

Children's Law Center of Indiana



Adoption

7/8/2015

In **In Re I.J.**, 39 N.E.3d 1184 (Ind. Ct. App. 2015), the Court reversed the trial court's orders which: (1) denied Putative Father's motions to intervene in the child's adoption; (2) denied Putative Father's motion for genetic paternity testing; and (3) granted the child's adoption. *Id.* at 1188. The case was remanded to the trial court. *Id.* On March 21, 2014, the child was born to Mother, who was married to Husband. Mother and Husband consented to the child's adoption by Adoptive Parents. Adoptive Parents filed their petition to adopt the child on March 24, 2014. Since birth, the child lived with Adoptive Parents. On April 3, 2014, Putative Father told the court that he believed he was the child's biological father. Putative Father registered with the putative father registry on April 15, 2014, when the child was less than thirty days old. Adoptive Parents served the petition for adoption on Putative Father on May 19, 2014. The trial court appointed counsel for Putative Father and his motion to contest adoption was filed on June 17, 2014.

On August 12, 2014, Putative Father filed a motion for genetic paternity testing, but Adoptive Parents objected to the motion. On September 23, 2014, the trial court denied Putative Father's motions to contest the child's adoption and to obtain genetic paternity testing. The trial court denied Putative Father's subsequent motion to correct errors and motion to reconsider. The trial court's orders found that (1) IC 31-19-5-12 required Putative Father to register prior to the filing of the adoption petition; (2) no notice of the filing of the adoption petition was required since Putative Father's registration was filed on April 15 after the Petition for Adoption was filed on March 24; (3) Putative Father's failure to timely register was a waiver constituting an irrevocably implied consent to the child's adoption pursuant to IC 31-19-5-18; and (4) Putative Father could not intervene and contest the adoption since his consent was implied. Putative Father moved to certify the court's decision for interlocutory appeal, but the court denied the motion. On December 19, 2014, the trial court granted Adoptive Parents' petition to adopt the child.

The Court found that, because Putative Father registered before the child was thirty days old, his registration was timely. Putative Father therefore was entitled to notice of the adoption and should have been permitted to contest the adoption. *Id.* at 1187. Quoting **In Re Infant Girl W.**, 845 N.E.2d 229, 242 (Ind. Ct. App. 2006), *trans. denied*, the Court noted "statutory construction is a matter of law reserved for the court and is reviewed *de novo*" (emphasis in opinion). *I.J.* at 1186. Quoting **Hatmaker v. Hatmaker**, 998 N.E.2d 758, 762 (Ind. Ct. App. 2013), *trans. denied*, the Court observed that "[w]ords and phrases within a statute are to be given their plain, ordinary, and usual meaning unless a contrary purpose is clearly shown by the statute itself." *I.J.* at 1186. The Court looked to IC 31-19-5-12, which provides: (a) To be entitled to notice of an adoption under IC 31-19-3 or IC 31-19-4, a putative father must register with the state department of health under section 5 of this chapter not later than:

- (1) thirty (30) days after the child's birth; or
- (2) 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.

(b) A putative father may register under subsection (a) before the child's birth. Id. at 1187.

The Court observed that, pursuant to the statute, a putative father would still be entitled to notice of an adoption if he registered “no later than... thirty (30) days after the child’s birth...” because the deadline is thirty days after the birth *or* the date a petition for adoption is filed, “*whichever occurs later.*” (Emphasis in opinion). Id. The Court found that Putative Father registered after the petition for adoption was filed, but that did not foreclose his right to challenge the adoption if he registered before the child was thirty days old. Id. The Court held that, because Putative Father registered before the child was thirty days old, his registration was timely, he was entitled to notice of the adoption, and he should have been permitted to contest it. Id. The Court also held that, because Putative Father’s timely registration gave him standing to challenge the adoption petition in the trial court, he had standing to challenge the adoption proceedings on appeal. Id. at 1187 n.2. The Court cited Ind. Appellate Rule 17(A), which states that a party of record in the trial court or administrative agency shall be a party on appeal. Id.

The Court found that Putative Father’s timely registration with the putative father registry entitled him to an opportunity to challenge the presumption that Husband is the child’s father. Id. at 1188. The Court quoted IC 31-19-9-1(a)(1), which states that consents to a child’s adoption are required from “[e]ach living parent of a child born in wedlock, including a man who is presumed to be the child’s biological father under IC 31-14-7-1(1) if the man is the biological or adoptive parent of the child.” Id. at 1187. The Court could not ignore the statute’s requirement of consent “if the man is the biological or adoptive parent of the child.” Id. at 1188. Adoptive Parents claimed that Husband’s consent to the child’s adoption was sufficient under IC 31-19-9-1(a)(1) because he is presumed to be the child’s biological father under IC 31-14-7-1(1). Id. The Court noted that, under IC 31-14-7-1, a man is presumed to be a child’s biological father if the man “and the child’s biological mother are or have been married to each other” and the “child is born during the marriage.” Id. Quoting the Merriam-Webster Dictionary, the Court said that to “presume” is “to suppose to be true without proof.” Id. The Court said that Mother was married to Husband when the child was born, so Husband is presumed to be the child’s father. Id. The Court noted that the presumption of fatherhood created by IC 31-14-7-1(1) can be rebutted by “direct, clear, and convincing evidence” that someone else is the father. (Multiple citations omitted). Id. Citing Minton v. Weaver, 697 N.E.2d 1259, 1260 (Ind. Ct. App. 1998), *trans. denied*, and IC 31-14-7-1(3), the Court observed that one method for rebutting the presumption that a mother’s husband is the father of the child is with genetic test results demonstrating greater than a 99% probability that another man is the father. Id. The Court said that Putative Father could not produce evidence that might have rebutted the presumption that Husband was the child’s father because the trial court denied Putative Father’s motion for genetic testing. Id.

The Court was mindful that the child has been in the custody of Adoptive Parents since birth and the Court's reversal of the adoption might create instability in the child's life. Id. The Court could not ignore the constitutional dimension of the parental right that arose with Putative Father's timely registration with the putative father registry. Id.

In Judge Robb's concurrence in the result of this opinion, she noted that IC 31-19-9-1(a)(1) allows a man who is presumed to be the child's biological father because of a marital relationship to consent to an adoption only "if [he] is the biological or adoptive parent of the child." (Emphasis in opinion). Id. at 1189. Judge Robb observed that the *consent statute itself* therefore grants a third party who claims to be the biological parent the right to seek genetic testing in order to rebut a husband's presumption of paternity (emphasis in opinion). Id. Judge Robb said that if the third party is otherwise entitled to notice of the adoption, a trial court is required by statute to grant such a request. Id.