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## Adoption

2/16/05

In **Mariga v. Flint**, 822 N.E.2d 620 (Ind. Ct. App. 2005), the Court affirmed the Tippecanoe Superior Court's order granting the biological mother's Petition for Child Support and the Tippecanoe Circuit Court's order denying the adoptive mother's Petition to Vacate Adoption. The children are a 16-year-old daughter and a 13-year-old son. Soon after the biological father and mother were divorced, the biological mother and the adoptive mother began a romantic relationship during which the adoptive mother played an active role in the children's lives, attending their sporting events and school conferences. The adoptive mother sought to adopt the children pursuant to Indiana's stepparent adoption statute, IC 31-19-15-2, in 1996. The biological and adoptive mother pursued the adoption for a variety of reasons including, the adoptive mother's desire to provide financially for the children via life insurance, college assistance, and health insurance and a hope to solidify their family unit. The biological mother informed the court that the adoptive mother was her "life-time companion" and that she wished to "co-parent" the children with her. The father agreed to terminate his parental rights to permit the adoption without terminating the biological mother's parental rights. The adoption petition was granted July 10, 1997, and the children's last names were officially changed to "Mariga-Morris." The biological and adoptive mothers separated in November 1998, and the children have remained with the biological mother. The adoptive mother visited regularly with the children at first, but the visits became sporadic, and she began attending their school activities less frequently. The adoptive mother initially paid child support pursuant to an informal agreement, but ceased doing so in early 2001; she continued to carry the children on her health insurance plan, however.

In 1999 the biological mother married a man; in 2000 she had a child with her new husband; and in June 2001 they moved to Georgia. Thereafter, the adoptive mother and the children rarely communicated and did not visit. In February 2001, the biological mother filed a Petition to Establish Custody, Visitation, and Support, in Circuit Court, which she withdrew in November 2001, but refiled in Superior Court in December 2001. The Superior Court determined that it did not have jurisdiction because Georgia was the home state of the biological mother and the children, and dismissed the petition without prejudice. In late 2003, the biological mother divorced her second husband, moved back to Indiana, and filed a Petition to Re-Open in Superior Court, which was granted. On June 28, 2004, the Superior Court denied the adoptive mother's Amended Motion to Dismiss or Stay Proceedings which she had filed June 24, 2004, and granted the biological mother's Petition, ordering, among other things, that the adoptive mother pay

child support in the amount of \$290 per week and that she was responsible for 75% of the children's uninsured medical, optical, and dental expenses. On June 25, 2004 the adoptive mother filed an Amended Petition to Vacate Adoption, which was denied by the Circuit Court on September 1, 2004, following a hearing. The adoptive mother appealed the orders of both courts, and the cases were consolidated.

**The Circuit Court did have the statutory authority to grant the adoptive mother's petition to adopt the biological children of her same-sex partner, and it had sufficient evidence to conclude that the adoptive mother and the biological mother were in a committed relationship and intended to form a solid family unit. The adoption was valid and proper. The adoptive mother sought to be a parent, she is one, and the time has come for her to assume those responsibilities.** *Id.* at 628. The Court noted that it had recently decided several cases that are adverse to the adoptive mother's contention to the contrary including *In re Parentage of A.B.*, 818 N.E.2d 126 (Ind. Ct. App. 2004) and *In re Adoption of M.M.G.C.*, 785 N.E.2d 267 (Ind. Ct. App. 2003). The Court discussed *In re Adoption of K.S.P.*, 804 N.E.2d 1253 (Ind. Ct. App. 2004), in which it held that a same-sex domestic partner may adopt the biological children of her partner without divesting the parental rights of the biological parent. It pointed out that the facts of that case were remarkably similar to this case, and noted that the Court in that case (1) emphasized that "the primary concern in every adoption proceeding is the best interest of the child;" (2) examined the stepparent adoption statute; and (3) concluded that, although a strictly literal reading of the statute might lead to the conclusion that if the adoptive mother's petition were granted it would divest the biological mother of her parental rights, "[i]n light of the purpose and spirit of Indiana's adoption laws, ... the legislature could not have intended such a destructive and absurd result." *Id.* at 1257. *Mariga* at 625-26.

Also contrary to the adoptive mother's contentions, the Court found it appropriate to apply the holdings of the above-referenced cases retroactively to this case. *Id.* at 627. It noted that, generally, "pronouncements of common law made in rendering judicial opinions of civil cases have retroactive effect unless such pronouncements impair contracts made or vested rights acquired in reliance on an earlier decision..." *Marsh v. Dixon*, 707 N.E.2d 998, 1001 (Ind. Ct. App. 1999). The Court pointed out that, here, there was no contract that was impaired, nor did the adoptive mother acquire vested rights in reliance on pre-*K.S.P.* law of which she might now be divested. *Id.* at 627-28.

The Court noted that the adoptive mother also seemed to argue that the holding of *K.S.P.* is improper because it does not require the biological and adoptive parents to prove that they are in a committed relationship and that the only way to ensure that the parents are in a committed relationship is if they are married, which is an impossible hurdle for same-sex partners in the State of Indiana. In response, the Court discussed its recent decision in *Morrison v. Sadler*, 821 N.E.2d 15 (Ind. Ct. App. 2005) in which it held that IC 31-11-1-1, which expressly limits marriage to opposite-sex couples, was not violative of Indiana's Constitution. The Court also stated that the best interests of children is the overarching concern in the recent decisions on same-sex relationships. Accordingly, the Court declined the adoptive mother's request to alter the course of its recent decisions by

directing the focus away from her relationship with her children, and placing the focus upon the relationship of the parents. The Court also noted that nothing, not even a marriage certificate, can provide a court with total assurance that a couple is committed to each other and will remain so forever. As to the adoptive mother's argument that the children no longer wished to see her and were embarrassed when trying to explain that she is their mother's former lesbian lover, the Court responded that she is their parent and has a responsibility to remain in their lives even if her only contribution is financial. Mariga at 627-28.

**There is no evidence that the biological mother made any knowing or reckless material misrepresentations of a past or existing fact to the adoptive mother or to the Circuit Court at the time that the adoptive mother petitioned to adopt the children.** Id. at 629. The adoptive mother contended on appeal that the adoption was invalid because it was procured by fraud in that, allegedly, the biological mother was dishonest when she told the Circuit Court that the adoptive mother was her life-long partner, and that in fact the biological mother is heterosexual, and that she merely desired the financial benefits she and the children would receive if the adoptive mother became the children's adoptive parent. The Court noted that to vacate a decree of adoption based on fraud, there must have been a material misrepresentation of past or existing fact made with knowledge or reckless disregard for the falsity of the statement, and the misrepresentation must have been relied upon to the detriment of the relying party. In re Adoption of T.B., 622 N.E.2d 921, 925 (Ind. 1993). The fact that the relationship of the biological and adoptive mothers deteriorated after the adoption, and that the biological mother may have subsequently rediscovered her heterosexuality, is of no moment in that a claim of fraud cannot be premised upon future conduct.. Mariga at 628-29.

**The Superior Court had subject matter jurisdiction, i.e., jurisdiction over the class of cases, to order the adoptive mother to pay child support. The adoptive mother, by way of the adoption, assumed all of the rights, duties, and obligations of a biological parent and is a legally recognized "parent" to these children in every sense of the word. As a parent, she is obligated pursuant to civil common law and statutory law to help bear the cost of raising these children.** Id. at 631. Our common law and statutory law provided the Superior Court with subject matter jurisdiction to award child support in this case. Our statutes do not predicate the court's jurisdiction upon the status of the parents, as to each other. An adoptive mother is a mother and is liable for support of the adopted children, all of which is completely unaffected by the adoptive mother's status as the former same-sex domestic partner of the other parent. Child support is of the class of cases that Indiana superior courts have statutory jurisdiction to determine. That authority extends to supplemental powers to aid it in determining the difference between the parties and in protecting the welfare and rights of the children involved.. After considering the required statutory factors, a court "may order either parent or both parents to pay any amount reasonable for support of a child." IC 31-16-6-1(a). Moreover, the court must enter a decree in an action for child support when it finds: "(1) that there is a duty to support by the person alleged to have the duty; (2) that the duty to support has not been fulfilled; and (3) that an order should be entered under IC 31-16-6-1." IC 31-16-2-8(a). Mariga at 630-31.

**The Tippecanoe Circuit Court, as a court of probate jurisdiction, had exclusive jurisdiction regarding the children's adoption, but the Circuit Court and Superior Court No. 2 of Tippecanoe County have concurrent or coordinate jurisdiction as to child support. Further the Circuit Court was not vested with exclusive jurisdiction over all matters concerning the parties after it ruled on the adoption in 1997. Id. at 631. Two courts of coordinate jurisdiction cannot exercise jurisdiction over the same subject matter at the same time, but that did not happen here where the two courts were exercising jurisdiction over different subject matters. Id.**

The Court also found that the adoptive mother's 2001 Petition filed in Superior Court was clearly dismissed without prejudice, contrary to the adoptive mother's arguments. Id. at 632. It further found that the biological mother's errors in fashioning her petition were harmless, and declined to reverse the Superior Court's denial of the adoptive mother's motion to dismiss on this basis. It noted that the biological mother's failure to include a proper caption and to verify her petition simply did not affect the substantial rights of the parties, especially when it considered that at the heart of this case was the well-being of two minor children. Id. at 633.