No. 25894 - William D.A., Sr., v. Shawna Renee A. and Stephen Everett A.; and Renee A. C.

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January 6, 2000
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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

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SUPREME COURT OF APPEALS
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Davis, J., concurring:

The majority opinion in this case is absolutely correct. While it is true that the Appellant's circumstances at the time she consented to the adoption were genuinely unfortunate, we must not let the sympathetic story of one woman who happened to be down on her luck unravel the entire scheme of adoption law in this state. These laws have been enacted to protect the interests of *all* the parties involved in an adoption proceeding, primarily the children. *See, e.g.*, W. Va. Code § 48-4-3 (1997) (Repl. Vol. 1999) (setting forth persons whose consent or relinquishment is required for adoption, and defining specific circumstances under which court may order adoption without consent or relinquishment); W. Va. Code § 48-4-3a (1997) (Repl. Vol. 1999) (providing that no consent or relinquishment may be executed prior to seventy-two hours after birth of child to be adopted, and enumerating persons who must witness and acknowledge a consent or relinquishment); W. Va. Code § 48-4-6(a) (1997) (Repl. Vol. 1999) (giving prospective adopting parent right to receive birth, medical and family medical history of child); W. Va. Code § 48-4-6(b) (requiring that child live with prospective adopting parent for no less than six-months prior to hearing on petition for adoption); W. Va. Code § 48-4-8 (1997) (Repl. Vol. 1999) (designating who is to receive notice of adoption proceeding); W. Va. Code § 48-4-9(a) (1997) (Repl. Vol. 1999) (stipulating that trial court shall decree adoption only if it first

determines, *inter alia*, that petitioner(s) are fit to adopt child and adoption is in best interests of child).

This statutory scheme includes provisions to protect natural parents who, through fraud or duress, unwittingly consent to place their children for adoption. *See* W. Va. Code § 48-4-5(a)(2) (1997) (1999) (allowing revocation when "[t]he person who executed the consent or relinquishment proves by clear and convincing evidence, in an action filed either within six months of the date of the execution of the consent or relinquishment or prior to the date an adoption order is final, whichever date is later, that the consent or relinquishment was obtained by fraud or duress"). In this case, the Appellant took advantage of this statutory provision, intervened in the adoption proceeding and put forth her evidence. As the Appellant presented her case, the trial judge had the advantage of observing, first hand, subtleties such as the Appellant's demeanor during her testimony in the proceedings below.

With the benefit of such observations, the trial court determined that the Appellant's evidence was insufficient and her testimony was not credible. Indeed, the record submitted on appeal reveals that the Appellant's evidence consisted of little more than her own unsupported allegations. Witnesses who testified on her behalf had little direct knowledge of the relevant events. Thus, her credibility was of utmost importance to her case. Credibility determinations are nearly impossible to make from a sterile appellate

record, and are better left to the trial court. "'[W]hen findings are based on determinations regarding the credibility of witnesses, Rule 52(a) demands even greater deference to the trial court's findings[.]'" *In re Tiffany Marie S.*, 196 W. Va. 223, 231, 470 S.E.2d 177, 185 (1996) (quoting *Anderson v. Bessemer City, N.C.*, 470 U.S. 564, 575, 105 S. Ct. 1504, 1512, 84 L. Ed. 2d 518, 529 (1985). With regard to the Appellant's credibility, the lower court expressly found that "she [was] unable to recall details to support her allegations even though her attorney attempt[ed] to lead her testimony. In addition, she somewhat overplay[ed] her testimony to be convincing and dramatic."[1] To permit a natural parent to revoke her consent to adoption under these circumstances would seriously undermine adoption law in this state.

When addressing issues involving children, especially custody issues, consideration of the best interests of the child must be paramount. *See Kessel v. Leavitt*, 204 W. Va. 95, __, 511 S.E.2d 720, 799 (1998) ("the natural right of parents to the custody of their children is always tempered with the courts' overriding concern for the well-being of

[1]In addition, the trial court specifically found that (1) according to the notary who witnessed the Appellant's signature on the Consent to Adoption form, the Appellant conducted herself rationally and expressed no reservations when executing the document; (2) the Appellant is a high school graduate who could read and write; (3) the Consent to Adoption form clearly stated that the Appellant was giving her "full and free consent to the adoption . . . ," that it was irrevocable, and that she believed the adoption to be in the best interests of both of her children; (4) the Appellant testified, under oath, that she understood all of the words contained in the Consent to Adoption and that all of the statements therein were true at the time she signed the form; and (4) it was in the best interests of the children to allow the Appellee's to adopt them.

the children involved."); Syl. pt. 7, *In re Brian D.*, 194 W. Va. 623, 461 S.E.2d 129 (1995) ("Cases involving children must be decided not just in the context of competing sets of adults' rights, but also with a regard for the rights of the child(ren)."); *Michael K.T. v. Tina L.T.*, 182 W. Va. 399, 405, 387 S.E.2d 866, 872 (1989) ("[T]he best interests of the child is the polar star by which decisions must be made which affect children." (citation omitted)); W. Va. Code § 48-4-9(a) (stipulating that a trial court shall decree adoption only if it first determines, *inter alia*, that petitioner(s) are fit to adopt child and adoption is in best interests of child). Being placed in the middle of a custody battle between natural and adoptive parents is not in the best interests of any child. In an effort to avoid such conflicts, natural parents must be encouraged, indeed, required, to seriously consider the full consequences of a decision to place a child for adoption *before* the adoption proceedings are begun. Natural parents must also know that, absent the occurrence of one of a very limited number of statutory exceptions,[2] their decision is final. To adopt the result advocated by the dissent in this case would send the message that natural parents need not be too concerned about their decision to place their child for adoption because that decision is easily revoked.

[2]*See* W. Va. Code § 48-4-5 (1997) (Repl. Vol. 1999).