MOTHER]: I felt like I was pressured, so I just signed away.
> . . . .
> [ARENDAS]: And you felt pressure from your family?
> [MOTHER]: Yeah.

Arendas then questioned the mother about what induced her to sign the consent forms for the foster parents:

> [ARENDAS]: So, you felt like you were being pressured into signing?
> [MOTHER]: Yes.
> [ARENDAS]: Would you have signed but for the promise that you would see your son?
> [MOTHER]: Could you repeat that again?
> [ARENDAS]: Would you have signed consents for [the foster parents] to adopt your son but for the promise that you would see him again?
> . . . .
> [MOTHER]: Oh, no.
> [ARENDAS]: Okay.
> [MOTHER]: I want the promise.
> [ARENDAS]: . . . I just want to make sure we're all clear here. Because of the promise that you would be able to see him again, you agreed to sign the consents?
> [MOTHER]: Yes.

According to the mother, she was not provided with a copy of the second consent form, and again she was not advised that she had three days in which to revoke her consent. She testified that her lawyer was present at the signing of the second consent form, but counsel did not provide assistance to the mother. Counsel told the mother to "just sign the consent paper."

Next, the mother testified about a subsequent meeting between herself, her attorney, and Arendas. During this meeting, the three reviewed the first and second consent forms. Arendas explained to the mother each of the statutory disclosure items, that she had a three-day right of revocation, that Florida does not allow open adoptions per se, and that the foster parents could deny the mother visitation after she executed the consent form. The mother did not recall any of those items being explained to her by the foster care liaison and/or the notaries. The mother acknowledged previously agreeing to adoption by the paternal aunt, and she said she changed her mind due to pressure from her family. She also testified that she felt no pressure while signing the consent for the aunt to adopt.

Following the hearing, the trial court entered an order striking the consent form executed by the mother. The court found that “by the time [the intermediary] went to the jail [the first time], family had already coerced the mother into signing the consent.” The court further found that the mother “was a bit confused regarding whether she was aware that the foster parents could deny her visitation; however, she did clearly testify that she would not have signed the consent to adopt without a promise that she would be able to see her son again.” Thus, the court concluded that the mother “did not fully understand what she was signing." Additionally, the court found that the mother did not understand

the affidavit of intent to work with Blair, and that she felt pressured to sign that affidavit. As to the signing of the second consent form, the court stated:

> As the notary and two witnesses could not speak with [the mother] or hear her, there was no evidence that she took an oath, acknowledged that she read the consent, verified its contents to be true and correct and executed it freely and voluntarily as indicated in the notary's certification in the consent.

Citing In re Adoption of P.R. McD., 440 So. 2d 57 (Fla. 4th DCA 1983), the court concluded that the mother "was not provided with any counseling regarding the nature of the documents she was signing or their legal effects" and, therefore, her consent was not voluntary. This appeal followed.

We review the trial court's order for an abuse of discretion. See R.B. v. Dep't of Children & Families, 997 So. 2d 1216, 1218 (Fla. 5th DCA 2008); W.T. v. Dep't of Children & Families, 846 So. 2d 1278, 1281 (Fla. 5th DCA 2003). In order to find an abuse of discretion, we would have to conclude that no reasonable person would have arrived at the conclusion reached by the trial court. Canakaris v. Canakaris, 382 So. 2d 1197, 1203 (Fla. 1980). We cannot come to such a conclusion on this record.

Upon executing a consent for the adoption of a child older than six months of age, the parent has three days in which to revoke that consent. § 63.082(7)(a), Fla. Stat. (2012). After the expiration of the three-day revocation period, consent can be set aside only when the court finds that the consent was obtained by fraud or duress. § 63.082(7)(f), Fla. Stat. (2012). Duress is defined as "[a] condition of the mind produced by an improper external pressure or influence that practically destroys the free agency of a party and causes him to do an act or make a contract not of his own volition." T.G. v. Dep't of Children & Families, 9 So. 3d 48, 49 (Fla. 4th DCA 2009) (quoting Herald v. Hardin, 116

So. 863, 864 (Fla. 1928)). The parent seeking to set aside the consent bears the burden of establishing duress by clear and convincing evidence. K.C. v. Adoption Servs., Inc., 721 So. 2d 811, 812 (Fla. 1998).

Blair argues that the trial court erred in concluding that the paternal aunt proved, by clear and convincing evidence, that the mother's consent was obtained by duress. We disagree. The trial court's conclusion that the mother "did not fully understand what she was signing" was supported by the evidence.

Blair also contends that the record is devoid of any evidence that the mother was coerced into signing the consent forms and, thus, the finding of duress is clearly erroneous. It is well-recognized that it is not the appellate court's function to reweigh the credibility of the witnesses. In re Adoption of Baby Girl C, 511 So. 2d 345, 348 (Fla. 2d DCA 1987). Although the evidence of duress may have been limited, the mother's testimony, apparently believed by the trial judge, was sufficient to establish duress[1].

AFFIRMED.

EVANDER, J. concurs.

COHEN, J. dissents, with opinion.

[1] The court also found various procedural violations of the adoption statute occurred in procuring the mother's consent. The court found that the foster parents' intermediary held the pre-consent meeting without the mother's attorney being present, and that neither a representative of the adoption entity nor the mother's attorney was present when the mother signed the consent form. In addition, the court found that the mother was not provided with reasonable notice of her right to select a witness of her own choosing, as required by section 63.082(4)(d), Florida Statutes.

COHEN, J., dissenting.

The majority posits that C.A. ("Mother") clearly testified that she would not have signed the consent to adopt without a promise that she would be able to see her son again. In my view, the evidence presented belies that finding. This case originated when I.B., at four months of age, was sheltered and placed in the care of his foster parents, the Farlings, after his biological parents were criminally charged for the death of his half-sister. Following an investigation that revealed that Mother and I.B.'s father also subjected I.B. to abuse, the Department of Children and Families filed an expedited petition for termination of parental rights.

Mother signed not one, but two forms consenting to adoption by the foster parents. In my view, the evidence adduced below demonstrated that Mother freely and voluntarily consented to adoption by the Farlings. Accordingly, I would reverse.

Not only did Mother's family approach the foster care liaison, Jerry Pitzer, to disclose that Mother did not wish to have I.B. adopted by the paternal aunt, Mother herself also informed the liaison that she agreed to consent to adoption by the Farlings. Since Mother was incarcerated for her role in the death of I.B.'s half-sister, Pitzer and a notary went to the jail where Mother was housed to obtain a consent for adoption. After reviewing the document with Mother, the liaison felt assured that Mother clearly understood the legal consequences of consenting to adoption and that she was fully aware that the Farlings could refuse to allow her visitation with I.B. Mother signed the consent form ("the First Consent Form"), and the liasion and the notary signed as witnesses. Attorney Blair later determined that the First Consent Form did not comply

with section 63.082(4)(d), Florida Statutes,[2] because the notary both witnessed and notarized the document. Thus, another consent form had to be executed.

Less than two weeks later, Mother executed an Affidavit of Intent to Work with the Law Office of Jerri A. Blair in order to facilitate the private adoption by the Farlings. The following day, Ruth Pippin, a notary who had a background in family services, went to the jail with two witnesses to facilitate Mother's execution of another consent form. Pippin had been advised that Mother would not meet with her unless she used a certain password. Mother required the use of the password because she feared that she would be tricked into signing a consent form agreeing to adoption by the paternal aunt and she wanted to ensure that any visitor was coming to her on the Farlings' behalf. Mother executed another consent form ("the Second Consent Form") agreeing to adoption by the Farlings. The Second Consent Form was then signed by the two witnesses and notarized. After procuring the Second Consent Form, Blair filed a petition for termination of parental rights pending adoption and a motion to intervene in the TPR case.

Approximately two months later, the paternal aunt's adoption intermediary, Christine Arendas, met with Mother and Mother's new attorney. During this meeting, Mother executed a consent form agreeing to adoption by the paternal aunt. Subsequently, Arendas filed a motion to strike Mother's consent to adoption by the Farlings, arguing that Mother's consent had been obtained by duress. Specifically, she alleged that Mother's family had assured Mother that she would be permitted visitation with her son if she agreed to allow the Farlings to adopt him, and that she felt forced to

[2] That section provides that "[t]he consent to adoption . . . must be signed in the presence of two witnesses and be acknowledged before a notary public who is not signing as one of the witnesses." § 63.082(4)(d), Fla. Stat. (2012).

sign the consent forms. Arendas also noted various procedural defects in procuring Mother's consent. Mother subsequently adopted Arendas's motion to strike.

The trial court held an evidentiary hearing on the motion to strike, during which the court heard testimony from Mother, Pitzer, Pippin, and Mrs. Farling. Discussing the circumstances surrounding her execution of the First Consent Form, Mother acknowledged that Pitzer reviewed "certain things about Chapter 63 and adoption disclosures," and that Pitzer explained "how the adoption goes and stuff." According to Mother, Pitzer told her it was going to be an "open adoption," but he did not explain what the term "open adoption" meant. Mother understood that term to mean "[t]hat anybody can come in and adopt [her son]."

At times during her testimony, Mother claimed she did not understand the legal ramifications of executing the consent forms. However, she also acknowledged that she was aware that by signing the consent forms, her parental rights would be terminated and, as a result, I.B. would live with the Farlings permanently. On at least five occasions, she admitted that she understood that the Farlings could deny her visitation. At one point in her testimony, however, Mother somewhat contradicted this testimony by stating that she would not have signed the consent forms for the Farlings without a promise that she would be able to see her son again. Nevertheless, even after giving this testimony, Mother again denied that anyone advised her that she would have a right to visitation if she signed the consent forms for the Farlings. Instead, she testified that she was informed that she would have a right to visitation if she agreed to adoption by the paternal aunt and that the paternal aunt's promise to allow visitation prompted her to change her mind about allowing the Farlings to adopt her son. According to Mother, her family

pressured her to agree to allow the Farlings to adopt her son. At the same time, Mother conceded that she initially agreed to allow the Farlings to adopt her son because she believed it was in the child's best interests.

Following the hearing, the trial court entered an order striking both consent forms executed by Mother. The court found that Mother "signed the consents to adopt as a result of the coercive pressure exerted upon her by her family, generated out of their fear that if the child was adopted by the paternal aunt, they would never see the child again." The court further found that Mother "was a bit confused regarding whether she was aware that the [Farlings] could deny her visitation; however, she did clearly testify that she would not have signed the consent to adopt without a promise that she would be able to see her son again." Additionally, the court noted that "Pitzer told [Mother] that it would be an open adoption, but did not explain to her what that term meant" and that Mother "believed that term meant that anyone could adopt her child." Thus, the court concluded that Mother did not fully understand the legal effect of consenting to adoption when she executed the First and Second Consent Forms.

The trial court also noted various procedural violations of the adoption statute that occurred in procuring Mother's consent. For instance, the court found that Pitzer held the pre-consent meeting without Mother's attorney being present, and that neither a representative of the adoption entity nor Mother's attorney was present when Mother signed the consent forms. In addition, the court found that Mother was not provided with reasonable notice of her right to select her own witness, as required by section 63.082(4)(d), Florida Statutes. Lastly, the court concluded that the First Consent Form was invalid because it was not properly witnessed.

The parent seeking to set aside the consent bears the burden of establishing duress by clear and convincing evidence. K.C. v. Adoption Servs., Inc., 721 So. 2d 811, 812 (Fla. 1998). To prove duress, the parent must establish two elements: first, "that the act sought to be set aside was effected involuntarily and thus not as an exercise of free choice or will," and second, "that this condition of mind was caused by some improper and coercive conduct of the opposite side." City of Miami v. Kory, 394 So. 2d 494, 497 (Fla. 3d DCA 1981).

In my view, the record does not support the trial court's determination that Mother executed the consent forms under duress. First, I note that the trial court's conclusion that Mother did not fully understand what she was signing was, in large part, refuted by Mother's own testimony. Although Mother asserted that she did not understand what she was signing, the content of Mother's testimony demonstrated that she did, in fact, understand the legal ramifications of signing the consent forms. Specifically, she testified that she understood that signing the consent forms would terminate her parental rights and would allow I.B. to stay with the Farlings permanently. In addition, Mother repeatedly acknowledged that she understood the Farlings could deny visitation, contradicting her testimony that she executed the consent forms because she was promised that she would be able to see her son again. And even though Mother was confused about the meaning of the term "open adoption," significantly, she did not believe that consenting to an open adoption would give her a right to visitation.

Furthermore, even if Mother's family pressured her to consent to adoption by the Farlings, the family's behavior did not rise to the level of "improper and coercive conduct" necessary to prove duress. See W.T. v. Dep't of Children & Families, 846 So. 2d 1278,

1281 (Fla. 5th DCA 2003) (explaining that to prove duress, there must be evidence of coercion, i.e., "evidence of force, threat, restraint or domination," and holding that adoptive parent's promise to allow visitation did not constitute coercive conduct, especially where mother initiated conversation with adoptive parent regarding visitation); see also J.S. v. S.A., 912 So. 2d 650, 652 (Fla. 4th DCA 2005) (affirming lower court's ruling that mother failed to prove duress where the evidence showed that mother consented to adoption due to "social and financial pressures"). Unlike in In re Adoption of P.R. McD., 440 So. 2d 57 (Fla. 4th DCA 1983), the case the trial court cited to support its finding of duress, in this case there was no evidence that Mother's family threatened her, misinformed her about the legal ramifications of consenting to adoption or about her ability to revoke her consent, or coerced her in any other manner.

Lastly, I believe that the failure to strictly comply with the requirements of the adoption statute in procuring Mother's consent does not constitute grounds for invalidating the consent in this case. Section 63.2325, Florida Statutes, specifically provides that the failure to satisfy a requirement of the adoption statute does not constitute grounds for invalidation of consent to adoption "unless the extent and circumstances of such a failure result in a material failure of fundamental fairness in the administration of due process, or the failure constitutes or contributes to fraud or duress in obtaining a consent to adoption." § 63.2325, Fla. Stat. (2012). The procedural safeguards set forth in section 63.082 are designed to ensure that the parent is fully advised of the legal ramifications of consenting to adoption and to prevent the adoption entity from procuring consent by fraud or duress. Here, although Blair failed to satisfy some of the requirements of the adoption statute, such errors do not constitute grounds for revocation of Mother's

consent because Mother's testimony demonstrated that she understood the legal effect of the consent forms and that her consent was not obtained under duress.[3] See J.S., 912 So. 2d at 652 (rejecting mother's argument that her consent to adoption should be set aside because it was not executed in accordance with adoption law, explaining that "section 63.2325 . . . limits our authority to revoke consent to an adoption based on a failure to comply with statutory requirements," and affirming because "the record supports the court's finding that the mother's consent resulted from social and financial pressures and not from fraud or duress"). Thus, I would conclude that the failure to comply with the statute did not result in "a material failure of fundamental fairness in the administration of due process" or contribute to duress.

Accordingly, I would reverse the order striking Mother's consent to adoption.

[3] I agree with the trial court's conclusion that the First Consent Form was invalid because it was not properly witnessed. The Second Consent Form, however, was properly executed and is, in my view, valid.