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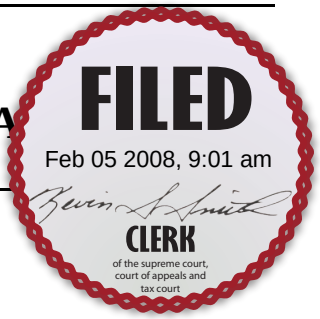
IN THE
COURT OF APPEALS OF INDIANA



DIANA WILLIAMS and CHRISTOPHER WILLIAMS,	)	
Appellants,	)	
vs.	)	No. 71A04-0706-CV-335
CHRISTY KRUSZKA,	)	
Appellee.	)	

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable J. E. Smithburn, Judge
Cause No. 71J01-0609-AD-128

February 5, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Christy Kruszka gave birth to Infant K. and executed a consent to adopt the next day. Diana and Christopher Williams, husband and wife, petitioned to adopt the child. They appeal the trial court's decision to grant Kruszka's subsequent petitions to withdraw her consent to adopt and to contest the adoption.

We affirm.

The twenty-eight-year-old Kruszka became pregnant sometime in early 2006. In the spring of that year, Kruszka was living with her then four-year-old son, T.J., and the unborn child's father, Joshua Parker. In April or May, Parker and Kruszka broke off their relationship and Kruszka and T.J. moved into the home of Kruszka's parents. At the time, Kruszka considered terminating the pregnancy, but decided against it after speaking with Parker and with Diana, who is Kruszka's aunt (her mother's half-sister). Diana and Christopher met with Parker and Kruszka in May 2006 and it was agreed that the Williamses would adopt Kruszka's unborn child. It was further agreed that "no one would know that [Kruszka] was the child's mother (that [Kruszka] would be known as the child's aunt) and that [Kruszka] would be allowed to have contact with the child after birth." *Appellant's Appendix* at 6. After the meeting in May, Diana called Kruszka on an almost daily basis to check whether Kruszka was sure she was not going to change her mind about the adoption. Eventually, Kruszka asked Diana to stop calling her, as she was feeling harassed.

During July and August of 2006, the Williamses participated in a home study conducted by The Villages of Indiana, Inc. (Villages). Villages prepares home studies for

adoptive parents. In conjunction with that study, the Williamses met with adoption specialist Douglas Slabach on at least four separate occasions in July and August. At the first of those meetings, the Williamses acknowledged to Slabach that Kruszka might change her mind about the adoption, and told her that if she did, they "would go along with [Kruszka's] change of mind." *Id*. The Williamses indicated, among other things, that they lived at 532 Ballard Street in Mishawaka, Indiana. We will set forth additional facts relative to the home study later in this opinion. On August 6, 2006, Parker executed a written consent to adopt. On August 30, 2006, Slabach prepared and signed a report recommending that the Williamses be the adoptive parents of Infant K.

As the time of delivery drew near, Kruszka became "extremely anxious" about her schoolwork and child-care issues relating to T.J. during her hospital stay. *Transcript* at 158. Meanwhile, Diana continued to call and ask if Kruszka had "popped yet." *Id*. at 159. Kruszka drove herself to the hospital late in the evening of September 6 and checked in. Infant K. was born the next afternoon at 1:00 p.m. Diana's attorney was scheduled to bring a consent for adoption form for Kruszka's signature at 2:00 p.m. on the day after the birth, i.e., September 8. Before Kruszka signed the form, she talked with a nurse at the hospital. The nurse could tell that Kruszka "was extremely upset from crying and other things" and they discussed the situation. *Id*. at 165. The nurse told Kruszka that even if she signed the consent form, she had thirty days to withdraw it. Kruszka called her mother for advice but was unable to speak with her. Diana arrived with her attorney and the attorney's assistant. Diana "kept coming in and out of the

room" while the attorney and attorney's assistant stood on either side of Kruszka's bed and presented the consent forms for her signature. *Id*. at 166. Kruszka, who was still feeling effects from an epidural she had received the day before, signed the form. On the same day, September 8, the Williamses filed their Verified Petition for Placement Pending Adoption and for Adoption. The court immediately granted the petition for placement, giving the Williamses temporary custody of Infant K. pending a hearing on the adoption petition.

Kruszka and Parker began discussing the situation within two or three days and decided to withdraw their consents. They consulted an attorney for advice. Kruszka went to Diana's house within a week after signing the consent form and told Diana she wanted to withdraw her consent and also asked to see the baby. Diana responded that as far as she was concerned, Kruszka gave the baby to them, and he was the Williamses'. On September 11, 2006, Kruszka and Parker met with attorney Mark S. Lenyo. The next day, Kruszka and Parker met with the Williamses and indicated they wanted to withdraw their consents to adopt. Kruszka indicated she would speak with Christopher about it. Diana thereafter did not let Kruszka see the baby and did not answer the phone or return calls when Kruszka telephoned. On September 15, 2006, Kruszka and Parker executed their Motion to Withdraw Consent and Motion to Contest Adoption.

On October 25, 2006, the Williamses filed a motion for summary judgment with respect to Parker's motion to withdraw consent. The Williamses argued that Parker was prohibited under Ind. Code Ann. § 31-19-3-4 (West, PREMISE through 2007 1st Regular

Sess.) from establishing paternity because he did not file a paternity action within thirty days of receiving notice of the adoption petition. On December 8, 2006, the court granted summary judgment in favor of the Williamses as to Parker.

A hearing was scheduled for January 17, 2007 on Kruszka's petitions. In late December, the Williamses' counsel withdrew from the case and replacement counsel sought a continuance of the hearing. Kruszka opposed the continuance, noting that the Williamses refused to permit Kruszka to see the child and "refused to even allow the biological mother to view photographs of her baby." *Appellants' Appendix* at 27. The hearing was held on March 14, 2007. Pending a decision on Kruszka's petitions, on March 16 the court issued an order granting parenting time to Kruszka in the amount of ninety minutes per day, two days per week. On June 5, 2007, the trial court issued findings of fact and conclusions of law granting Kruszka's motion to withdraw consent, granting Kruszka's motion to contest the adoption of Infant K. by the Williamses, dismissing the Williamses' adoption petition, and awarding custody of Infant K. to Kruszka. Further facts will be supplied where relevant.

The Williamses contend the trial court's findings were not supported by the evidence and that its conclusions "were in direct conflict with the stringent requirements of the Indiana adoption statutes." *Appellants' Brief* at 12.

The challenged order was issued following a hearing without a jury and was accompanied by findings and conclusions. Pursuant to Indiana Trial Rule 52(A), "[o]n appeal of claims tried by the court without a jury ... the court on appeal shall not set aside

the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." When a trial court's judgment is accompanied by specific findings and conclusions, we apply a two-tiered standard of review. *Anthony v. Indiana Farmers Mut. Ins. Group*, 846 N.E.2d 248 (Ind. Ct. App. 2006). We construe the findings liberally in support of the judgment and first consider whether the evidence supports those findings. *Id*. Findings are clearly erroneous when a review of the record leaves us firmly convinced that a mistake has been made. *Id.* Next, we must determine whether the findings support the judgment. *Id*. A judgment is clearly erroneous when the findings of fact and conclusions thereon do not support it. *Id*. We will disturb the judgment only when there is no evidence supporting the findings or the findings fail to support the judgment. *Id*. In performing this review, we do not reweigh the evidence and consider only the evidence favorable to the trial court's judgment. *Id*.

The particular clearly erroneous standard to be used depends upon whether the party is appealing a negative or an adverse judgment. *Id*. In the instant case, the Williamses appeal from an adverse judgment because they were the party defending against Kruszka's motions to withdraw consent and to contest the adoption and thus did not bear the burden of proof.

> When the trial court enters findings in favor of the party bearing the burden of proof, the findings are clearly erroneous if they are not supported by substantial evidence of probative value. Moreover, we will reverse such a judgment even where we find substantial supporting evidence, if we are left with a definite and firm conviction a mistake has been made.

Id. at 252 (quoting *Romine v. Gagle*, 782 N.E.2d 369, 376 (Ind. Ct. App. 2003), *trans. denied*) (internal citations omitted).

For a parent's consent to adoption to be valid, it must be voluntary. Consent is voluntary if it is an act of the parent's own volition, free from duress, fraud, or any other consent-vitiating factors, and if it is made with knowledge of the essential facts. *In re Adoption of M.L.L.*, 810 N.E.2d 1088 (Ind. Ct. App. 2004). The issue of an invalid consent may be raised by a petition to withdraw consent and the burden of proof falls on the petitioner. I.C. § 31-19-10-0.5 (West, PREMISE through 2007 1st Regular Sess.). "'[E]motion, tensions, and pressure are ... insufficient to void a consent unless they rise to the level of overcoming one's volition.'" *Adoption of M.L.L.*, 810 N.E.2d at 1093 (quoting *In the Matter of Adoption of Hewitt*, 396 N.E.2d 938, 942 (Ind. Ct. App. 1979)).

We begin with several findings that the Williamses claim are improper or have no support in the record. They first claim the finding that Parker "plans to be involved as [Infant K.'s] father" is improper because Parker did not have standing to contest the adoption inasmuch as his petition to withdraw consent was dismissed via the granting of the Williamses' motion for summary judgment on that issue. We note first that Parker did not appear as a petitioner at the beginning. His motion to withdraw consent had been denied for lack of timeliness, which meant he could not withdraw his legal consent to the adoption. It did not mean, however, that he was thereby precluded from testifying on Kruszka's behalf, or indeed that his future relationship with Infant K. would be irrelevant

in the event the trial court granted Kruszka's motion to withdraw consent. Thus, although we agree that Parker did not have standing to contest the adoption, his testimony did not constitute a formal, legal adoption contest and thus was not impermissible.

Next, the Williamses contend the finding, "Christy felt pressured and harassed by Diana and she asked Diana to not call her anymore" is not supported by the evidence. *Appellants' Appendix* at 6. In fact, that is precisely what Kruszka stated during her testimony. We are not free to second-guess the trial court's assessment of the truthfulness of that assertion. *Anthony v. Indiana Farmers Mut. Ins. Group,* 846 N.E.2d 248. We believe the real gist of the Williamses' claim with respect to this finding is that even if true, it does not support the granting of Kruszka's motion to withdraw consent. Standing in isolation and without regard to any other evidence presented, that is correct. There were, however, other grounds upon which to permit Kruszka to withdraw her consent.

There was much evidence adduced at the hearing concerning the status of the Williamses' marital relationship. In the home study, the Williamses told Slabach they lived in a home on Ballard Street in Mishawaka. That was, in fact, Diana's place of residence. Christopher, however, had not lived there for four or five years. In other words, the couple had been separated and living separately for four or five years. The evidence revealed that the Williamses actively concealed that fact from Slabach. For her part, Kruszka was aware that the Williamses maintained separate residences, but "still thought they were perfectly happy[.]" *Transcript* at 169. She was not aware that their

relationship was “as bad as it [was]”. *Id*. Christopher indicated during the home study that he lived at the Ballard Street address and had for six years. They indicated they were separated only during Christopher’s business trips. In every way, they presented themselves as happily married. The Williamses sought to explain at the hearing how most of the statements to the Villages that created the impression of a close relationship were technically correct. This does not change the fact that the information was misleading in that it clearly created a false impression – an impression that would facilitate the Williamses’ goal of adopting Infant K. Kruszka also was not aware that Christopher was seeing a psychiatrist and taking medicine for depression. Further, the Williamses failed to divulge to Kruszka or in the home study that they had heavy credit card debt.

Kruszka indicated at the hearing that the foregoing information would have changed her decision to consent to the Williamses adopting her baby. Indeed, Slabach testified that the fact that the Williamses were separated was “significant” to him as well, *Transcript* at 67, and could possibly have affected his recommendation regarding their petition to adopt. Slabach also testified that the fact that Christopher was seeing a psychiatrist for depression would at least require follow-up and might affect the recommendation.

The cumulative effect of the information that was withheld or concealed from Kruszka is of such a nature that it implicates the voluntariness of her consent. As indicated above, consent is not voluntary if it is made without knowledge of the essential

facts. *See In re Adoption of M.L.L.,* 810 N.E.2d 1088. We conclude the information withheld from Kruszka may be deemed essential under these circumstances. Therefore, the grant of Kruszka's consent to withdraw consent is sustainable on the basis that her consent was not voluntary. We are aware that the trial court did not explicitly grant the motion on that basis, but instead granted it merely reciting the statutory criteria, i.e., the petition to withdraw was timely filed and seeking withdrawal was in Infant K.'s best interest. Nevertheless, a considerable amount of evidence and several of the trial court's findings of fact were relevant to that issue (e.g., "Christopher and Diana didn't inform Christy that they were living in separate households"). *Appellants' Appendix* at 7. Thus, we conclude that it may be affirmed on that basis.

Moreover, the ruling is also sustainable on the statutory basis cited by the trial court. That is, under I.C. § 31-19-10-3, a consent to adopt must be filed within thirty days after it is signed. Kruszka clearly met that requirement. Kruszka was required to prove by clear and convincing evidence that seeking withdrawal was in Infant K.'s best interest. *See* I.C. § 31-19-10-3(a)(1). Kruszka presented clear and convincing evidence that the initial placement of Infant K. with the Williamses was based upon, at best, incomplete information about their circumstances and thus that withdrawal of Kruszka's consent and further fact-finding on all matters related to Infant K.'s placement was in the child's best interest. The Williamses' assertion that "[t]o allow a birth mother to withdraw her valid consent to adoption just because she says 'I am stable now' is to eviscerate the entire adoption statutory scheme" not only begs the question, but also

mischaracterizes the bases upon which the petition to withdraw consent was granted. The trial court did not err in granting Kruszka's motion to withdraw consent.

The remaining ruling arguably challenged by the Williamses is the granting of Kruszka's motion to contest the Williamses' adoption of Infant K. We say "arguably" because the Williamses do not devote any appreciable portion of their argument to the merits of that ruling, concentrating instead on the motion to withdraw consent. *Appellants' Brief* at 20. To the extent the granting of the motion to contest is challenged, it is in the form of the contention that placing the child with the Williamses was in the child's best interest, i.e.:

> Diana and Christopher parented and cared for the child from the day of his birth until the date the trial court ordered them to turn over the child to Ms. K. That, combined with their plans to "give him a caring, loving, home, with the nurturing and stability that he deserves" should have been a primary consideration for the court to include in its determination of what would be in the child's best interest.

Appellants' Brief at 20. Infant K.'s best interest was an overarching criterion in the various matters before the court, including Kruszka's motion to withdraw her consent, *see* I.C. § 31-19-10-3(a)(1), her motion to contest the adoption, *see* I.C. § 31-19-10-6(1)(A), and the decision whether to dismiss the Williamses' petition for adoption. *See id*. With respect to the motion to contest, the Williamses contend the "findings of fact were not sufficiently supported by the evidence for the court to reach the conclusion that Ms. Kruszka proved by clear and convincing evidence that it was in the child's best interest that her … motion to contest should be granted." *Appellants' Brief* at 20.

The evidence shows that the strength of the Williamses' marital relationship was questionable in that they had been separated for several years before commencing the attempt to adopt and that they did not live in the same residence until approximately one week before Infant K.'s birth. Coupled with the fact that they actively misrepresented to Slabach the nature of their marital relationship and the status of their living arrangement, the timing of Christopher's move from his apartment back into Christy's house strongly suggests it was prompted more by strategic considerations related to the adoption than by a change in the tenor of the couple's marital relationship. In addition to the Williamses' lack of candor with Slabach, the evidence shows that Christopher has medical and emotional issues that, although perhaps not enough by themselves to counsel against the adoption, are causes of concern. Finally, there was evidence that the Williamses have significant credit card debt.

The evidence supports the findings that very soon after signing the consent to adopt, Kruszka changed her mind and wanted to keep her child. She is gainfully employed and is pursuing a degree in business management. Parker is Infant K.'s biological father and wants to have a relationship with his child. Parker is gainfully employed and owns his own home. He and Kruszka are able to provide medical insurance for Infant K. through their respective places of employment. While she finishes college, Kruszka plans to live with her parents, which is a suitable home environment for Infant K. Kruszka has another child and the placement of Infant K. with Kruszka "offers an opportunity of [Infant K.] to have a sibling relationship [sic] with

[that child]." *Appellants' Appendix* at 9. The foregoing evidence demonstrates that granting Kruszka's motion to contest was in Infant K.'s best interest.

Judgment affirmed.

MATHIAS, J., and ROBB, J., concur.