

# Children's Law Center of Indiana



## Adoption

3/18/11

In **Devlin v. Peyton**, 946 N.E.2d 605 (Ind. Ct. App. 2011), the Court affirmed the trial court's (Dissolution Court's) order which established parenting time for Father. The Court reversed and vacated the Dissolution Court's findings and conclusions on its jurisdiction over Stepfather's adoption petition and the merits of Stepfather's adoption petition. Mother and Father, the parents of two children, were divorced in Marion Superior Court (Dissolution Court) in 2004. Mother was awarded sole legal and physical custody of the children, who were twenty-three months and four months old at the time. Father was ordered to pay \$502 per week in child support. According to Father, he has consistently fulfilled his child support obligation with the exception of a short period of time in 2008. Father last saw the children on June 29, 2004; he moved to Washington, D.C. in 2004 for work. Mother married Stepfather on November 24, 2007. In November 2009, Stepfather filed a petition to adopt the children in Hendricks Superior Court (Adoption Court). Stepfather alleged, *inter alia* that Father's consent to the adoption was unnecessary because he had "abandoned or deserted the minor children for at least six (6) months immediately preceding the date of the filing of the petition and has failed without justifiable cause to communicate significantly with the children when able to do so for the past year." Father claimed that he has made several attempts through Mother to establish parenting time with the children to no avail, including specific requests for parenting time within one year of the filing of Stepfather's adoption petition.

Mother, Stepfather, and the children were residing in Hendricks County when the adoption petition was filed. On January 11, 2010, the Adoption Court issued decrees of adoption, ordering that Stepfather was now the children's adoptive parent and changing their last names. Father moved to vacate Stepfather's adoption in the Adoption Court on January 27, 2010. On March 15, 2010, Stepfather agreed to vacate the adoption decrees due to a lack of proper service. The Adoption Court set a contested hearing on the matter for April 27, 2010. On or about March 15, 2010, Father moved to dismiss the adoption proceeding in the Adoption Court and to transfer it to the Dissolution Court to be consolidated with the dissolution proceeding. The Adoption Court denied Father's motion to consolidate and stayed the adoption case pending receipt of an order from the Dissolution Court.

Mother and Father also filed motions in the Dissolution Court between January 2010 and March 2010. On January 15, 2010, Mother moved the Dissolution Court to terminate the child support withholding order issued against Father's income. The Dissolution Court granted Mother's motion on January 21, 2010. On February 3, 2010, Father filed an objection to Mother's motion to terminate the child support withholding order and also moved to establish parenting time with the children. On March 23, 2010, Father filed a notice of vacation of adoption and moved for the establishment of parenting time in the Dissolution Court.

The Dissolution Court held a hearing and subsequently issued its judgment on July 16, 2010. The Dissolution Court *sua sponte* concluded that it had jurisdiction over the adoption proceeding, that Mother had failed to present sufficient evidence to sustain the conclusion that Father's consent to the adoption was not required, and ordered that Father should have parenting time with the children. Mother appealed the Dissolution Court's conclusions that it had jurisdiction to address the adoption question and that she failed to establish that Father's consent to the adoption was not required.

**The Court concluded that the Dissolution Court erroneously addressed issues involving Stepfather's petition to adopt the children.** Id. at 607. The Court noted that Stepfather's adoption petition is still pending in Adoption Court, and, as such, the Dissolution Court cannot properly exert jurisdiction over the issue. Id. The Court said that Indiana Trial Rule 75(B)(1) provides that the mechanism for addressing improper venue (the claim Father has made regarding the adoption proceeding) is a motion to transfer the case filed in the court where the action was originally filed. Id. Father moved the Adoption Court to transfer the case to the Dissolution Court, and that motion was denied. Had Father wished to pursue the question of venue of the adoption case further, the only way to do so was to appeal that denial pursuant to Indiana Appellate Rule 14(A)(8), which provides for an interlocutory appeal of right from a trial court's "refus[al] to transfer a case under Trial Rule 75[.]" Id. The Court noted that Father did not pursue any such appeal. Id. The Court said that Father points to no authority, and the Court's own research has revealed none, that allows a trial court, absent the approval of the originating court or appellate court, to *sua sponte* assume jurisdiction over a case pending in another trial court. Id. The Court opined that the only issue properly before the Dissolution Court was the question of parenting time for Father. Id. at 608. The Court affirmed the Dissolution Court's judgment regarding Father's parenting time, because Mother does not take issue with the ruling. Id.