

# Children's Law Center of Indiana



## Adoption

12/15/17

In **J.R. v. S.P.**, 89 N.E.3d 438 (Ind. Ct. App. 2017), the Court affirmed the trial court's order granting Parents' motion to dismiss the custody petition filed by their adopted child's Birth Mother and her husband. *Id.* at 441. The child was born in December 2003. The day after this child's birth, Birth Mother signed a consent to adoption wherein she consented to the child's adoption, waived notice of the adoption proceedings, and voluntarily relinquished all maternal rights, including the care, custody, and control of the child. Mother and Father (Parents) petitioned to adopt the child and the adoption was finalized in March 2004. Parents and Birth Mother did not enter into any agreement regarding post-adoption contact between Birth Mother and the child. Thirteen years later, in February 2017, Birth Mother and her husband filed a petition seeking custody of the child pursuant to IC 31-17-2-3, which provides that a "child custody proceeding is commenced in the court by... a person other than a parent by filing a petition seeking a determination of custody of the child." The petition alleged that Birth Mother and her husband had been in contact with the child, had learned that there were conflicts between the child and Parents, and they believed that Parents were planning to relocate with the child. The petition also alleged that a change in custody was in the child's best interests. In March 2017, Parents filed a motion to dismiss the custody petition filed by Birth Mother and her husband. Parents' motion to dismiss, filed pursuant to Indiana Trial Rule 12(b)(6) for failure to state a claim upon which relief may be granted, alleged that Birth Mother had voluntarily relinquished her parental rights in 2003 and had not entered into a post-adoption visitation agreement. The trial court granted Parents' motion to dismiss after a hearing. The trial court found that Birth Mother could not regain custody of the child from Parents under the guise of a non-parent third party, and the rights between Birth Mother and Parents had been litigated and a final order of adoption had been entered. Birth Mother and her husband appealed.

**The Court agreed with the trial court that Birth Mother could not circumvent the adoption statute, IC 31-19-15-1, "under the guise of a non-parent third party" custody request, and found the trial court did not err in granting Parents' motion to dismiss.** *Id.* at 440. The Court noted that the standard of review of a trial court's order granting a motion to dismiss for failure to state a claim under T.R. 12(B)(6) is de novo. *Id.* Quoting Trail v. Boys & Girls Clubs of Northwest Ind., 845 N.E.2d 130, 134 (Ind. 2006), the Court explained "while we do not test the sufficiency of the facts alleged with regards to their adequacy to provide recovery, we do test their sufficiency with regards to whether or not they have stated some factual scenario in which a legally actionable injury has occurred." *J.R.* at 440. Birth Mother and her husband contended that IC 31-17-2-3 provided them with the ability to commence a custody action to obtain custody of the child, but Parents responded that this statute did not apply because, as a matter of law, Birth Mother had violated her right to challenge custody of the child. The Court agreed with Parents'

The Derelle Watson-Duvall Children's Law Center of Indiana - A Program of Kids' Voice of Indiana  
9150 Harrison Park Court, Suite C • Indianapolis, IN 46216 • Ph: (317) 558-2870 • Fax (317) 558-2945  
Web Site: <http://www.kidsvoicein.org> • Email: [info@kidsvoicein.org](mailto:info@kidsvoicein.org)

argument. Id. The Court looked to IC 31-19-15-1, which provides that “if the biological parents of an adopted person are alive, the biological parents are . . .divested of all rights with respect to the child, and the parent-child relationship is terminated after the adoption unless the parent-child relationship is terminated by an earlier court action, operation of law, or otherwise.” J.R. at 440. Quoting In re Adoption of K.S.P., 804 N.E.2d 1253, 1257 (Ind. Ct. App. 2014), the Court noted the purpose of this statute “is to shield the adoptive family from unnecessary instability and uncertainty arising from unwanted intrusions by the child’s biological family.” J.R. at 440. Citing Schmitter v. Fawley, 929 N.E.2d 859, 861 (Ind. Ct. App. 2010), the Court explained that: (1) case law is clear that in an adoption proceeding, the parental rights of the biological parents are irretrievably terminated once the decree of adoption has been entered; (2) a decree of adoption severs forever every part of the biological parent and child relationship; (3) adoption severs the child entirely from its own family tree and engrafts it upon that of another; (4) for all legal and practical purposes, the child is the same as dead to its biological parents. J.R. at 440-41. The Court opined that Birth Mother’s parent-child relationship with the child was irretrievably terminated when the decree of adoption was entered in March 2004, and she was divested of all rights with respect to the child. Id. at 441. The Court explained that the acceptance of Birth Mother’s argument “would lead to patently absurd results in this case and potentially in many others.” Id. The Court observed that under Birth Mother’s argument, all parents who had either voluntarily relinquished their parental rights or had those rights involuntarily terminated could use IC 31-17-2-3 to potentially revive those divested rights, which would create the “unnecessary instability and uncertainty” that IC 31-19-15-1 was enacted to prevent. Id. The Court further opined that in this case, it would be absurd to allow Birth Mother to use her husband to revive these divested rights. Id.