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IN THE COURT OF APPEALS OF INDIANA

In Re: The Adoption of E.E.;
R.P. (Father),
Appellant-Respondent

v.

E.C.,
Appellee-Petitioner.

February 28, 2023

Court of Appeals Case No. 22A-AD-732

Appeal from the Adams Circuit Court

The Honorable Chad E. Kukelhan, Judge

Trial Court Cause No. 01C01-2006-AD-20

Opinion by Judge Pyle

Judges Bradford and Kenworthy concur.

Pyle, Judge.

Statement of the Case

[1] R.P. ("Father") appeals the trial court's order that granted E.C.'s ("E.C.") petition to adopt Father's daughter, E.E. ("E.E."). Father specifically argues

that the trial court erred in granting E.C.'s petition to adopt E.E. because his consent to the adoption was not valid. Concluding that Father's consent to the adoption was valid, we affirm the trial court's judgment.

[2] We affirm.

Issue

Whether Father's consent to the adoption was valid.

Facts

[3] In 2020, a pregnant A.E. ("Mother") asked thirty-seven-year-old E.C., who was the director of a daycare facility, to adopt E.E., Mother's unborn female child. In June 2020, before E.E.'s birth, E.C. filed a petition to adopt E.E. According to the petition, Mother had consented to the adoption, and E.C. would file Mother's written consent to the adoption following the birth of E.E. The petition further stated that E.E.'s father was unnamed. E.C. also filed a petition for temporary custody of E.E.

[4] E.E. was born in July 2020. The following day, the trial court entered an order awarding E.C. temporary custody of E.E., and E.C. took E.E. home from the hospital. E.E. has resided in E.C.'s home since that time.

[5] Shortly after E.E.'s birth, forty-year-old Father received notice of the pending adoption via publication and filed a motion to contest it. In September 2020, E.C. filed a motion to waive the requirement of Father's consent. According to E.C.'s motion, Father was unfit, and it was in E.E.'s best interest to dispense

with his consent to the adoption. The motion specifically alleged that Father had a "substantial criminal history and addiction to illegal substances[.]" (Father's App. Vol. 2 at 44). Father filed a response to E.C.'s motion to waive the requirement of his consent, and the trial court scheduled a hearing on the issue of consent.

[6] The following month, October 2020, the trial court granted Father supervised parenting time with E.E. pursuant to the Indiana Parenting Time Guidelines and ordered Father to pay child support to E.C. In October and November, Father cancelled six scheduled parenting time visits with E.E. and failed to pay E.C. child support. Father's last parenting time visit with E.E. was at the end of November 2020.

[7] Before the trial court held a hearing on E.C.'s motion to waive the requirement of Father's consent, Father told his counsel that he had decided to consent to the adoption. Father's counsel prepared the consent ("the Consent"), which provides as follows:

> WAIVER OF NOTICE AND CONSENT BY BIOLOGICAL PARENT FOR ADOPTION OF CHILD
>
> COMES NOW [Father], being first duly sworn upon his oath, deposes and states as follows:
>
> 1. That he is the biological father of [E.E.], born [in July 2020].
>
> 2. That he consents to the adoption prayed for herein and feels the same would serve the best interests of the child.

3. That this consent to adoption is made after due consideration and deliberation.

4. That he is fully aware of all implications of this waiver and consent and the legal effect of this document has been explained to him.

5. THAT HE SPECIFICALLY WAIVES ANY AND ALL FURTHER NOTICE OF SAID PROCEEDINGS.

6. That at the time of signing this Waiver of Notice and Consent, he is over the age of eighteen (18) years and not under the influence of any alcohol or drugs.

7. That he has not received, nor has he been promised any money from the adoptive parent or any party on their behalf either directly or indirectly.

8. That he has had adequate opportunity to seek legal counsel regarding this matter and he is fully aware of the legal consequences of him signing this Waiver and Notice of Consent.

9. THAT HE UNDERSTANDS THAT THIS CONSENT IS FINAL AND IRREVOCABLE UPON SIGNING.

(E.C.'s App. Vol. 2 at 70-71) (emphases in the original). Father signed the Consent at his home on November 25, 2020. He did not have the Consent notarized. After signing the Consent, Father emailed it to E.C. E.C. forwarded the Consent to her counsel, who filed it in the trial court. Father and E.C. also signed a stipulation terminating child support, which provided that the parties had agreed that E.C. would adopt E.E. and that Father's child support obligation would be terminated effective the date that he signed the consent. After signing the Consent and the stipulation terminating child support, Father

acted in accordance with the documents. He did not seek parenting time with E.E. or pay child support.

[8] The trial court scheduled a final adoption hearing for February 9, 2021. The day before the final hearing, seventy-five days after Father had signed the Consent, Father filed a request to withdraw his consent to the adoption. In this request, Father explained that he "no longer consent[ed] to the adoption, and wishe[d] this matter be set for a contested hearing." (E.C.'s App. Vol. 2 at 74). E.C. filed a response to Father's request.

[9] In April 2021, E.C. filed "A Motion to Dismiss or, in the alternative, for Summary Judgment" on Father's request to withdraw his consent to the adoption ("the April 2021 motion"). (Father's App. Vol. 2 at 40). In this motion, E.C. argued that Father's consent was properly executed, his consent was irrevocable, and he was unable to establish that the revocation of his consent would be in E.E.'s best interests. In support of the April 2021 motion, E.C. attached the Consent and the stipulation terminating child support.

[10] In May 2021, E.C. deposed Father. In this deposition, Father stated that he had owned a residential and commercial painting company for seven months and that he typically worked from 7:00 a.m. until 6:00 p.m. Monday through Saturday. Father also acknowledged that he had never paid court-ordered child support to E.C. or provided any other financial support for E.E. In addition, Father acknowledged that he was the parent of two adult children, he had an extensive criminal history, he had been addicted to drugs for twenty-two years,

and he had overdosed four different times on heroin. However, according to Father, he had not used heroin for eight months.

[11] Regarding the Consent, Father acknowledged that he had signed it and specifically identified his signature. In addition, Father acknowledged that he had reviewed the Consent with his counsel before signing it and that he had understood that he was consenting to E.E.'s adoption and waiving notice of any further proceedings in the matter. Father further acknowledged that he had not been under duress or under the influence of any alcohol or drugs at the time he had signed the Consent and that no one had promised him any money related to signing the Consent. Father also acknowledged that he had signed the Consent "of [his] own volition." (E.C.'s App. Vol. 2 at 42). When asked why he had filed a request to withdraw his consent, Father explained that he had "had a change of heart, basically, about the situation and [he] . . . wanted to have some post-adoption contact" with E.E. (E.C.'s App. Vol. 2 at 35). E.C. supplemented her April 2021 motion with a copy of Father's deposition.

[12] The day before the hearing on the April 2021 motion, Father filed a response wherein he argued that the April 2021 motion was untimely and that there was an issue of material fact regarding the validity of his consent. At the August 2021 hearing on this motion ("the August 2021 hearing"), Father specifically argued that the Consent was not valid because he had not signed it in the presence of a notary or any of the other entities set forth in INDIANA CODE § 31-19-9-2. In response to Father's argument, E.C. directed the trial court to *In re Adoption of Infant Child Baxter*, 799 N.E.2d 1057, 1062 (Ind. 2003), and argued

that although Father had not executed the Consent in the presence of any one of the entities specified in INDIANA CODE § 31-19-9-2, the validity of Father's consent had been satisfied by evidence that his signature was authentic and manifested a present intention to give E.E. up for adoption. E.C. pointed out that, in Father's deposition, Father had identified his signature on the Consent and that it manifested a present intention to give E.E. up for adoption.

[13] In September 2021, the trial court issued a detailed order that provides, in relevant part, as follows:

> 65. Pursuant to I.C. 31-19-9-2(a), "The consent to adoption may be executed at any time after the birth of the child, either in the presence of: (1) the court; (2) a notary public or other person authorized to take acknowledgments; or (3) an authorized agent of: (A) the department: or (B) a licensed child placing agency."
>
> 66. The primary purpose of a notary is to verify the identity of the person signing the documents, and this purpose was served in another manner.
>
> 67. "If the written consent is not executed in the presence of any one of six specified entities, the validity of the consent may nevertheless be satisfied by evidence that the signatures are authentic and genuine in all respects and manifest a present intention to give the child up for adoption." *In re Adoption of Infant Child Baxter*, 799 N.E.2d 1057 (Ind. 2003).
>
> 68. Here, [Father]'s statements under oath at his deposition verify that his signature on the consent to adoption was authentic, genuine, and manifested his present intention to give the child up for adoption.

> 69. Consent is voluntary when it is made "of the parent's own volition, free from duress, fraud, or any other consent-vitiating factor, and if it is made with knowledge of the essential facts." *Bell v. A.R.H.*, 654 N.E.2d 29, 32 (Ind. App. 1995); *Matter of Adoption of Hewitt*, 396 N.E.2d 938, 941 (Ind. App. 1979).
>
> 70. Again, the facts are indisputable that [Father]'s consent was voluntary when it was made. Per his deposition, his consent was made of his own volition, free from duress, free from fraud, and he was not promised anything in exchange for it.
>
> 71. Therefore, the Court finds the consent to be valid.

(Father's App. Vol. 2 at 29-30).

[14] After the trial court had issued this order, E.C. filed a motion asking the trial court to schedule a final adoption hearing. Before the trial court had scheduled the hearing, Father filed a motion asking the trial court to certify the September 2021 order for interlocutory appeal. Although the trial court granted Father's motion and certified its order for interlocutory appeal, in January 2022, this Court denied Father's motion to accept the order for interlocutory appeal. Thereafter, the trial court scheduled the final adoption hearing for March 2022.

[15] In February 2022, E.C. filed a motion to exclude Father from the final adoption hearing. The trial court granted E.C.'s motion and held the final adoption hearing as scheduled. Following the hearing, the trial court issued an adoption decree, which granted E.C.'s petition to adopt E.E.

[16] Father now appeals.

Decision

[17] Father argues that the trial court erred in granting E.C.'s petition to adopt E.E. Father specifically contends that his consent to the adoption was not valid. We disagree.

[18] In family law matters, we generally give considerable deference to the trial court's decision because we recognize that the trial court is in the best position to judge the facts and determine the credibility of the witnesses. *Matter of Adoption of E.M.M.*, 164 N.E.3d 779, 781 (Ind. Ct. App. 2021), *trans. denied*. Trial courts are also in the best position to "get a feel for the family dynamics[]" and "get a sense of the parents and their relationship with their children." *Id*. Accordingly, when reviewing an adoption case, we presume that the trial court's decision is correct, and the appellant bears the burden of rebutting this presumption. *Id*.

[19] Further, we will not disturb the trial court's decision in an adoption proceeding unless the evidence at trial leads to but one conclusion and the trial court reached the opposite conclusion. *Id*. at 781-82. We will neither reweigh the evidence nor reassess the credibility of the witnesses. *Id*. at 782. In addition, we will examine only the evidence most favorable to the trial court's judgment.

[20] Here, Father specifically argues that the Consent was not valid because he did not sign it in the presence of a notary or any of the other entities set forth in INDIANA CODE § 31-19-9-2. That statute provides, in relevant part, as follows:

> (a) The consent to adoption may be executed at any time after the birth of the child, either in the presence of:
>
> (1) the court;
>
> (2) a notary public or other person authorized to take acknowledgments; or
>
> (3) an authorized agent of:
>
> (A) the department; or
>
> (B) a licensed child placing agency.

I.C. § 31-19-9-2. We agree with the trial court that *Baxter*, 799 N.E.2d 1057 is dispositive.

[21] In the *Baxter* case, the biological mother became pregnant when she was seventeen years old. She and the eighteen-year-old biological father selected a family to adopt their unborn child. Biological parents and biological maternal grandparents signed consents to the adoption at a dinner with the adoptive parents. Thereafter, a notary public notarized the consents, which had not been signed in her presence. The foregoing took place before the child's birth.

[22] The child was born on September 7, 2000, and the adoptive parents took the child home from the hospital. Two weeks later, the biological mother and maternal grandmother contacted the adoptive parents to revoke their consent and reclaim custody of the child. The biological parents and maternal grandparents also filed a petition to dismiss the adoption petition. The trial court concluded that because the signatures of the biological parents and the maternal grandparents had not been executed in the presence of a notary public

as required by INDIANA CODE § 31-19-9-2, the consents were invalid. This Court affirmed. *In re Adoption of Infant Child Baxter*, 778 N.E.2d 417, 422 (Ind. Ct. App. 2002), *trans. granted*.

[23] The Indiana Supreme Court granted transfer and stated the issue as:

> whether the required written consents executed by the biological parents and maternal grandparents were valid in the face of the following provision of the Adoption Code:
>
> The consent to adoption may be executed at any time after the birth of the child either in the presence of:
>
> (1) the court;
>
> (2) a notary public or other person authorized to take acknowledgements; or
>
> (3) an authorized agent of:
>
> (A) the division of family and children;
>
> (B) the county office of family and children; or
>
> (C) a licensed child placing agency.
>
> Ind. Code § 31-19-9-2[, "the Consent Statute"].

Baxter, 799 N.E.2d at 1060.

[24] The Indiana Supreme Court noted that the Consent Statute was implicated in the case because although the consents bore the signature of the notary public, biological mother, biological father, and maternal grandparents had not been in the presence of the notary public when she notarized the consents. Further, the

consents had not been executed in the presence of any of the other five entities listed in the Consent Statute.

[25] The biological parents argued that the Consent Statute set forth a mandatory and exclusive regimen for executing consents to adoption. Thus, because the consents were not executed in the presence of any of the entities listed in the Consent Statute, the biological parents contended that the consents were not valid. On the other hand, the adoptive parents argued that the failure of the consents to meet the specifications set forth in the Consent Statute did not render the consents invalid but only denied the consents presumptive validity. According to the adoptive parents, because the Consent Statute provided that consents may be executed – rather than must be executed – in the presence of the specified entities, the adoptive parents were permitted to employ additional evidence of the consents' validity. The adoptive parents further argued that the biological parents' admissions that they had signed the consents, combined with the trial court's finding that the consents were signed knowingly and voluntarily, confirmed the validity of the consents.

[26] Our Indiana Supreme Court agreed with the adoptive parents and held that "if the written consent is not executed in the presence of any one of six specified entities, the validity of the consent may nevertheless be satisfied by evidence that the signatures are authentic and genuine in all respects and manifest a present intention to give the child up for adoption." *Id*. Although the trial court in *Baxter* had made no explicit findings in this respect, our supreme court noted that there appeared to be evidence in the record to warrant returning the

case to the trial court for a determination of whether the signatures on the consents were authentic and genuine in all respects and manifested a present intention to give the child up for adoption. *Id*. at 1063. Accordingly, our supreme court remanded the case to the trial court for a determination of whether the consents were authentic and valid even though they were not executed in the presence of any one of the six entities specified in the Consent Statute. *Id*.

[27] Here, as in *Baxter*, Father argues that his consent to E.E.'s adoption was not valid because he did not execute it in the presence of one of the entities specified in the Consent Statute. Applying the law set forth in *Baxter* to the facts of this case, we conclude that the validity of Father's consent may be satisfied by evidence that his signature was authentic and genuine in all respects and manifested a present intention to give E.E. up for adoption.

[28] Although the trial court in *Baxter* made no explicit finding that the signatures on the consents were authentic and genuine in all respects and manifested a present intention to give the child up for adoption, the trial court in this case did make such an explicit finding. Further, our review of the evidence reveals that it supports the trial court's finding. Specifically, in his deposition, Father identified his signature. In addition, Father acknowledged that he had reviewed the Consent with his counsel before signing it and that he had understood that he was consenting to E.E.'s adoption. Father also acknowledged that he had voluntarily signed the consent. Because Father's signature was genuine and manifested a present intention to give E.E. up for

adoption, the Consent was valid even though it was not executed in the presence of one of the entities specified in the statute. Accordingly, because the Consent was valid, the trial court did not err in granting E.C.'s petition to adopt E.E.[1, 2]

[29] Affirmed.

Bradford, J., and Kenworthy, J., concur.

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[1]We are compelled to note that the parties could have avoided protracted litigation in this matter by following the safeguards set forth in IND. CODE § 31-19-9-2. Because protracted litigation is rarely in a child's best interest, we encourage practitioners to follow the statutory process.

[2] In addition, Father argues that the trial court erred in granting the April 2021 motion because it was untimely. The gravamen of his argument is that because the title of this motion included "Motion to Dismiss," E.C. had to file the motion within twenty days after service of the prior pleading. *See* Ind. Trial Rule 12(B). However, the April 2021 motion was titled a motion to dismiss, *or in the alternative, a motion for summary judgment*. (Emphasis added). Summary judgment motions may be filed "after the expiration of twenty (20) days from the commencement of the action." T.R. 56(A). We also note that because the April 2021 motion included matters outside the pleadings, the trial court properly considered it as a motion for summary judgment. *See In re Estate of Bender*, 806 N.E.2d 59, 62 n.3 (Ind. Ct. App. 2004). The April 2021 motion was not untimely.

Lastly, Father argues that the trial court violated his right to due process when it excluded him from the final adoption hearing. This argument fails as well. "Generally stated, due process requires notice, an opportunity to be heard, and an opportunity to confront witnesses." *In re Adoption of K.M.*, 31 N.E.3d 533, 536 (Ind. Ct. App. 2015) (internal citation and quotation marks omitted). Here, Father received due process at the August 2021 hearing to determine the validity of the Consent. Following that hearing, the trial court concluded that the Consent was valid, which resulted in the termination of Father's parental rights. *See In re Adoption of J.M.*, 10 N.E.3d 16, 22 (Ind. Ct. App. 2014) (explaining that once the trial court concluded at the consent hearing that natural parents were unfit, the effect was a termination of their parental rights). The termination of Father's parental rights severed all Father's rights to E.E., including the right to attend any further proceedings concerning E.E. *See Matter of F.A.*, 148 N.E.3d 353, 358 (Ind. Ct. App. 2020) (explaining that a termination of parental rights severs all rights of a parent to his child). The trial court did not violate Father's right to due process when it excluded him from the final adoption hearing.