

# Children's Law Center of Indiana



## Adoption

4/28/2015

In ***In Re Adoption of K.M.***, 31 N.E.3d 533 (Ind. 2015), the Court affirmed the trial court's order granting the adoption petition, and held that: (1) Mother's procedural due process rights were not violated by having her consent irrevocably implied pursuant to IC 31-19-9-10 and IC 31-19-9-18; and (2) because IC 31-19-9-18 is a nonclaim statute, Mother was not entitled to equitable deviation from the statutory thirty day time limit to file a motion to contest the adoption.

Stepmother filed a verified petition to adopt the child on November 12, 2013, and Mother received personal service of the adoption petition in open court on January 9, 2014. The notice provided to Mother advised her that she must file a motion to contest the adoption within thirty days of receiving service of the notice. On February 14, 2014, the trial court held a hearing, with all parties present. Mother, who appeared pro se, admitted that she had not filed a motion to contest the adoption, but claimed that she tried several ways to communicate her objection to the adoption, including contacting her attorney for an unrelated matter, conducting internet research, going to the clerk's office, and contacting the trial court via telephone. The trial court determined that Mother had failed to contest Stepmother's petition for adoption within the allotted time frame, and consequently, Mother's consent was irrevocably implied. The trial court appointed counsel to review Mother's interests, and that same day, Mother's counsel filed a motion to contest the adoption. Mother asserted that she acted in good faith to comply with the thirty day time frame to contest the adoption. On February 24, 2014, the trial court entered an order finding that Mother had been properly served, that she failed to comply with IC 31-19-10-1 and file a timely motion to contest the adoption, and thus her consent was irrevocably implied as provided by IC 31-19-9-18. Mother appealed, arguing that IC 31-19-9-18 was unconstitutional and violated her due process rights, and that her efforts to communicate her objection to the adoption petition justified an equitable tolling of the thirty day statutory time frame in IC 31-19-10-1.

**Both IC 31-19-10-1 and IC 31-19-9-18 provided Mother with procedural due process; it was Mother's failure to timely file a motion to contest the adoption, not any State action, that prevented Mother from further opposing Stepmother's adoption petition.** *Id.* at 537. Mother specifically argued that the fundamental importance of the parent-child relationship necessitated a hearing so the court could evaluate the worthiness of the biological parent, rather than allowing "a court to 'default' a person based 'upon a technicality'", such as a missed deadline to file a motion to contest an adoption. *Id.* at 536. The Court agreed that Mother had a protectable interest, and the only remaining inquiry was whether Mother was denied procedural due process. *Id.* The Court first noted that the Due Process Clause of the Fourteenth Amendment

provides that a person shall not be deprived of “life, liberty, or property, without due process of law”; due process, in turn, requires notice, a chance to be heard, and a chance to confront witnesses. Id. (internal citations omitted). Mother acknowledged that she received proper notice and failed to file her motion to contest the adoption in the prescribed thirty day time period. Id. However, Mother further argued that it was unconstitutional for IC 31-19-9-18 to allow her consent to be irrevocably implied without a hearing, in essence arguing that a hearing on consent must be held in all adoption cases. Id. at 537. The Court deemed this to be an attempt on Mother’s part to “rewrite legislation”, and noted that there was nothing in the statutory language that required a hearing before deeming a person’s consent to be irrevocably implied under IC 31-19-9-18. Id. The Court declined to read a requirement for a hearing into the statute. Id. Since IC 31-19-10-1 and IC 31-19-9-18 provided for both notice and an opportunity to be heard and confront witnesses, and Mother failed to avail herself of these provisions, the Court determined that Mother’s due process rights were not violated. Id.

**The plain language of IC 31-19-9-18 makes it a nonclaim statute, a statute with a condition precedent that must be met before the enforcement of a right; as such, Mother was not entitled to equitable deviation from the thirty day time limit.** Id. at 538. Mother argued that her various efforts to communicate her objection to the adoption should constitute sufficient communication with the judiciary. Id. at 537. Mother then argued that consequently, an equitable deviation from the time limit set forth in IC 31-19-9-18 should be permitted, and her irrevocably implied consent should be set aside. Id. The Court first noted that the trial court was not obligated to find credible Mother’s testimony of her efforts, and that the trial court’s own questioning of Mother seemed to discount the extent of some of her claimed actions. Id. at 537 n.3. The Court turned to prior case law to examine the difference between an ordinary statute of limitations, which can be waived, and a nonclaim statute, which cannot be waived. Id. at 537 (citing In Re Paternity of M.G.S., 756 N.E.2d 990 (Ind. Ct. App. 2001)). A nonclaim statute is not subject to equitable tolling of a time limit, since a nonclaim statute creates a right of action only if the action is taken within the prescribed time period. Id. at 538 (citing M.G.S., 756 N.E.2d at 997) (emphasis added). A statute is a nonclaim statute when “there is clearly evidenced a legislative intent in [the] statute to not merely withhold the remedy, but to take away the right of recovery where a claimant fails to present his claim as provided in the statute.” Id. at 538 (citing M.G.S. at 997) (other internal citations omitted). The Court opined that IC 31-19-9-18 uses identical language to the statute at issue in M.G.S., in that the failure to do something had the effect of consent being irrevocably implied without further court action. K.M. at 538. The Court also noted that IC 31-19-9-19 provides that a person whose consent is irrevocably implied “may not contest the adoption or the validity of the person’s implied consent to the adoption.” Id. The plain language of IC 31-19-9-19 imposes a time condition that must be met before the right to file a motion to contest an adoption can be enforced. Id. The Court opined that legislative intent to take away a right of recovery is clear, and this was in accordance with the objective of avoiding uncertainty and instability in adoption proceedings. Id. The Court held that since IC 31-19-9-18 was a nonclaim statute, Mother was not entitled to equitable relief from the time limit it imposed. Id.