

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

FILED

In Re: Adoption of A.P.B.

No. 11-0106 (Wirt County 10-A-1)

December 2, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Biological Mother appeals the circuit court's order refusing her objection to the adoption of A.P.B. and granting respondents' petition for adoption. This appeal was timely perfected by counsel, with petitioner's appendix accompanying the petition. The respondents, the adoptive parents of A.P.B., have filed a response.

This Court has considered the parties' briefs and the record on appeal. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this case is appropriate for consideration under the Revised Rules. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

Petitioner Biological Mother has given birth to three children, none of whom are currently in her custody. The child in question, A.P.B., is her third child, and has no father named on the birth certificate. When the child was just over a year old, petitioner sought out the respondents and asked them to care for A.P.B. Petitioner Biological Mother signed a Consent for Adoption in the presence of several witnesses, including a notary, allowing respondents to adopt A.P.B. At the time, the evidence shows that Petitioner Biological Mother was addicted to drugs, but the majority of the testimony shows that she was not under the influence at the time she signed the Consent. Although the form clearly reads "Consent to Adoption," Petitioner Biological Mother argues that she thought she was signing a consent for medical treatment for the child. The child receives disability benefits, and even after the consent was signed, Petitioner Biological Mother cashed one of the checks for such benefits and kept the money. Upon finding that the Respondent Adoptive Parents had been substituted as the payees for the purposes of the child's disability check, Petitioner Biological Mother contacted the Respondent Adoptive Parents in anger, and has had no contact with A.P.B. or the adoptive parents since that time in September 2009.

After the Respondents filed their Petition for Adoption, Petitioner filed an objection, although she had not had contact with the child for several months. The circuit court found that the Consent for Adoption was valid, and overruled Petitioner Biological Mother's objection. The circuit court found that the Consent for Adoption generally meets all of the West Virginia Code requirements. Although it does not specifically inform Petitioner of the consequences of misidentifying the biological father, there is no evidence that she did so. Any error on this form is inconsequential under the facts of this case. Further, there is no requirement that any agreement on future contact between the biological parent and the child be reduced to writing. Further, the circuit court found that the Consent for Adoption was not obtained by fraud or duress. The personal circumstances leading to the decision to allow adoption do not justify revocation of the consent. The circuit court found that the respondents relied on the consent, have a bond with the child, and the best interests of the child require the child to remain with respondents.

Fraud Claim

On appeal, petitioner argues that the circuit court erred in concluding that there was insufficient evidence of fraud which induced petitioner to sign the Consent for Adoption. The legal requirements for revoking a written consent for adoption or relinquishment are found in West Virginia Code § 48-22-305:

(a) Parental consent or relinquishment, whether given by an adult or minor, may be revoked only if:

(1) The person who executed the consent or relinquishment and the prospective adoptive parent named or described in the consent or the lawyer for said adoptive parent, or the agency in case of relinquishment, agree to its revocation prior to the entry of an adoption order; or

(2) The 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; or

(3) The person who executed the consent or relinquishment proves by a preponderance of the evidence, prior to the entry of an adoption order, that a condition allowing revocation as expressly set forth in the consent or relinquishment has occurred; or

(4) The person who executed the consent or relinquishment proves by clear and convincing evidence, prior to the entry of an adoption order, that the consent or relinquishment does not comply with the

requirements set forth in this article.

(b) If the custody of a child during the pendency of a petition to revoke a consent or relinquishment is in issue, the court shall conduct a hearing, within thirty days of service of notice upon the respondent, to determine the issue of temporary custody. The court shall award such custody based upon the best interests of the child.

In the instant case, petitioner argues that the Consent for Adoption was invalid on the basis of fraud. In the context of revoking consent for an adoption, proof of duress “means a condition that exists when a natural parent is induced by the unlawful or unconscionable act of another to consent to the adoption of his or her child. Mere ‘duress of circumstance’ does not constitute duress . . .” Syl. Pt. 2, in part, *Wooten v. Wallace*, 177 W.Va. 159, 351 S.E.2d 72 (1986). The circuit court noted this standard, but petitioner does not raise duress in seeking to set aside the agreement.

It is well settled law that “[t]he essential elements in an action for fraud are: ‘(1) that the act claimed to be fraudulent was the act of the defendant or induced by him; (2) that it was material and false; that plaintiff relied upon it and was justified under the circumstances in relying upon it; and (3) that he was damaged because he relied upon it.’” Syl. Pt. 1, *Lengyel v. Lint*, 167 W.Va. 272, 280 S.E.2d 66 (1981) (citations omitted). Further, this Court has found that “[a]n adoption of a child should not be revoked merely because the natural parent or parents, who formally consented to the adoption, subsequently experience a change of mind on the subject. In the absence of fraud in the adoption proceedings or a showing that the best interests of the child would be subserved by annulling the adoption, the court should refuse to disturb the same.” *Lane v. Pippin*, 110 W.Va. 357, 158 S.E. 673 (1931), Syllabus.” Syl. Pt. 1, *In the Matter of: Adoption of Truslow*, 167 W.Va. 696, 280 S.E.2d 312 (1981). Petitioner now argues fraud, rather than duress, but the circuit court used the terms interchangeably, and found no evidence of either. Despite any intellectual limitations of the petitioner, she made verbal representations to the respondents and the notary public that she understood that she was consenting to an adoption and that she was relinquishing her parental rights. The Consent for Adoption is clearly titled “Consent for Adoption.” Petitioner filled in blanks in the form, and her claims that she thought she was only signing a medical consent form are unsubstantiated by the evidence in this case. Additionally, there is no evidence that Petitioner was forced to execute the document or induced to do so by false promises. This Court finds no error in the circuit court’s finding that there was insufficient evidence of fraud.

Influence of Drugs and/or Alcohol

Petitioner also argues that the circuit court's finding that "[petitioner birth mother] knowingly, intelligently and voluntarily executed the Consent for Adoption without the influence of drugs and/or alcohol" was clearly erroneous and was not supported by credible evidence. The evidence in this matter shows that an independent third party, the notary public who witnessed the signing of the Consent to Adoption, found that Petitioner Biological Mother was not under the influence of any intoxicants, as he questioned her repeatedly to be sure of her intentions. Further, petitioner's friend who had been using drugs and alcohol with her previously testified that they had not been using drugs or alcohol on the date that petitioner signed the documents. Most importantly, Petitioner Biological Mother made no effort to regain custody of her child in the eight months between signing the consent and filing her objection to the adoption. This Court finds no error in the circuit court's finding that the Consent for Adoption was "knowingly, intelligently and voluntarily executed."

Deficiencies in the Consent for Adoption

Next, petitioner argues that the circuit court erred in concluding that the legal deficiencies in the Consent for Adoption were inconsequential. Adoptions in West Virginia are governed by statute. There are a number of detailed and specific requirements for the contents of a Consent for Adoption found in West Virginia Code § 48-22-303. The primary deficiencies alleged by petitioner are that the document failed to advise Petitioner Biological Mother of the ramifications of misidentifying the birth father as per West Virginia Code § 48-22-303(a)(13)(iv), and that petitioner was not provided a copy of the document as per West Virginia Code § 48-22-303(a)(13)(i).

The deficiencies in the Consent for Adoption were inconsequential and do not warrant revocation of the consent. First, Petitioner Biological Mother never misidentified the biological father. She told the respondents that it could be one of several men, and based on this, a notice of publication was placed in the newspaper. She never identified a father until her testimony, and due to the publication, the circuit court found that proper notice was given. Secondly, Respondent Adoptive Mother testified that she offered a copy of the Consent for Adoption to the Petitioner Biological Mother, who refused it. She cannot now claim error when she would not allow respondents to comply with this element. Thus, this Court finds no error in the circuit court's holding that the deficiencies in the Consent for Adoption are inconsequential.

Significance of the Omission of Reference to an “Open Adoption”

Finally, Petitioner Biological Mother argues that the circuit court erred in concluding that there was no legal significance to the omission from the Consent for Adoption of the alleged promise that this would be an “open adoption” and in failing to consider that omission in any regard. There is no provision of the West Virginia Code requiring that there be any written agreement pertaining to additional contact between the biological parent and the child. Petitioner’s allegations that she has been prevented from seeing the child are contrary to the evidence. In fact, the child’s biological grandmother has visited him. The failure to include such a reference is inconsequential and does not justify revoking the consent, and this Court finds no error in the omission of a reference to the alleged agreement that this would be an “open adoption.”

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: December 2, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh