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2012 IL App (3d) 110921-U

Order filed November 7, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

EMILY C.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Petitioner-Appellant,)	Peoria County, Illinois,
)	
v.)	
)	Appeal No. 3-11-0921
CATHOLIC CHARITIES of the DIOCESE)	Circuit No. 11-MR-62
OF PEORIA, SARA M., JIM G., and)	
NATHAN C.,)	
)	Honorable
Respondents-Appellees.)	Michael E. Brandt,
)	Judge, Presiding.
)	

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Schmidt and Justice Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The dismissal of a birth mother's petition to revoke or void her consent to adoption was upheld on appeal because she failed to allege unrefuted facts that stated a claim for fraud or duress by the adoption agency or the adoptive parents. She failed to allege any wrongful statement meant to deceive her into giving up her son for adoption, and her only claims of duress involved the baby's father and her life circumstances.

¶ 2 The appellant, Emily C., brought an action against the defendants, Catholic Charities of the Diocese of Peoria, Sara M., Jim G., and Nathan C., to revoke her surrender of Nathan for adoption. The defendants' motion to dismiss was granted, and Emily appealed.

¶ 3 **FACTS**

¶ 4 According to Emily's amended petition, Emily approached Catholic Charities while she was pregnant with Nathan to discuss the possibility of adoption. She was counseled by Mary Beth Zelenski, a Catholic Charities case worker, and met with her a number of times over the next five and half months. During that time, Zelenski read the "Birth Parents' Rights and Responsibilities in Illinois" to Emily, and Emily initialed each page and signed the document on January 15, 2010. Just prior to Nathan's birth, Emily was scheduled to meet a prospective adoptive couple. However, Nathan was born before Emily could meet with the couple. After Nathan's birth, Emily allowed the prospective adoptive parents (the defendants Sara M. and Jim G.) to visit Nathan in the hospital, but Emily told hospital staff and Zelenski that she was unsure that she wanted to pursue adoption. Emily proceeded to bring Nathan home. Over the next week, Nathan's father attempted to persuade Emily to sign the consent forms, and the father did sign the forms. Emily continued to waver on the issue of adoption, going to the Catholic Charities offices on different occasions, with and without the father.

¶ 5 Finally, when Nathan was nine days old, Emily telephoned Catholic Charities after getting into an argument with Nathan's father. At Emily's request, an employee of Catholic Charities went and picked up Emily and Nathan and brought them to Catholic Charities. While there, Emily received a telephone call from Nathan's father, wherein he stated that he was leaving her. Emily was distraught that Nathan's father was leaving her. She asked to sign the surrender

form so that she could return to her apartment. The employees of Catholic Charities refused to allow her to sign in that state of mind, but Mary Kay Collins, the assistant adoption coordinator at Catholic Charities, agreed to drive Emily back to her apartment while Nathan stayed at Catholic Charities. Emily argued with Nathan's father, and then returned to Catholic Charities to get Nathan. When they returned to Emily's apartment, the employees of Catholic Charities remained in the car with Nathan while Emily went inside. According to Emily, the father threatened to leave her if she kept Nathan.

¶ 6 Emily returned to the car and asked to sign the surrender form. According to Collins, Zelenski read out loud and explained the surrender form to Emily. Emily alleged in her complaint that the documents were not read to her at that time, because they had been read to her earlier in the week. Emily signed the "Final and Irrevocable Surrender for Purposes of Adoption of Born Child" on April 19, 2010, at 7:50 pm. On the second page of the surrender, Zelenski and Collins attested to the fact that they fully explained to Emily that she was irrevocably relinquishing all parental rights by signing the surrender. After signing the surrender, Emily objected to signing the last form, which was a form stating that she was not under the influence of drugs or alcohol. According to Emily, Zelenski told her that the surrender was already done and the last form was not necessary to the adoption. Collins stated in her affidavit that neither she nor Zelenski subjected Emily to any pressure or duress to sign any documents.

¶ 7 Emily, Nathan, Nathan's father, and the Catholic Charities workers returned to the Catholic Charities office and contacted Jim and Sara. Emily handed over Nathan to Jim and Sara that evening.

¶ 8 Emily alleges that she called Zelenski the next morning and said that she wanted Nathan

returned to her, and that Zelenski said there was nothing she could do. In the adoption proceedings, Emily's parental rights were terminated on June 18, 2010, and the final order of adoption was entered on July 30, 2010. Emily filed a petition to revoke or void her consent to adoption on March 16, 2011, and she filed a motion to vacate the judgment order of adoption on July 29, 2011.

¶ 9 Emily then filed an amended petition to revoke or void her consent to adoption, alleging fraud and duress, and alleging that she was mentally incompetent at the time she signed the consent. The defendants moved to dismiss the complaint pursuant to section 2-619(a)(9) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(9) (West 2008), arguing that Emily's unsupported conclusory allegations of fraud, duress, and incompetency did not undermine the validity of the surrender. The trial court granted the motions to dismiss, and denied Emily's motion for reconsideration. Emily appealed.

¶ 10

ANALYSIS

¶ 11 Emily contends that the trial court erred in dismissing her petition to revoke or void her consent to adoption. Emily argues that the facts as stated in her petition alleged claims for fraud and duress. The defendants argue that their affidavits, exhibits, and other uncontroverted documents defeated Emily's claim. They argue that Emily's conclusory allegations of fraud and duress were not supported by the facts.

¶ 12 Section 11(a) of the Adoption Act provides that a consent to adoption is irrevocable unless it was obtained by fraud or duress on the part of the person before whom such consent was acknowledged. 750 ILCS 50/11(a) (West 2008). In order to set aside a consent executed in accordance with the Adoption Act, the parent must prove by clear and convincing evidence that

the consent was procured by fraud or duress. *Regenold v. Baby Fold, Inc.*, 68 Ill. 2d 419 (1977).

¶ 13 Trial court granted the defendants' motions to dismiss pursuant to section 2-619(a)(9) of the Code of Civil Procedure. 735 ILCS 5/2-619(a)(9) (West 2008). Under section 2-619(a)(9) of the Code, an action may be dismissed on the ground that the claim asserted is barred by other affirmative matter that avoids the legal effect of or defeats the claim. 735 ILCS 5/2-619(a)(9). "The phrase 'affirmative matter' refers to something in the nature of a defense that negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint." *Glisson v. City of Marion*, 188 Ill. 2d 211, 220 (1999). In assessing a motion to dismiss pursuant to section 2-619 of the Code, courts must take all facts properly pleaded as true, but must also take as true those facts that are contained within an affidavit, and not contradicted by counteraffidavit, even if the facts are contrary to unsupported allegations in the pleadings. *Young v. Caterpillar, Inc.*, 258 Ill. App. 3d 792 (1994). Our review of a dismissal under section 2-619 is *de novo*. *Glisson*, 188 Ill. 2d at 221.

¶ 14 Fraud includes anything that is calculated to deceive; it implies a wrongful intent. *Regenold.*, 68 Ill. 2d at 435. Emily's allegations of fraud include the allegation that Catholic Charities withheld the fact that children can be harmed by adoption and that Catholic Charities breached its fiduciary duty to provide Emily honest information about adoption. She alleges that Catholic Charities did not fully inform her of the psychological effects of adoption and made false statements to induce her to believe that adoption was in Nathan's best interest. The attachments, however, refute Emily's allegations. The attachments indicate that Catholic Charities counseled Emily on her options with respect to Nathan. Also, Emily's beliefs regarding the psychological effects of adoption, or whether adoption was in Nathan's best interest, are not

facts. Further, although Zelenski's affidavit refutes Emily's contention that she was not counseled on alternatives to adoption, since Catholic Charities had no duty to inform Emily regarding alternatives to adoption (see *Kathy O. v. Counseling and Family Services*, 107 Ill. App. 3d 920, 927 (1982)), there can be no fraud in the failure to do so. In addition, Emily alleges that Zelenski made her a list of things she might need to take care of if she were to keep Nathan, clearly addressing the alternative that Emily would keep the child.

¶ 15 Emily also alleges that Catholic Charities committed fraud on the night of the surrender. Specifically, Emily contends that Zelenski told Emily that Emily had to sign three documents for the adoption to be completed, but when Emily stopped before signing the third document, Zelenski told her that the third form was not necessary after all and that the surrender was already completed. Emily alleges that Zelenski's representation that there were three forms to sign was a misrepresentation of fact. However, Emily does not allege that Zelenski told her that all three forms were necessary to effectuate the surrender, but, rather, she alleges that was her own interpretation.

¶ 16 To constitute fraud, a misrepresentation must be of a material fact and relief upon by the parent in executing the surrender. *Meza v. Lisa Rodriguez & Children's Home*, 305 Ill. App. 3d 777, 787 (1999). Although Emily alleges that Zelenski made a false statement, the facts as presented in the attachments, and Emily's own argument, do not support that allegation. It was a true statement that there were three documents to sign. It was also a true statement that the third document was not necessary to the surrender. Emily's own interpretation that all three documents were necessary, in light of the clear and unequivocal language in the surrender itself, does not constitute fraud. Emily has failed to point to any wrongful statements meant to deceive

her into giving up Nathan for adoption. As such, Emily's claim of fraud was properly dismissed.

¶ 17 Emily's allegations of duress are limited to the two to three hours prior to the signing of the surrender. Emily alleges that her duress began with a telephone call from the baby's father, wherein he threatened to leave her, including her fear that she would not get home before he left. Emily alleges that Catholic Charities was a party to the duress because they witnessed it and allowed her to sign the surrender. The defendants argue that Emily's allegations of duress by Catholic Charities were conclusory and unsupported by allegations of specific facts.

¶ 18 Although there may be some extreme exceptions, generally, the fraud or duress necessary to invalidate an otherwise irrevocable consent must have been on the part of the person before whom the surrender was acknowledged. *Regenold v. Baby Fold, Inc.*, 68 Ill. 2d at 430-31; 750 ILCS 50/11(a) (West 2008). Duress is where one is induced by the wrongful acts or wrongful threats of another to make a contract or perform an act under circumstances that are a deprivation of free will. *Regenold*, 68 Ill. 2d at 433-34. Emily clearly attributes her duress to Nathan's father, and her circumstances. She does not allege any specific duress by Catholic Charities or the adoptive parents. We find nothing in the record that constituted duress on the part of Catholic Charities, or even by the adoptive parents. Clearly, Emily felt pressured to sign the surrender, but the pressure came from her circumstances and Nathan's father. Such pressures do not constitute fraud or duress by Catholic Charities nor the adoptive parents.

¶ 19 Accepting the alleged facts as true, except for those specifically refuted by the additional material attached to the motion, dismissal without an evidentiary hearing was appropriate under these circumstances.

¶ 20

CONCLUSION

¶ 21 The judgment of the circuit court of Peoria County is affirmed.

¶ 22 Affirmed.