

# Children's Law Center of Indiana



## Adoption

3/11/2014

In **In Re the Adoption of T.L.**, 4 N.E.3d 658 (Ind. 2014), the Court held that there was sufficient evidence to support the trial court's decision granting the adoption on the grounds that Father had knowingly failed to provide for the care and support of the child when able to do so as required by law or judicial decree.

Mother and Father had two children, and Father had been ordered to pay child support in 2002. Father paid child support once in November 2002, and once in May 2005. These two child support payments totaled \$390, and Father made no child support payments at all after May 2005. Father was first incarcerated in November 2004. Father testified that he was released in 2008, and was incarcerated again later in 2008. Mother's Husband petitioned to adopt the children in January 2011, and Father remained incarcerated during the adoption trial. The adoption petition was granted on July 13, 2012, and the clerk issued notice to Father's attorney on July 17, 2012. Father, who was still incarcerated and now without an attorney, mailed a letter to the Court on August 13, 2012, exactly thirty days after the entry of the adoption judgment. Father's letter set forth his intent to appeal the decision and asked the trial court to appoint him a new attorney. The trial court treated it as a Notice of Appeal and assigned Father a new attorney. Father's new attorney filed an Amended Notice of Appeal on August 23, 2012.

**The Court granted transfer to determine Father's case on the merits, in spite of the appeal's procedural defects, because of the importance of Father's constitutional right to parent his children.** *Id.* at 661 n.2. Mother and Mother's Husband sought to dismiss Father's appeal for the following reasons: (1) Father's letter indicating his intent to appeal was not a proper Notice of Appeal and did not contain the information required by Appellate Rule 9; and (2) Father's appeal was not timely, as the Amended Notice of Appeal was not filed by Father's counsel until August 23, 2012, which was after the time allotted to file a Notice of Appeal. *Id.* at 661. The Court of Appeals had granted Mother's and Mother's Husband's Motion to Dismiss. *Id.* However, the Court agreed with Father that his case should be heard on the merits, because the case involved his constitutional right to parent his children. *Id.* at 661 n.2. The Court noted in a footnote that the appellate rules "exist to facilitate the orderly presentation and disposition of appeals" and that the appellate procedural rules are the "means for achieving the ultimate end of orderly and speedy justice", but that when "substantial rights are at issue before the Court, [it] often [prefers] to decide cases on their merits rather than dismissing them on procedural grounds." *Id.* (internal citations omitted). Because Father's claim involved a substantial right,

namely, the right to parent his children, the Court proceeded to the merits of Father's claim and denied Mother's and Mother's Husband's Motion to Dismiss. Id.

**Father's history of payment and non-payment of child support supported the trial court's conclusion that Father was able to pay child support while incarcerated, but chose not to do so, and this finding supported the trial court's judgment that Father's consent to the adoption was not required; consequently, the Court held that the trial court's judgment was not clearly erroneous.** Id. at 662-3. In response to Father's argument that he could not pay child support because he was incarcerated, the Court noted that it had said before that it "cannot imagine that the legislature intended for incarcerated parents to be granted a full reprieve from their child support obligations" and that such a position would "cut against the established common law tradition that has long held parents responsible for the support of their offspring." Id. at 663 (citing Lambert v. Lambert, 861 N.E.2d 1176, 1179 (Ind. 2007)). The Court determined that the proper way to decide the child support obligation of an incarcerated parent was to use the "non-imputation approach" described in Lambert, which would impose a minimal level of support without ignoring the realities of incarceration. T.L. at 663 (citing Lambert at 1181). The Court opined that Father's own actions demonstrated that Father had not been incarcerated during the entire duration of the support order, and that even while Father was incarcerated, he demonstrated an ability to pay at least some support. T.L. at 663. In determining that Father was able to pay child support, the Court noted the following: (1) Father was ordered to pay child support in 2002, and was not incarcerated until November 2004; (2) From 2002 until his 2004 incarceration, Father made only one child support payment; (3) Even if Mother and Father agreed that Father did not have to pay child support as long as he was involved in the children's lives, parties cannot contract away child support rights, since the child support is a right that belongs to the child; and (4) During the time that Father testified he was incarcerated, he made a child support payment, which indicated Father had the ability to pay child support even while he was incarcerated. Id. at 662-3.