

Children's Law Center of Indiana



Adoption and Paternity Establishment

9/26/14

In ***In Re Adoption of K.G.B.***, 18 N.E.3d 292 (Ind. Ct. App. 2014), the Court affirmed the trial court's orders which (1) dismissed Putative Father's petition to establish paternity; and (2) struck Putative Father's motion to contest the child's adoption. *Id.* at 294-95. The Court remanded the case for necessary further proceedings on the child's adoption. *Id.* at 304. Mother gave birth to the child out-of-wedlock on August 22, 2012 and paternity was not established. Nearly one year later, on August 20, 2013, Mother filed a request with the Indiana Department of Health (DOH) to conduct a search of the Registry for any registered putative father of the child. The search revealed that no putative father was registered and no paternity determination for the child was on file with DOH. The DOH employee responsible for the administration of the Registry issued an affidavit on these results on August 23, 2014. On August 27, 2013, the child's maternal grandfather (Grandfather) filed his petition to adopt the child, which was accompanied by Mother's consent to the child's adoption that was executed on August 22, 2013. Under the terms of her consent, Mother would retain her maternal rights to the child, and would share parental rights and obligations relating to the child with Maternal Grandfather. On August 29, 2013, Grandfather filed a motion for change of judge, which was joined by Mother, and alleged that the trial judge to whom the adoption matter was assigned had, while in private practice, potentially communicated with a man who thought he might be the child's father. The trial court granted Grandfather's motion requesting a change of judge. On September 9, 2013, Grandfather filed an amended petition for adoption, which added statements that the Registry search revealed that paternity of the child had not been established and that no putative father was listed on the Registry and was accompanied by the affidavit of the DOH employee who was responsible for the administration of the Registry. On October 9, 2013, Putative Father filed a petition to establish paternity of the child, and, two days later, he filed a motion to contest the child's adoption. In his motion, Putative Father acknowledged that he had not properly registered with the Registry, but argued that he nonetheless should have been notified of the pending adoption proceedings. On October 22, 2013, Grandfather filed a motion to strike Putative Father's motion contesting the adoption, arguing that Putative Father was not entitled to notice of the adoption petition because he failed to register timely with the Registry; hence, he had irrevocably and implicitly consented to the adoption. On October 22, 2013, Mother filed a motion to dismiss Putative Father's paternity action. In support of her motion, Mother argued that Putative Father did not have standing to bring the paternity action because he failed to timely register and because he failed to join the child, who was a necessary party to the paternity action. Mother also requested that the trial court consolidate the adoption and paternity proceedings, and her request was granted by the trial court.

On December 19, 2013, the trial court conducted a hearing on the pending motions. During the hearing, counsel for Putative Father conceded that his client had not timely registered with the Registry. At the conclusion of the hearing, the court gave the parties until January 10, 2014, to file any supplemental post-hearing materials. On January 14, 2014, the trial court issued its orders granting Mother's motion to dismiss the paternity case and granting Grandfather's motion to strike Putative Father's motion contesting the adoption. On January 15, 2014, Putative Father filed an amended paternity petition, which styled the caption as being brought as "next friend" for the child. On February 13, 2014, Putative Father filed a motion to correct error, which was denied by the trial court. Putative Father then appealed.

The Court opined that, because Putative Father failed to timely register with the Registry, he had irrevocably waived his right to notice of the child's adoption; therefore, he had impliedly consented to the adoption and was barred from contesting the adoption. *Id.* at 299. The Court, quoting *Boyd v. WHTIV, Inc.*, 997 N.E.2d 1108, 110 (Ind. Ct. App. 2013), observed that "we review the matter de novo when the issue on appeal is purely a question of law." *K.G.B.* at 296. The Court also reviewed the Indiana Registry, established in 1994, noting inter alia: (1) the purpose of the registry is to provide notice to a putative father that a petition for adoption has been filed; (2) the Registry applies to a putative father whenever an adoption under IC 31-19-2 has been or may be filed regarding a child who may have been conceived by the putative father; and on or before the date the child's mother executes a consent to the child's adoption, the child's mother has not disclosed the name or address, or both, of the putative father to the attorney or agency that is arranging the child's adoption (IC 31-19-5-1(a)); (3) the filing of a paternity action by a putative father does not relieve him from the obligation of registering or the consequences of failing to register unless paternity has been established before the filing of the adoption petition (IC 31-19-5-6); (4) to be entitled to notice of an adoption, a putative father must register with DOH not later than thirty days after the child's birth; or the earlier of the date of the filing of a petition for the (A) child's adoption, or (B) termination of the parent-child relationship between the child and the child's mother; whichever occurs later (IC 31-19-5-12(a)); (5) a putative father who fails to register within the period specified by IC 31-19-5-12 waives notice of an adoption proceeding and the putative father's waiver *constitutes an irrevocably implied consent to the child's adoption* (IC 31-19-5-18); (6) a putative father whose consent has been implied may not challenge the adoption or establish paternity (IC 31-19-9-13 and -14) (emphasis in opinion). *Id.* at 297.

Putative Father argued that the trial court abused its discretion in granting Grandfather's motion to strike Putative Father's motion to contest the adoption because the trial court erroneously determined that the statutes on implied consent for failure to register applied to him. Although Father acknowledged that he failed to register timely, he argued that he was entitled to notice of the adoption petition because circumstantial evidence suggested that Mother had disclosed his name or address to the attorney who was arranging the adoption on or before the date she executed her adoption consent. In support of his argument, Putative Father pointed to Grandfather's motion for change of judge, in which Grandfather alleged that, while in private practice, the prior trial court judge had communicated with a man who believed that he might be the child's father. The Court observed that nothing in the record indicated that Putative Father was the man to whom Grandfather revered in his motion for change of judge. *Id.* at 298. The

Court concluded that the record was insufficient to sustain a reasonable inference that Mother disclosed Putative Father's identity as a potential putative father on or before the date she consented to the child's adoption by Grandfather. Id. at 299. The Court opined that Putative Father was only entitled to notice of Grandfather's adoption petition if Putative Father timely registered with the Registry. Id.

The Court concluded that Putative Father failed to meet his burden of proving that the challenged statutes were unconstitutional as applied to him. Id. at 302. Putative Father argued that the challenged statutes were unconstitutional as applied to him because they violated his due process rights under both the United States and Indiana Constitutions. Quoting State Board of Tax Comm'rs. v. Town of St. John, 702 N.E.2d 1034, 1038 (Ind. 1998), the Court observed that "every statute comes before us clothed with the presumption of constitutionality until clearly overcome by a contrary showing. The party challenging the constitutionality of the statute bears the burden of proof, and all doubts are resolved against that party." K.G.B. at 299. The Court noted that Putative Father had correctly cited both Indiana and United States Supreme Court case law for the well established principal that a parent-child relationship is "one of the most valued relationships in our culture" and that a "parent's interest in the care, custody, and control of his or her children is perhaps the oldest of the fundamental liberty interests" (multiple citations omitted). Id. at 300. The Court said that Putative Father had also correctly acknowledged that the U.S. Supreme Court has specifically held that states may limit the rights of putative fathers without violating those principles. Id. The Court looked to Lehr v. Robertson, 463 U.S. 248, 262 103 S. Ct. 2985 (1983), in which the U.S. Supreme Court concluded that a mere biological link between the putative father and the child does not require a State to listen to his opinions regarding the child's best interests unless that putative father takes advantage of the biological connection by forming a relationship with that child. K.G.B. at 300. The K.G.B. Court compared Putative Father's situation to that in Lehr. Id. The Court found that Father failed to demonstrate that he established a substantial relationship with the child or took advantage of any opportunity to participate in the child's life before or even within thirty days after Grandfather filed his petition to adopt the child. Id. Putative Father blamed his failure to participate in the child's life or to attempt to establish paternity on unspecified actions by Mother. In response, the Court cited In Re Paternity of Baby Doe, 734 N.E.2d 281, 285 (Ind. Ct. App. 2000), which noted, with approval, that courts from sister states have placed the responsibility for promptly asserting parental rights on the putative father, even when the child's mother has attempted to prevent the putative father's knowledge of or contact with the child. K.G.B. at 301.

Because Putative Father impliedly consented to the child's adoption, the Court concluded that, pursuant to IC 31-19-9-14, he was also barred from establishing paternity, and the trial court did not err in dismissing his petition. Id. at 304. Putative Father also contended that the trial court erred in dismissing his paternity action. The Court observed that, because Mother's motion to dismiss the paternity action referred to matters outside the pleadings, the trial court treated her motion as a motion for summary judgment. Id. at 302. The Court, citing Knoebel v. Clark County Superior Court No. 1, 901 N.E.2d 529, 531-32 (Ind. Ct. App. 2009), said that the party appealing from a summary judgment decision has the burden of persuading the Court that the grant or denial of summary judgment was erroneous. K.G.B. at 302. The Court noted that, where the facts are undisputed and the issue presented is a pure question of law, the Court

reviews the matter de novo. Id. at 302, citing City of Terre Haute Ex Rel Dep't. of Redev., 812 N.E.2d 164, 166 (Ind. Ct. App. 2004). The Court, quoting In Re Paternity of G.W., 983 N.E.2d 1193, 1198 (Ind. Ct. App. 2013), said that “[The] requirement that the putative father registers within a certain time limit is not solely mandated in adoption proceedings but also carries its mirror consequences into the paternity proceedings.” K.G.B. at 302. The Court reviewed IC 31-19-9-4, which provides that a putative father whose consent to adoption of the child is implied is not entitled to establish paternity of the child. Id. Putative Father also argued that his amended paternity petition, styled as being filed on behalf of the child, endured, citing In Re Adoption of E.L., 913 N.E.2d 1276 (Ind. Ct. App. 2009). In E.L. at 1282, the Court concluded that a putative father who was time-barred from petitioning for a paternity determination in his own name could petition for a paternity determination as the child’s “next friend”. K.G.B. at 303. The Court noted Putative Father had failed to recognize that, since the E.L. opinion was issued, the General Assembly amended the code, adding IC 31-14-5-9, which explicitly states that “[a] man who is barred under [Indiana Code article] 31-19 from establishing paternity may not establish paternity by: (1) filing a paternity action as next friend of the child.” K.G.B. at 303.

The Court declined to award Mother’s and Grandfather’s request for appellate attorney fees because the discretion to award attorney fees under Indiana Appellate Rule 66 is limited to instances when an appeal is frivolous or in bad faith. Id. at 303.