



Adoption

In **Mathews v. Hansen**, 797 N.E. 2d 1168 (Ind. Ct. App. 2003), decided October 29, 2003, the Court affirmed the trial court's dismissal of the alleged father's motion to vacate the decree which granted the step-father's petition for adoption. The child was born in 1995 and lived with the mother and alleged father until 1997 when the father was arrested for domestic battery. The trial court issued a no-contact order between the father and mother, and the father later moved to California where his parents resided. The mother initiated a paternity action in 1997. Blood tests were court ordered and the order was sent to California but paternity was never established because blood testing was not completed. The paternity court ordered that the paternity matter be re-scheduled upon the written motion of a party.

In 1999 the child's step-father petitioned to adopt the child. The alleged father was served with notice by publication and the adoption was granted in January 2001. The court determined that the alleged father had been properly served by publication, that he had abandoned the child because he had not seen, supported or communicated with the child for over one year, that the Lake County Department of Public Welfare did not know the alleged father's whereabouts, that the alleged father's parental rights were terminated, and that the adoption was in the child's best interests.

In January, 2002 the alleged father attempted to register with the Putative Father Registry. In August, 2002 the alleged father filed a motion to vacate the adoption decree pursuant to Indiana Trial Rule 60(B)(6), claiming that the adoption judgment was void due to insufficient notice and fraud by the mother and step-father. The alleged father argued that the adoption decree had been obtained by the misrepresentations of the mother and step-father, who allegedly knew or had access to the alleged father's whereabouts and concealed this information from the court. The step-father filed a motion to dismiss the alleged father's challenge to the adoption, claiming the following: (1) the motion was time-barred under IC 31-19-14-4; (2) the alleged father's failure to register as a putative father constituted an irrevocable implied consent to adoption; (3) the alleged father had not shown a meritorious defense because he never denied his failure to see, support or communicate with the child for over one year. The trial court entered an order recognizing that the putative father's statute is a substantive non-claim statute, and concluded that the alleged father's failure to register in a timely manner precluded him from challenging the adoption.

Standard of review of a grant of a motion to dismiss is de novo.

Deciding a motion to dismiss based on a failure to state a claim involves a pure question of law. Mathews at 1171, citing Sims v. Beamer, 757 N.E. 2d 1021, 1024 (Ind. Ct. App. 2001). Therefore the Court does not defer to the trial court's decision because no determinations of fact are required.

Alleged father's challenge to adoption decree was time-barred by IC 31-19-14-2 and IC 31-19-14-4, which are statutes of limitation.

IC 31-19-14-2 states that if a person whose parental rights are terminated by entry of an adoption decree challenges the adoption decree not more than the later of six (6) months after the entry of the decree or one (1) year after the adoptive parents obtain custody of the child, the court shall sustain the adoption decree unless the person establishes, by clear and convincing evidence, that modifying or setting aside the adoption decree is in the child's best interests. A companion statute, IC 31-19-14-4, states that after the six (6) month or one (1) year time limit outlined at IC 31-19-14-2, a person whose parental rights were terminated by the entry of an adoption decree may not challenge the adoption decree even if: (1) notice of the adoption was not given to the child's putative father; or (2) the adoption proceedings were in any other manner defective.

The Court opined that IC 31-19-14-2 and IC 31-19-14-4 operate as statutes of limitation. Mathews at 1171. The Court further stated that such statutes are favored because they provide security against stale claims and promote the welfare and peace of society. Id., citing A.M. v. Roman Catholic Church, 669 N.E. 2d 1034, 1037 (Ind. Ct. App. 1996), trans. denied. If the applicable state of limitations has run, dismissal is appropriate. Monsanto Co. v. Miller, 455 N.E. 2d 392, 398 (Ind. Ct. App. 1983). The Court noted two prior decisions concerning challenges to adoption decrees when the challenge has not been brought within the statutorily mandated time frame, namely Adoption of LDC, 751 N.E. 2d 747 (Ind. Ct. App. 2001) and In Re Paternity of M.G.S., 756 N.E. 2d 990 (Ind. Ct. App. 2001), trans. denied. The Court opined that the alleged father had failed to avail himself of the putative father registry and that he could not challenge the adoption decree due to this failure and his lack of timeliness in moving to vacate the adoption. Mathews at 1172, 1173.

The Court further construed IC 31-19-14-4 as precluding the alleged father from contesting the adoption decree, even if he had not been given notice. The Court stated that "it is apparent that our legislature intentionally promulgated that an adoption decree could not be attacked on the basis of lack of notice after the time limitations have expired." Id. at 1173. The Court opined that the statute operates to preclude the alleged father's arguments because the motion to vacate was filed over eighteen months after the entry of the decree and beyond the one year requirement with respect to the step-father's custody of the child. The Court held that to permit the alleged father to vacate the adoption decree in these circumstances would "contravene the intended purpose and specific language of the applicable statute of limitations." Id.