

On June 23, 2008 we received a phone call that a birthmother had selected us to parent the baby girl she had delivered earlier that same day. On June 24th we were able to go to the hospital and meet our new daughter. We named her Waverley Isabel Nagel. She was perfect.

We were told that the birthfather had not shown any interest in the pregnancy nor shown support during the pregnancy. Our adoption agency Adoption & Beyond, located in Stilwell, KS, let us know the details of the situation. The birthmother had signed the papers relinquishing her rights. Her husband, the natural father, was supportive of her relinquishing her rights and felt adoption would be the best thing for the child. We would wait and see if the birth father came forward, and if not we would take the proper steps to reach out to him. In the meantime, we settled in at home with our baby girl.

Through our attorney we facilitated the hiring of a private investigator to do our due diligence to find the birth father. The investigator ended up finding the birth father and reached him through the birth father's mother who was surprised to hear of the baby's birth. She informed the birth father of the adoption plan and they sought legal counsel to retain his parental rights.

We appeared in court for the first time on September 4, 2008 in the Johnson County District Court. The hearing was scheduled for a couple of hours one afternoon. However, the proceeding took longer than anyone imagined as more and more details emerged, painting a very unclear and conflicting story of what actually happened. What was supposed to be heard over a few hours turned into several separate court dates with several postponements. The birth parents each gave testimony that contradicted one another's. Allegedly the birth mother had texted the birth father that she had miscarried. However no proof of the text was presented and the birth father did not do anything to confirm the accuracy of the text. The birth mother testified that there had not been financial or emotional support from the birth father at any point during her pregnancy, and that she and the birth father had separated during the pregnancy.

During this time, aware of the possibility that we might lose our daughter, we voluntarily met with the birth father and his mother twice at Adoption & Beyond. They had petitioned for visitation and, although that request had been denied by the district court, we agreed to meet with them anyway. During the first visit they brought Waverley a few presents: a blanket, two onesies, a bib, and a pacifier. They took all of these gifts home with them and did not offer to send them with Waverley. These were the only tangible items ever presented and were never actually given to Waverley. The birth father did write a note saying to let him know if we needed anything, but it was a very general offer of support and nothing tangible was ever offered or given.

The district court ruled on March 3, 2009 that the birth father had not shown reasonable support during the pregnancy or after the birth of the child and terminated his parental rights. The birthfather quickly appealed this decision. At this point Waverley was 10 months old. We were the only parents and family that she had known.

At the appellate trial we listened as our attorney presented information again to the affect that the birth father had not made any effort to support the child before or after her birth. No meaningful effort had been made. He argued that the birth father had not made any effort to follow up with the birth mother after the alleged text she sent him and that even had the text been set it would have taken very little effort to confirm whether the birthmother had in fact miscarried. The birthfather's lawyer argued that the birth father had done all he needed to do to maintain his rights as a father. While we felt that we had a strong case for the birthfather's rights being terminated, we also saw that the adoption statute was very unclear as to what exactly a birth father needed to do to maintain his rights.

Thankfully, on January 1, 2010 the appellate court ultimately ruled to uphold the district court's original ruling.

As Waverley's parents we were at a point of financial despair and extreme emotional heartache. We were not sleeping at night as the fear of losing our daughter kept us awake and agitated each day. We feared for the circumstances of her new life if she was taken from us. We feared for her safety and happiness. When the appellate court upheld the original ruling we were relieved but still nervous at the prospect of another appeal. As the case dragged on longer, our daughter became older becoming more bonded to us as her parents. What would it do to her if the courts were to take her from the only home she'd ever known after she was a year old, two years old?

We found out shortly thereafter that the birthfather had appealed to the Kansas Supreme Court. We desperately hoped the court would dismiss the appeal, but they decided to hear the case. We went to court again and sat with clenched fists and wet eyes as we heard the same arguments go back and forth a final time.

On October 29, 2010 the ruling came down from the Supreme Court overturning both the district court's ruling as well as the appellate court's ruling. They reversed everything interpreting an unclear statute differently than the two lower courts before them. We were losing our daughter and she was now two years old. Although it was her life and her future that would ultimately be affected, she had no say in the matter and her rights and well being were of no consideration to the courts or the law.

Over the next two months we spent a significant amount of time in court. The problem was, no one seemed to know what to do next. Not only was there a lack of clarity in the law when it came to what was required of a birthfather. There was also no clarity in the law for what should happen to a birthmother's rights if an adoption plan were to fail in a case such as this. While the Supreme Court had reversed the ruling they did not hand down any guidelines about how they things should be handled other than setting an arbitrary timeline they gave for completing the reversal.

When the decision was reversed and the birth mother was informed the adoption plan had failed she made it known that she and her husband wanted to parent. The birthmother retained an attorney and expected her parental rights would be fully reinstated. We ultimately ended up back in the same district courtroom. The district court judge seemed unsure about the birth mother's request although the lack of clarity in the law clearly allowed for it. Ultimately he seemed agreeable to it. We all left court that day with the understanding that the birthmother's rights could be reinstated to their pre-adoption plan status. In the grief of losing our daughter this was some consolation. The birth mother was married and in a stable home; one very similar to ours. Waverley would have the opportunity to still grow up with a mother and in a safe home as opposed to growing up in the home of the birthfather who lived with his mother and could not provide for himself, let alone for a child. However, even this was too much to hope for. The next time we were in court it seemed that the district court judge had changed his mind. He determined that the birth mother's rights were nullified as the day she signed them away originally - when she thought she was able to choose adoption for her child. Again, with the way the law was written he could have decided either way with the mother's parental rights, a decision that should not be left in the hands of a judge.

The birth mother fought against this ruling as she felt she had grounds to and was to go before another district judge who typically deals with issues of family court. However, as this court proceeding unfolded, the birthfather and his attorney threatened to sue her for child support if she sought to retain her parental rights. She and her husband could not afford to take this risk. This decision would again be up to the whims of a judge since the law was not clear on how or whether her rights could be retained. Facing financial pressure and the uncertainty of what another judge might do they felt they had no choice but to back down and follow the district court's ruling.

We now had until the end of the month (January of 2011) to transition our little girl out of our home and into the home of people that were strangers to her. The court arbitrarily decided to adopt the transition plan the birth father's side presented instead of the one that we presented which would have drawn things out for four more weeks but been much gentler to our child. Amidst great confusion and pain we watched our two and a half year old daughter struggle to understand that we could not be her parents anymore. We told her this at our kitchen table and it is a day we will never forget. She would now grow up without a mother. We left her in the home of her birth father on January 28, 2011. She lost her parents, sister, all of her extended family and friends. She lost everything when she was two and a half years old because the courts did not have the clarity they needed in the laws to make a decision and stand on it. Had the courts had more clarity in the law this situation would never have lasted two and half years.

So why are we telling our story to you now? Will it bring our daughter back? Absolutely not. Is it to vent about the injustices we and Waverley suffered? No, although we do feel that this was unjust. It is impossible for us to express in words, written or spoken, how painful it has been to lose a child; how costly it was financially and emotionally to endure a two and a half year court process. It's something no person should have to experience and is an example of a failure of our judicial system. We are telling our story in hopes that it will lead to some lasting change; in hopes that no other family or child will ever have to go what we went through. Clarity must be brought to adoption law in the state of Kansas. The law must give the courts clear language on what is required of a birthfather to retain his rights and what should happen to a birth mother's rights in the event that her adoption plan does not succeed.

Adoption is a wonderful institution. We have built our family through adoption thus far and are committed to doing so despite what we had to endure in trying to adopt Waverley. However, we feel that without clearer adoption laws fewer potential adoptive parents will want to adopt domestically ultimately hurting the institution of adoption which had done so much for the lives of birth parents, adoptive parents and especially children.

Thank you for taking the time to listen our story and the impact current adoption law in this state has had on our family and thank you for your consideration in strengthening that law and the institution of adoption.

Sincerely,

Matt and Molly Nagel