

# Children's Law Center of Indiana



## Adoption

10/27/2014

In **In Re Adoption of K.W.**, 21 N.E.3d 96 (Ind. Ct. App. 2014), the Court reversed the trial court and remanded the matter, holding that (1) the trial court's failure to rule on Father's request for court appointed counsel was a violation of his right to due process and his statutory right to counsel in an adoption proceeding; and (2) Father did not waive his right to counsel.

The child was born to Mother and Father in 2004, and in 2008, Mother became ill with Crohn's disease. Father, an emergency medical technician, became dissatisfied with the treatment Mother was receiving and began stealing medical supplies to give to Mother. In March 2009, Mother died after Father injected her with a lethal dose of pain medication. Father was arrested in September 2009, and Maternal Grandmother obtained guardianship over the child. Father pled guilty in February 2010 in Kentucky, and was ordered to serve a twelve year sentence in Kentucky. In March 2013, Maternal Grandmother and Step-Maternal Grandfather ("Maternal Grandparents") petitioned to adopt the child. Father received notice, and filed a pro se appearance and a request for counsel to be appointed to him because was indigent and had tried without success to obtain a lawyer. The trial court did not rule on Father's request for counsel, and held a hearing on Maternal Grandparents' petition. Father appeared pro se telephonically. The trial court found that Father's consent was not needed and granted the adoption petition. Father appealed.

**Father's due process rights were violated when the trial court ignored his request that counsel be appointed to represent him in the adoption proceeding.** *Id.* at 98. The Court stated that it would review this decision *de novo*, since it related to the constitutionality of the trial court's judgement. *Id.* at 97. The Court noted that parental rights are among the most cherished and fundamental rights, and as such, require due process protections. *Id.* at 97-98. IC 31-32-2-5 provides that a parent is entitled to counsel in any proceeding that may terminate the parent-child relationship. *Id.* Since the Court had previously held in Taylor v. Scott, 570 N.E.2d 1333, 1335 (Ind. Ct. App. 1991) that this statute also applies to adoption proceedings, Father was entitled to representation. *Id.* at 98. Consequently, the Court agreed with Father that the trial court's ignoring his request for appointed counsel in the adoption proceedings was a violation of his due process rights. *Id.*

**The Court declined to find that Father had waived his right to counsel by filing several documents, by failing to ask for a hearing on his motion to appoint counsel, or by failing to again ask for counsel at the adoption hearing.** *Id.* at 98. Maternal Grandparents argued that

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Father waived his right to counsel when he filed a pro se appearance and other documents, and that he had waived his right to counsel by failing to ask for a hearing on his motion to appoint counsel, as well as failing to repeat his request for counsel at the adoption hearing. Id. In disagreeing with these arguments, the Court noted In Re G.P., 4 N.E.3d 1158, 1165 (Ind. 2014), which stated ““Nor have we ever held that a litigant who has been told that they would receive appointed counsel must continually request said counsel at each and every hearing where an attorney is not provided to her.”” Id. at 98-99. The Court also noted that it was undisputed that Father was incarcerated, unable to hire an attorney, and had very little funds. K.W. at 98-99. The Court concluded that Father was entitled to representation, and he had not waived that right by filing pro se documents or failing to repeat his request for counsel. Id. at 99.