

No. 1-17-0703

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re ADOPTION OF X.G.)	Appeal from the
)	Circuit Court of
(C.B. and K.B.,)	Cook County.
)	
Petitioners-Appellees,)	
)	
v.)	
)	No. 16 COAD 385
X.G., a minor,)	
)	
Respondent, and)	
)	
F.L.,)	Honorable
)	LaGuina Clay-Herron,
Intervener-Appellant).)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Ellis and Justice Howse concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court’s decision that F.L. failed to show fraud or duress in the signing of his final and irrevocable waiver by clear and convincing evidence was not against the manifest weight of the evidence.
- ¶ 2 Intervener F.L. is the putative father of minor X.G., born February 10, 2016. Petitioners C.B. and K.B. have filed a petition to adopt the minor under the Illinois Adoption Act (Act). See

750 ILCS 50/1 *et seq.* (West 2016). Prior to the minor's birth, F.L. signed a "Final and Irrevocable Waiver of Parental Rights of Putative or Legal Father" (Waiver). The waiver operated to terminate F.L.'s parental rights to the minor. F.L. filed a motion in petitioners' adoption case to intervene and to have the waiver invalidated. Following a hearing, the trial court denied F.L.'s motion to invalidate the waiver. F.L. appeals, arguing that the trial court erred in denying his motion because he was induced to sign the waiver by fraud and duress.

¶ 3 In or around 2015, F.L. was in a relationship with T.G., the minor's biological mother. After the relationship had ended, T.G. contacted F.L. and informed him that she was pregnant. At that time, T.G. was incarcerated in the Illinois Department of Corrections. T.G. told F.L. that when the baby was born, she wanted to have the minor adopted by M.C. and N.C. (collectively, the Family). The Family had previously adopted two of T.G.'s children. The Family resided in Naperville, Illinois. F.L. was given contact information for the Family. After some communication, F.L. agreed to the minor's adoption by the Family. At N.C.'s suggestion, F.L. registered with the Illinois putative father's registry.

¶ 4 On February 5, 2016, F.L. met with Sara Howard, the Family's adoption attorney, at a currency exchange in Chicago. During that meeting, F.L. read and signed the Waiver, which was notarized at that time. The minor was born a few days later on February 10, 2016. F.L. was not named on the birth certificate as the father. T.G., who was still incarcerated, signed guardianship to the Family. On February 14, 2016, F.L., joined by his sister, met with the Family at hotel. F.L. was able to see the minor. DNA samples were taken for an over-the-counter DNA testing kit. F.L. mailed the kit, and the emailed results established a 99.99% probability that F.L. was the biological father.

¶ 5 In March 2016, the Family filed a petition to adopt the minor in Cook County. At some point thereafter, communication ceased between F.L. and the Family. The Family decided not to adopt the minor and filed a motion to dismiss their adoption petition, which the court granted but left guardianship in place. In May 2016, a petition for adoption was filed by petitioners to adopt the minor. In the motion, petitioners asked for an order terminating the parental rights of F.L. based on his signed Waiver. The trial court entered an order terminating F.L.'s parental rights.

¶ 6 In July 2016, F.L. filed a parentage action in DuPage County. Petitioners' attorney filed a motion in this case asking for guidance regarding the putative father. The court entered an order leaving the matter at status quo. In August 2016, F.L. was granted leave to intervene in this case. In October 2016, F.L. filed a motion to declare the Waiver invalid and to have his parental rights restored.

¶ 7 In November 2016, the trial court conducted a hearing and heard testimony from four witnesses: F.L., his sister, whose testimony only related to the February 14, 2016, meeting in the hotel, N.C., and Howard. In his testimony, F.L. stated that he had a relationship with T.G., but it ended because she was a lady of "ill repute," which he explained meant she was a prostitute. Upon learning that T.G. was pregnant, F.L. said he would take responsibility if he was the father, but T.G. wanted to have the child adopted by the Family. F.L. agreed to consider the adoption and communicated with N.C. He was told that he could continue to be involved in the child's life if adopted by the Family. N.C. suggested for F.L. to register with the Illinois putative father registry. He stated he got along well with the Family.

¶ 8 F.L. testified that N.C. informed him that he needed to sign a waiver, which had been done in their previous adoptions. She reiterated that he could continue to play a role in the child's life. He said he relied on her expertise with regard to the Waiver and thought this was part of the

adoption process. He did not think there would be any consequences to signing the Waiver because he believed N.C. would adopt the child, but if the Family did not adopt, then he would get custody of the child. He stated that Howard did not read the Waiver to him. On the Waiver, F.L. selected the box stating, "I neither admit nor deny that I am the biological father of the child." He signed the Waiver in front of a notary public at the currency exchange. F.L. had not seen the Waiver prior to that date and the entire process took about 10 to 15 minutes.

¶ 9 F.L. testified about the February 14, 2016, meeting with the Family at a hotel to get the DNA samples. He stated that things changed with the Family after the DNA results. In March 2016, he asked N.C. why he had not received additional pictures of the child. He subsequently learned that the child had been given to another family. He said N.C. asked him if he wanted to meet the new family, and he responded that he did. F.L. asked for the Waiver back, but was denied. He testified that no one asked his permission to give the child to another family. He stated that he gave permission only to the Family to adopt X.G.. In mid-March to early April, F.L. filed a parentage action in DuPage County, sought help from the police, and hired legal counsel. He later learned the adoption petition had been filed in Cook County.

¶ 10 On cross-examination, F.L. stated that the meeting with Howard was initially planned for him to tender T.G.'s identification to the attorney. He admitted that he read the Waiver before he signed it. He further admitted that he understood what final and irrevocable meant, stating that, "Final and irrevocable means that it is final." He signed the Waiver because he believed the Family was going to adopt the child. Petitioners' attorney asked F.L. to read several paragraphs of the Waiver aloud and asked if he read each paragraph he signed the document and if he understood what it said. For each paragraph, F.L. answered that he read and understood. He also stated that he read and understood the oath at the end of the document. F.L. admitted that the

Waiver did not mention the Family by name, and the Waiver did not include a space to name specific people or anything specific about the adoption.

¶ 11 N.C. testified that she knew T.G. from the Family's previous adoption of two of T.G.'s children. She recalled that she first spoke with F.L. in November 2016. It was her suggestion that F.L. register with the putative father's registry. N.C. admitted that she told F.L. he would be first in line to care for the child if he was the father, and denied discussing his options to terminate his parental rights. She learned that F.L. signed the Waiver via a text message from him. N.C. testified that at the time F.L. signed the Waiver, it was her intent to adopt X.G.. The Family's petition to adopt was filed in March 2016. N.C. stated that they decided to not go through with the adoption because F.L. had retained counsel and was fighting the adoption. She said it was because "of the unknowns. Because of the absolute distress." She stated that F.L. was putting her family through "the unknown."

¶ 12 N.C. stated that she felt morally obligated to continue the relationship with F.L. after he signed the Waiver, but knew that she was not legally obligated to do so. N.C. testified that when the Family decided against the adoption, she was told through her attorney Howard of another family and as the guardian, she signed guardianship to petitioners. N.C. maintained that she did not arrange for F.L. to meet Howard to sign the Waiver.

¶ 13 Sara Howard testified that she never spoke to F.L. prior to the February 5, 2016, meeting at the currency exchange. She was representing the Family at that time and would have continued if they had moved forward with the adoption. She stated that when she met with F.L., she informed him that she was not his lawyer and could not give him any legal advice. She did present the Waiver to him. She said she read each paragraph to him. She told him that if he did not want to sign it, then do not sign it. She testified that F.L. said it was fine and signed it.

Howard stated that F.L. did not express any hesitation in signing the Waiver and had no questions. She believed he understood the Waiver. Howard learned in April 2016 that the Family was no longer going forward with the adoption.

¶ 14 On cross-examination, Howard stated that language in the Waiver about parental rights remaining intact if an adoption was not finalized was not applicable because the Waiver was not specific to the Family's adoption. The dismissal of the Family's adoption did not reinstate F.L.'s parental rights when another adoption petition was filed. She did not inform F.L. about what was going with the child because he had signed the Waiver and was not entitled to any additional notice.

¶ 15 In February 2017, following the filing of written closing arguments, the trial court issued its written order denying F.L.'s request to invalidate the Waiver. The court found that F.L. failed to show by clear and convincing evidence that he was induced to sign the Waiver under fraud or duress, as required to invalidate the Waiver.

¶ 16 This appeal followed.

¶ 17 On appeal, F.L. argues that the trial court's decision was against the manifest weight of evidence where he was "fraudulently induced under duress" into signing the Waiver, and thus, the Waiver is invalid. In the alternative, F.L. asserts that if the Waiver is valid, then his parental rights should be restored because no final judgment or order of adoption was ever entered.

¶ 18 We review the trial court's denial of a motion to invalidate an irrevocable waiver under a manifest weight of the evidence standard. *In re Adoption of Hoffman*, 61 Ill. 2d 569, 578 (1975). Under this standard, we will not overturn the trial court's decision unless "the facts clearly demonstrate that the court should have reached the opposite result." *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071 (2009). In our review, we give great deference to the trial court because it is in the

best position to weigh the credibility of the witnesses and evidence presented. See *Hoffman*, 61 Ill. 2d at 578. We recognize the emotional concerns of all parties involved in this adoption proceeding, but we must adhere to the language of the Act, and for the reasons that follow, we find that the trial court’s decision was not against the manifest weight of the evidence.

¶ 19 Section 10 of the Act delineates various forms for consents, surrenders, and waivers. See 750 ILCS 50/10 (West 2016). Specifically, section 10(S) sets forth the waiver form at issue here, the “form of waiver by a putative or legal father of a born or unborn child.” 750 ILCS 50/10(S) (West 2016). The form shall be substantially as follows:

“FINAL AND IRREVOCABLE
WAIVER OF PARENTAL RIGHTS OF PUTATIVE OR LEGAL
FATHER

I,, state under oath or affirm as follows:

1. That the biological mother has named me as a possible biological or legal father of her minor child who was born, or is expected to be born on,, in the City/Town of, State of

2. That I understand that the biological mother intends to or has placed the child for adoption.

3. That I reside at, in the City/Town of, State of

4. That I am years of age and my date of birth is,

5. That I (select one):

... am married to the biological mother.

... am not married to the biological mother and have not been married to the biological mother within 300 days before the child's birth or expected date of child's birth.

... am not currently married to the biological mother, but was married to the biological mother, within 300 days before the child's birth or expected date of child's birth.

6. That I (select one):

...neither admit nor deny that I am the biological father of the child.

...deny that I am the biological father of the child.

7. That I hereby agree to the termination of my parental rights, if any, without further notice to me of any proceeding for the adoption of the minor child, even if I have taken any action to establish parental rights or take any such action in the future including registering with any putative father registry.

8. That I understand that by signing this Waiver I do irrevocably and permanently give up all custody and other parental rights I may have to such child.

9. That I understand that this Waiver is FINAL AND IRREVOCABLE and that I am permanently barred from contesting any proceeding for the adoption of the child after I sign this Waiver.

10. That I waive any further service of summons or other pleadings in any proceeding to terminate parental rights, if any to this child, or any proceeding for adoption of this child.

11. That I understand that if a final judgment or order of adoption for this child is not entered, then any parental rights or responsibilities that I may have remain intact.

12. That I have read and understand the above and that I am signing it as my free and voluntary act.

OATH

I have been duly sworn and I state under oath that I have read and understood this Final and Irrevocable Waiver of Parental Rights of Putative or Legal Father. The facts contained in it are true and correct to the best of my knowledge. I have signed this document as my free and voluntary act in order to facilitate the adoption of the child.” 750 ILCS 50/10(S) (West 2016)

¶ 20 The Waiver signed by F.L. here substantially follows this statutory guideline. The only difference is in paragraph 6, an option was available to select “admit that I am the biological father of the child.” However, F.L. did not select that option, F.L. selected that he neither admitted nor denied to be the father of the child.

¶ 21 Section 11(a-1) of the Act provides that:

“A waiver signed by a putative or legal father, including a minor, executed and acknowledged in accordance with Section 10

of this Act, shall be irrevocable unless it shall have been obtained by fraud or duress on the part of the adopting parents or their agents and a court of competent jurisdiction shall so find.” 750 ILCS 50/11(a-1) (West 2016).

“A court should not set aside a consent or a surrender executed in accordance with the Adoption Act unless the one seeking to invalidate the document proves by clear and convincing evidence that its execution was procured by fraud or duress.” *Regenold v. Baby Fold, Inc.*, 68 Ill. 2d 419, 432 (1977). The *Regenold* court observed that, “[s]ound policy requires that a person should not be permitted to easily repudiate this document which complies with the formal requirements of the statute.” *Id.*

¶ 22 The supreme court has defined “duress” as “ ‘a condition which exists where one is induced by the unlawful act of another to make a contract or perform or forego an act under circumstances which will deprive him of the exercise of his free will.’ ” *Id.* at 432-33 (quoting *People ex rel. Drury v. Catholic Home Bureau*, 34 Ill. 2d 84, 92 (1966)). Mere annoyance or vexation will not constitute duress; rather, there must be “ ‘such compulsion affecting the mind as shows that the execution of the contract or other instrument is not the voluntary act of the maker.’ ” *Id.* at 433 (quoting *Drury*, 34 Ill. 2d at 93).

¶ 23 Fraud has been defined as “ ‘a statement of material fact, false and known to be so by the party making it, made to induce the other party to act, and, in acting, the other party must rely on the truth of the statement.’ ” *Hoffman*, 61 Ill. 2d at 578 (quoting *Roth v. Roth*, 45 Ill. 2d 19, 23 (1970)). To constitute fraud, a misrepresentation must be of a material fact and relief upon by the

parent in executing the waiver. *Meza v. Lisa Rodriguez & Children's Home*, 305 Ill. App. 3d 777, 787 (1999).

¶ 24 We first point out that section 11(a-1) of the Act requires the showing of “fraud or duress on the part of the adopting parents or their agents.” Here, F.L. contends fraud and duress on the part of the Family, not the petitioners. He also raises these claims against Howard, who represented the Family and for a time represented petitioners. However, at the time the Waiver was signed, Howard was representing the Family, not the petitioners, in relation to the adoption proceeding. Thus, under the Act, F.L. has failed to allege fraud or duress by petitioners.

¶ 25 Even if we consider F.L.’s claims related to the Family and their attorney, our review of the record fails to establish by clear and convincing evidence that F.L. signed the Waiver as a result of fraud and duress. F.L. admitted in his testimony at the hearing that he read and understood the Waiver before he signed it. Although based on his testimony and the instant appeal, it is clear that he misunderstood the implications of signing a general waiver compared to a specific consent. Nevertheless, the Waiver here complied with the statutory requirements and contained no misleading information. Notably, the Waiver does not include any reference to the Family or any specific planned adoption. “ ‘The rule is clear that a consent to adoption form is not interchangeable with a surrender of parental rights.’ ” *In re Adoption of Samuel E.*, 401 Ill. App. 3d 250, 255 (2010) (quoting *In re Joseph B.*, 258 Ill. App. 3d 954, 964 (1994), citing *In re Custody of Mitchell*, 115 Ill. App. 3d 169 (1983)).

¶ 26 F.L. asserts that he relied on the assurances of N.C. that the Family would adopt X.G. and was guided by their expertise in the matter. But F.L. fails to show how their decision not to proceed with the adoption constituted fraud and duress. N.C. and Howard both testified at the hearing that at the time the Waiver was signed on February 5, 2016, the Family fully intended to

proceed with their plan to adopt X.G.. Further, the Family filed a petition to adopt X.G. in March 2016, which is evidence to support their intent to adopt when the Waiver was signed. F.L. did not testify that he felt pressured to sign the Waiver or was prevented from considering its implications or consulting an attorney. Howard testified that she told F.L. he did not have to sign that day, and F.L.'s testimony does not contradict this point. F.L.'s own testimony at the hearing was that he understood that "[f]inal and irrevocable means that it is final." We find that F.L. has failed to show a misrepresentation of a material fact that he relied on when signing the Waiver. Rather, the evidence establishes that at the time the Waiver was signed, the Family intended to proceed with the adoption, but at some point thereafter, opted not to complete the adoption.

¶ 27 F.L. appears to misunderstand that the Waiver was not contingent on the completed adoption by the Family and misconstrues paragraph 11's language as meaning that he should have his parental rights restored and be awarded custody of X.G.. Paragraph 11 states that "I understand that if a final judgment or order of adoption for this child is not entered, then any parental rights or responsibilities that I may have remain intact." He has interpreted this language to mean that since an order of adoption was not entered for the specific adoption by the Family, then his parental rights remain intact. He asks this court to view the Waiver as a contract with the Family, but we reject F.L.'s invitation as he did not enter into a contract with the Family nor did he sign a consent specific to that adoption proceeding. He cites no relevant authority for this position and the statutory language does not support him. The language from this paragraph is taken directly from the form set forth in section 10(S), and does not include any reference to a specific adoption, which is a different form under section 10. See generally 750 ILCS 50/10 (West 2016). After he signed the Waiver, no notice was required to be given to F.L. when the subsequent adoption petition was filed by petitioners. That petition for adoption remains

pending, and we presume, it should lead to a final judgment or order of adoption. We will not speculate further on the status of the pending adoption petition as it does not affect the outcome in this appeal.

¶ 28 We also note that the cases cited by F.L. are distinguishable and offer no support for this claim. We first point out that neither case involved the waiver prescribed under section 10(S) of the Act, as both cases were decided prior to the enactment of this form. See Pub. Act. 97-493 (eff. Aug. 22, 2011) (adding 750 ILCS 50/10(S)). The decision in *In re Custody of Mitchell*, 115 Ill. App. 3d 169, 172-73 (1983), focused on whether the birth father signed a consent to a specific adoption under section 10(A) or a surrender under section 10(C) of the Act. See Ill. Rev. Stat. 1981, ch. 40, pars. 1512(A), (C). No issue related to fraud or duress was raised. In *In re Adoption of Samuel E.*, 401 Ill. App. 3d 250, 257-61 (2010), the reviewing court found that the mother signed a specific consent to adopt under section 10(A) (750 ILCS 50/10(A) (West 2006)), but failed to revoke her consent within 12 months as required under section 11(a) of the Act (750 ILCS 50/11(a) (West 2006)). In *dicta*, the court noted that if it considered the mother's claims of fraud and duress, the result would not change because there was no reason why she could not have consulted with an attorney. *Id.* at 261-62.

¶ 29 As the trial court observed, it had “the unenviable position of having to submit its findings in an emotionally-rendering matter; but finds no bad actors in the case.” Likewise, we empathize with all parties involved, but find F.L. has failed to establish proof of fraud or duress by clear and convincing evidence as required under the Act. Accordingly, we conclude that the trial court's decision was not against the manifest weight of the evidence.

¶ 30 Based on the foregoing reasons, we affirm the decision of the circuit court of Cook County.

No. 1-17-0703

¶ 31 Affirmed.