

# Children's Law Center of Indiana



## Adoption

1/25/11

In **In Re Adoption of L.C.E.**, 940 N.E.2d 1224 (Ind. Ct. App. 2011), the Court reversed the Lawrence Circuit Court's grant of Grandfather's petition to adopt the child. Mother had already given birth to the child and his oldest sibling when she married Stepfather on November 28, 1999. Stepfather claims paternity of the child's oldest sibling, but the child's paternity has not been established. Mother and Stepfather subsequently had two additional children who were born during their marriage. On January 23, 2007, Johnson Circuit Court granted a dissolution of marriage after Mother and Stepfather submitted a Settlement Agreement and Decree of Dissolution, which determined custody, parenting time and child support for the child's oldest sibling and the child's two younger siblings. The agreement did not mention the child. On April 16, 2009, Stepfather filed an Emergency Petition for Temporary Modification of Child Custody and Support in the Johnson Circuit Court dissolution cause. Mother and Stepfather then filed an Agreed Entry for Modification of Custody and Child Support. The Agreed Entry relieved both parties of child support obligations and awarded physical custody of all four children, including the child in the instant case, to Stepfather. Stepfather was awarded physical custody of the two children born during the marriage immediately. Mother was to retain custody of the child and his oldest sibling (who had been born before the marriage) until the end of the 2009-2010 school year. At the end of the school year, the child and his oldest sibling were also to be in Stepfather's physical custody. Johnson Circuit Court adopted the parties' agreement as its order on March 9, 2010.

On May 5, 2010, Grandfather filed a petition to adopt the child in Lawrence Circuit Court. Mother joined the petition, consenting to Grandfather's adoption but requesting that she maintain her parental rights. In the petition, Grandfather noted "[Stepfather] is entitled to notice of these proceedings as there exists a prior order of custody; however, he has no standing to object to said adoption." Lawrence Circuit Court sent notice of the adoption petition to Stepfather. Lawrence Circuit Court held a hearing and granted Grandfather's adoption of the child on June 1, 2010. Stepfather filed an objection to Grandfather's petition to adopt on June 4, 2010. In his objection, Stepfather noted that he had custody of the child pursuant to an order of the divorce court (Johnson Circuit Court). On June 9, Stepfather filed a motion to set aside Grandfather's adoption of the child because he had not received notice of the June 1 adoption hearing and had not consented to the adoption of the child in his lawful custody. Grandfather and Mother moved to strike Stepfather's filing. Lawrence Circuit Court granted Mother's motion to strike and denied Stepfather's objection to the adoption. Stepfather appealed.

**Since Stepfather was the child's legal court ordered custodian, Lawrence Circuit Court erred when it failed to consider Stepfather's objection and grant his motion to vacate the adoption.** Id. at 1228. The Court, noting that Stepfather is the child's legal custodian, opined that Stepfather has a meritorious defense to the adoption order he wishes to have set aside. Id. at 1226. Mother and Grandfather argued that Stepfather cannot be a lawful custodian because he "is not a parent, the biological father, the putative father, or a legal guardian...", because Johnson Circuit Court did not have jurisdiction over the child, as he was not a child of the marriage, and because Johnson Circuit Court had never named Stepfather a de facto custodian. In response, the Court said this argument appears to be a request to review the validity of the Johnson Circuit Court order that gave Stepfather custody of the child, but that is not the appealed order before the Court reviewing the motion to set aside the adoption. Id. at 1227. The Court also said that the validity of the Johnson Circuit Court order should not have been an issue before the Lawrence Circuit Court because "[o]ne circuit court does not have jurisdiction to vacate, change, set aside, or modify a judgment of a court of similar jurisdiction or equal rank." Traders' Loan & Inv. Co. v. Houchins, 144 N.E.2d 879, 880 (1924). L.C.E. at 1227. The Court concluded that, under Trial Rule 69(B)(8), Stepfather has reason for relief from the judgment granting the child's adoption. Id. at 1227.

The Court also noted that Mother signed the Agreed Entry approved by Johnson Circuit Court regarding the child's custody; therefore, any error that may have occurred when custody of the child was given to Stepfather was invited by Mother. Id. Citing Stolberg v. Stolberg, 538 N.E.2d 1, 5 (Ind. Ct. App. 1989), the Court observed that a party may not complain of errors that he or she induced the trial court to make because error invited by the complaining party is not reversible error and such errors are not subject to appellate review. L.C.E. at 1227. The Court said, "[p]utting aside all consideration of comity between trial courts, our legal system cannot permit a party to avoid her own settlement agreement by filing for an alternate solution in a different county." Id. The Court stated that Mother should petition Johnson Circuit Court if she wishes a different custody arrangement for the child than the one she agreed to. Id.

The Court, noting that IC 31-19-9-1(a)(3) requires written consent of each person, agency, or county office of family and children having lawful custody of the child before a child may be adopted, opined that Stepfather's consent is required for the child to be adopted because Stepfather is the child's lawful custodian. Id. Citing IC 31-19-10-1(b), the Court said that when a person with standing pursuant to IC 31-19-9-1 objects to the adoption, he must "file a motion to contest the adoption with the court not later than thirty (30) days after service of notice of the pending adoption." Id. at 1228. Stepfather filed an objection to the adoption on June 4, which was twenty-nine days after the petition for adoption was filed; therefore, Lawrence Circuit Court had to consider Stepfather's objection prior to granting Grandfather's petition. Id. It was error for the Lawrence Circuit Court to grant Grandfather's petition for adoption prior to the expiration of the thirty days provided for objection to be filed. Id.