

# Children's Law Center of Indiana



## Adoption (Agency Liability)

6/3/15

In ***Kramer v. Catholic Charities***, 32 N.E.3d 227 (Ind. 2015), the Court affirmed the trial court's grant of summary judgment in favor of Catholic Charities, an adoption agency. *Id.* at 230. The Court vacated the Court of Appeals opinion at 6 N.E.3d 984. *Id.* at 227. In 2009, the Kramers contacted Catholic Charities, a not-for-profit organization which serves as an intermediary between adoptive parents, children, and parents placing children for adoption. The Kramers, who were seeking to adopt a child, reviewed Catholic Charities' Client Handbook, which spelled out the rights and responsibilities of both parties with respect to a potential adoption, and signed an acknowledgement of receipt of the Handbook. Among the contractual agreements between the Kramers and Catholic Charities were: (1) the Kramers agreed to provide "honest and complete information"; and (2) Catholic Charities agreed to "be honest and forthcoming in all phases of the adoption process." Catholic Charities also expressly reserved the right to revise its policies and practices at any time. The Kramers paid \$1,300 to be included in the pool of adoptive parents, and agreed to pay an \$8,000 service fee in exchange for the successful completion of an adoption. At one of the early meetings, Catholic Charities also verbally warned the Kramers of the possibility that a putative father could claim custody of a child even though the birth mother consented to the adoption.

The putative father registry, IC 31-19-5, provides for notice of an adoption to be given to a putative father who timely registers with the Indiana Department of Health (IDOH). IC 31-19-5-12(a)(1) gives putative fathers up to thirty days after the child's birth to register so they will receive notice of the adoption, including any time prior to the child's birth. (Attorneys should note that IC 31-19-12(a)(2) may extend the time period for registration to the earlier of the date of the filing of a petition for the child's adoption or the termination of the parent-child relationship between the child and the child's mother, but this subsection of IC 31-19-5-12 is not relevant to the instant case.) Once an adoption petition has been filed, adoption agencies are required by 31-19-5-15 to request a registry check by IDOH at least one day after the close of the putative father's deadline to register. Adoption agencies are also permitted to request a registry check at any time. At the time when the Kramers contacted Catholic Charities, the agency's internal policy was to check the putative father registry one day after the expiration of the registration deadline, consistent with the applicable statute. Catholic Charities also had an unwritten policy of checking the putative father registry twice more *before* the statutory deadline: once after the intake of the birth mother, and again right before the placement of the child with the potential adoptive family. This additional practice was not "mandated" by Catholic

Charities. Catholic Charities did not disclose the written policy or the informal practice to the Kramers. Catholic Charities simply warned the Kramers that a putative father could register at any time prior to the expiration of the 30-day deadline.

Catholic Charities placed a baby with the Kramers on May 3, 2010. The baby was born on May 1, 2010, and the birth mother consented to the baby's adoption on May 2, 2010. The birth mother indicated to Catholic Charities that there were two potential fathers, but she declined to give their names. On May 25, 2010, and again on June 1, 2010, Catholic Charities requested that IDOH check whether anyone had registered as the baby's putative father. The first check revealed no registered putative father, as sworn by the IDOH administrator of the putative father registry. The second search revealed that a putative father had registered on April 27, 2010. Neither party nor IDOH could explain why the putative father's registration was not discovered in the first search. The Kramers petitioned to adopt the baby, and the putative father contested the adoption petition. The putative father's paternity was established by DNA test and he received full custody of the baby in early January, when she was eight months old.

The Kramers sued Catholic Charities for negligence, alleging that Catholic Charities should have checked the registry prior to placing the baby with them, and should have notified them of its failure to do so. Catholic Charities moved for summary judgment, arguing that releases signed by the Kramers barred their negligence claim, and that Catholic Charities had satisfied any duty owed to the Kramers by complying with the putative father registry statute. The trial court granted summary judgment for Catholic Charities, and the Kramers appealed.

**The Court opined that the Kramers failed to demonstrate that Catholic Charities had any duties with respect to the putative father registry in excess of its statutory obligations.** *Id.* at 231. The Court noted Indiana Trial Rule 56(C), which states that summary judgment is appropriate where “the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Id.* at 230. Quoting *Pfenning v. Lineman*, 947 N.E.2d 392, 396-97 (Ind. 2011), the Court observed that, “[t]he party moving for summary judgment bears the initial burden to establish its entitlement to summary judgment. Only then does the burden fall upon the non-moving party to set forth specific facts demonstrating a genuine issue for trial.” *Kramer* at 231. The Court's review is de novo as to application of the law, and the Court will affirm a grant of summary judgment upon any theory supported by the evidence in the record. *Woodruff v. Ind. Family & Soc. Servs. Admin.*, 964 N.E.2d 784, 790 (Ind. 2012). *Kramer* at 231. The Court noted that summary judgment is appropriate when the undisputed material evidence negates one element of a negligence claim. *Rhodes v. Wright*, 805 N.E.2d 382, 385 (Ind. 2004). *Kramer* at 231.

The Kramers alleged that Catholic Charities had committed the tort of negligence, which has three elements: (1) a duty owed by the defendant to the plaintiff; (2) a breach of that duty; and (3) injury to the plaintiff resulting from the defendant's breach. *Id.* Catholic Charities asserted it “breached no duty” to the Kramers because it checked the putative father registry one day after the closure of the registration deadline, in compliance with IC 31-19-5-15(b)(1). The Court observed that, while compliance with statutory standards is not conclusive per se as to lack of

negligence, it is certainly *evidence* of lack of negligence (emphasis in opinion). *Id.* The Court noted that the Indiana Court of Appeals has held that a movant's compliance with statutory requirements is sufficient to award summary judgment on a negligence claim, in the absence of competent evidence designated by the non-movant which would demonstrate either non-compliance or the existence of a higher duty (multiple citations omitted). *Id.* at 231-32. The Court noted that the parties agreed Catholic Charities complied with IC 31-19-5-15 by checking the putative father registry on the 31<sup>st</sup> day after the baby's birth, the minimum statutory standard for adoption agencies. *Id.* at 232. Noting that this constituted a prima facie showing of both the extent of Catholic Charities' duty with respect to the registry and the satisfaction of that duty, the Court held that the Kramers bore the burden to set forth specific facts showing there was a genuine issue for trial. *Id.*

The Kramers claimed that Catholic Charities had a duty to check the registry prior to the baby's placement, but cited no authority beyond Catholic Charities' informal practice of conducting preplacement checks. The Court cited *Wal-Mart Stores, Inc., v. Wright*, 774 N.E.2d 891, 894-95 (Ind. 2002), which held that such informal practices, standing alone, do not "tend[ ] to show the degree of care recognized by [the defendant] as ordinary care"...and thus are only admissible before a jury "with an express caution that they are merely evidentiary and not to serve as a legal standard." *Kramer* at 232. The Court found the Kramers failed to raise a genuine issue of fact as to whether Catholic Charities assumed a duty to conduct a pre-placement check on the Kramers' behalf. *Id.* at 232-233.

The Kramers also argued that Catholic Charities had a duty to disclose its failure to check the registry prior to the baby's placement (in violation of its informal practice to do so) because the Kramers and Catholic Charities were in a fiduciary relationship. The Court found that Catholic Charities did not assume any such duty under the terms of its agreement with the Kramers. *Id.* at 234. Citing Restatement (Third) of Agency section 8.11 n.b. (2006), the Court observed that a duty of disclosure may be limited by the agreement of the parties. *Id.* The Court found that the terms of the parties' agreement limited any inherent duty of Catholic Charities to disclose its compliance or noncompliance with its own informal practices. *Id.*

The Kramers also claimed that there was a reasonable foreseeability of harm to them on the part of Catholic Charities because the Kramers would have delayed placement of the baby with them until the registry check had been completed. The Court found that injury to the Kramers was reasonably foreseeable based on Catholic Charities' conduct, which favored the imposition of a duty. *Id.* at 235. The Court noted that adoption agencies have statutorily required duties to all parties involved (multiple citations omitted). *Id.* The Court was reticent to impose additional, heightened requirements, as a matter of common law, given the degree of regulation to which Catholic Charities was already subjected to by statute. *Id.* The Court noted that the Indiana legislature had the power to impose broader duties on adoption agencies, including a requirement to check the putative father registry prior to the placement of a child with potential adoptive parents when the father is unknown. *Id.* at n.8. The Court found it plausible that a disclosure that the putative father registry had not been checked would have prevented the emotional harm suffered by the Kramers, and that the burden of informing the Kramers of its noncompliance

with that practice seemed relatively minimal. Id. at 236. The Court concluded that public policy considerations neither favored nor weighed against the imposition of a duty of disclosure under these circumstances. Id. The Court opined that the three-factor test for imposition of a duty under these circumstances was equally split, but observed that the Kramers bore the burden of persuasion. Id.