

Appellant-petitioner C.T., by his next friend, Armagene B. Smith, appeals from the juvenile court's order dismissing his petition to establish paternity. Because Smith admits that C.T. has been adopted by her husband, her petition to establish paternity must fail as a matter of law. We also conclude, however, that the juvenile court erred in ordering Smith to make monthly payments of \$100 for the attorney fees of appellee-respondent Donald Golden, Jr., inasmuch as it found her to be indigent for the purposes of court costs and filing fees and there is no indication in the record that her circumstances have changed. Therefore, we affirm in part, reverse in part, and remand with instructions.

FACTS

C.T. was born to Smith on November 29, 1991. In May 1991, Smith married the man whom she believed to be C.T.'s biological father. In July 1993, that marriage ended in divorce. Subsequently, Smith remarried, and the parental rights of Smith's ex-husband with respect to C.T. "were terminated" when Smith's second husband adopted C.T. Appellant's App. p. 12. At some point, "during a routine gathering of medical records," Smith realized that the date of C.T.'s conception had been a month earlier than she had previously believed it to be, meaning that Golden is allegedly C.T.'s biological father rather than Smith's first husband. Id.

On November 18, 2005, Smith filed a petition to establish paternity naming herself as the petitioner and Golden as the respondent. The juvenile court struck Smith's petition for failing to name C.T. as the petitioner by next friend Smith, instructing her to file an amended petition with a corrected caption. Also on November 18, 2005, the juvenile

court found that Smith was without sufficient funds to pay court costs and waived those fees. On January 4, 2006, Smith filed an amended petition to establish paternity, naming herself as the petitioner and Golden and C.T. “by Next Friend” as respondents. Appellant’s App. p. 11.

On January 27, 2006, Golden propounded interrogatories and a request for production on Smith. Smith refused to respond to the discovery and on January 28, 2006, sent an e-mail to Golden’s attorney stating, among other things, that “there is no further need to communicate except for the purposes of obtaining a DNA test with your client. All request[s] for interrogatories and production of documents will be denied until your client has submitted to DNA testing.” Appellee’s App. p. 23. On January 30, 2006, Smith sent another e-mail to Golden’s attorney, emphasizing that the discovery requests

will continually be denied until after DNA testing has taken place and the results revealed. The only reason that I desire contact from you outside of court is to let me know that your client has consented to DNA testing, otherwise, I do not wish to have any further communication with you outside of court.

Id. at 24. On February 3, 2006, Golden filed a motion to compel and request for sanctions, which was ultimately scheduled for a hearing on March 14, 2006.

On February 15, 2006, Golden filed a motion to dismiss the petition based on Trial Rule 12(B)(6), arguing that the stepparent adoption of C.T. precludes a determination of paternity herein and that because Smith filed the petition in her name, rather than in

C.T.'s, it is barred by the two-year statute of limitations.¹ The hearing on the motion to dismiss was scheduled for June 20, 2006. Smith filed a motion to invert the two hearing dates; in other words, she requested a hearing on the motion to dismiss on March 14 and a hearing on the motion to compel on June 20. The juvenile court denied her motion.

On March 14, 2006, at the hearing scheduled on Golden's motion to compel and for sanctions, Smith failed to appear. At the hearing, Golden presented arguments—at the juvenile court's request—regarding his motion to dismiss in addition to those regarding his motion to compel. At the end of the hearing, the juvenile court dismissed Smith's petition with prejudice, finding that the petition was filed outside the statute of limitations and that the stepparent adoption of C.T. precludes a determination of paternity.

On March 16, 2006, Golden filed a petition for attorney fees. On March 20, 2006, the juvenile court granted the motion, ordering Smith to pay Golden's attorney fees in the amount of \$1,778.77, reducing the amount to a judgment in favor of Golden's attorney, and requiring Smith to pay \$100 per month until the attorney is paid in full. Smith filed a motion to correct error, which the juvenile court denied on March 27, 2006. Smith now appeals.

¹ Although Smith failed to draft the caption in her amended petition correctly, it is apparent that she attempted to follow the juvenile court's instructions and that her intent is to bring this petition in C.T.'s name rather than her own. Consequently, we decline to dismiss her petition based on the two-year statute of limitations that applies to paternity petitions brought by the biological mother.

DISCUSSION AND DECISION

I. Dismissal of Petition

Smith argues that the juvenile court erred in dismissing her petition pursuant to Trial Rule 12(B)(6).² We apply a de novo standard of review to the grant of a Rule 12(B)(6) motion to dismiss for failure to state a claim. Paniaguas v. Endor, Inc., 847 N.E.2d 967, 969 (Ind. Ct. App. 2006). A dismissal under this rule is proper only if the allegations in the complaint are unable to support relief under any set of circumstances. Id. In determining whether the complaint was properly dismissed, we may look only to the complaint, taking all allegations as true, and may not examine any other evidence in the record. Id.

Here, Smith avers in her petition that the parental rights of her first husband were terminated with respect to C.T. when her second, presumably current, husband adopted the child. Appellant's App. p. 12. Adoption establishes a family unit, "sever[ing] the child entirely from its own family tree and engraft[ing] it upon that of another." Matter of Adoption of T.B., 622 N.E.2d 921, 924 (Ind. 1993) (quoting Matter of Adoption of Thomas, 431 N.E.2d 506, 513 (Ind. Ct. App. 1982)). As a result of the adoption, the adopted child becomes the legal child of the adoptive parent. T.B., 622 N.E.2d at 924. Indiana Code section 31-19-15-1(a) provides that the biological parent of an adopted

² Smith argues that we should reverse the dismissal of her petition because the juvenile court heard argument and ruled on Golden's motion to dismiss at the hearing scheduled on the motion to compel. But a trial court is required neither to conduct a hearing nor to give a party an opportunity to respond before it grants a motion to dismiss pursuant to Rule 12(B)(6). Browning v. Walters, 620 N.E.2d 28, 32 (Ind. Ct. App. 1993). Thus, the juvenile court did not err in ruling on the motion before Smith had a chance to respond.

child is: “(1) relieved of all legal duties and obligations to the child; and (2) divested of all rights with respect to the child”³

Here, even if Golden is C.T.’s biological father, the adoption of C.T. by Smith’s husband relieved Golden of all legal duties and obligations and divested him of all rights with respect to the child. There is no basis, therefore, for Smith’s petition to establish paternity, inasmuch as C.T.’s biological father, whoever that may be, has no legal relationship with C.T. and no obligation to make child support payments on his behalf. Thus, the juvenile court properly dismissed Smith’s petition for failure to state a claim upon which relief may be granted.

II. Attorney Fees

Smith argues that the juvenile court erred in ordering her to pay Golden’s attorney fees. In particular, she emphasizes that the juvenile court found that she was indigent for the purpose of paying court costs and filing fees. Indeed, nowhere in the record is there an indication that Smith’s circumstances have changed or that the juvenile court evaluated her ability to pay the attorney fees at issue. We must conclude, therefore, that the juvenile court erred in requiring Smith to make monthly payments of \$100 when it had already found her to be indigent and has made no determination to the contrary. Cf. Purifoy v. State, 821 N.E.2d 409, 414-15 (Ind. Ct. App. 2005) (holding that if “a

³ One exception to this rule applies herein and provides that if the adoptive parent is married to a biological parent of the adopted child, the rights and obligations of that biological parent are not affected by the adoption. I.C. § 31-19-15-2. Thus, Smith’s relationship to C.T. was not affected when her husband adopted the child.

defendant is found to be indigent as to the subject of attorney's fees, then he is also as a matter of law indigent as to any fines and costs that are assessed"), trans. denied.

We also conclude, however, that pursuant to Trial Rule 37(D), a trial court is obligated to award attorney fees to the party bringing a successful motion to compel discovery and for sanctions. The record reveals that Smith wholly failed to respond to Golden's discovery, and Smith has offered no evidence to the contrary or explanation for her refusal. Thus, the trial court properly ordered Smith to pay Golden's attorney fees in the amount of \$1,778.77. It must, however, hold a hearing regarding her ability to pay the judgment before ordering her to do so.

As to Golden's request that Smith be responsible for paying his appellate attorney fees, we observe that Smith has acknowledged from the beginning of this litigation that C.T. has been adopted by her husband. Notwithstanding her arguments to the contrary, it is so very apparent that his adoption nullifies his right to seek to establish paternity in Golden that we must conclude that Smith's appeal is frivolous. Consequently, we order that Smith is responsible for Golden's appellate attorney fees in an amount to be determined by the trial court. No requirement of payment can be made, however, until there is a hearing regarding her ability to do so.

The judgment of the juvenile court is affirmed in part, reversed in part, and remanded with instructions to calculate the amount of appellate attorney fees due to Golden and to hold a hearing regarding Smith's ability to pay Golden's trial and appellate attorney fees.

VAIDIK, J., and CRONE, J., concur.