

Children's Law Center of Indiana



Adoption

10/31/18

In **In Re Adoption of L.G.K.**, 113 N.E.3d 767 (Ind. Ct. App. 2018), the Court held that Mother's fraudulent claim that she did not know the identity of the child's father warranted granting Putative Father relief from the judgment, which was the granting of the adoption.

Mother and Putative Father dated until October 2014, and Mother told Putative Father she was pregnant in December 2014. Putative Father saw Mother once during the pregnancy, but Paternal Grandparents maintained contact with Mother. The child was born in August 2015; Putative Father did not visit Mother but Paternal Grandparents did. Putative Father was not listed on the birth certificate, did not register on the putative father registry, and did not establish paternity in any manner. Putative Father alleged that he and Mother used a drugstore DNA test which showed he was the father of the child; Mother denied this. Mother and Putative Father lived together for six months after the child was born, and Paternal Grandparents established a relationship with the child. The child calls Putative Father "dad". After Mother and Putative Father separated, Putative Father continued to visit the child, and even jointly hosted a first birthday party with Mother for the child, which Maternal Grandfather attended. Mother requested child support, which Putative Father sometimes paid. Mother threatened to take Putative Father to court over child support and deny him visitation, and the parties discussed having Putative Father placed on the birth certificate. Mother told Putative Father she would list him on the birth certificate, and that she would take care of it, but failed to do so. Mother's Fiancé filed a petition to adopt the child in February 2017; Maternal Grandfather then filed a petition for adoption in May 2017, and Mother's Fiancé agreed to Maternal Grandfather's petition. Maternal Grandfather's petition stated that the biological father was unknown and had not been disclosed by Mother to Maternal Grandfather or Maternal Grandfather's attorney. Maternal Grandfather's petition for adoption was granted.

In June 2017, Putative Father filed a petition to establish paternity, custody, parenting time, and child support. Putative Father continued to have contact with the child after the adoption decree, and he registered with the putative father registry in August 2017, and filed a motion to set aside the adoption. Putative Father alleged that Mother and Maternal Grandfather defrauded him by allowing him to have regular visitation with the child and act as the child's father, while secretly arranging for the adoption. After an evidentiary hearing, the trial court ultimately granted Putative Father's motion. The trial court's order stated: (1) Mother held Putative Father out to be the child's father to everyone, including Maternal Grandmother; (2) Evidence showed that Putative Father and his family had a loving relationship with the child; (3) the trial court did not find Mother to be credible; (4) Putative Father and the child had rights that were not served by the lack of notice; (5) the child would be denied a loving and involved parent if the order was not set aside; (6) Putative Father established that Maternal Grandmother and/or Mother defrauded

Putative Father and the trial court; (7) Putative Father was induced by Mother to not exercise his legal options for establishing paternity; (8) Putative Father had standing to join the adoption action; (9) revoking the adoption would protect the rights of Putative Father and the child. Maternal Grandfather appealed, arguing that the trial court erred when it granted Putative Father's motion for relief from judgment, that the trial court should have dismissed his motion to establish paternity, and that Putative Father could not allege fraud because he had failed to register on the putative father registry.

The trial court did not abuse its discretion in granting Putative Father equitable relief from the adoption order; Mother and Maternal Grandfather engaged in an unconscionable plan to defraud the trial court, and their acts ultimately influenced the trial court's decision. Id. at 773. Trial Rule 60 provides grounds for equitable relief from a judgment on grounds of fraud, duress, or material mistake of fact, and the decision of whether to grant that relief is within the discretion of the trial court. Id. at 771. In the absence of an abuse of discretion by the trial court, an appellate court will not reverse a trial court's decision on these grounds. Id. The burden of proof is on the movant to show the relief is necessary and just. Id. To establish a claim of fraud, the party alleging fraud must show that an unconscionable plan or scheme was used to improperly influence the court's decision and prevented the losing party from fairly or fully presenting the party's case. Id. The moving party also must show that he had a meritorious claim, which requires a showing that the party's evidence and case would prevail, unless overcome by other evidence. Id. Vacating a judgment must not be an empty exercise. Id. Fraud upon the court is limited to the worst and most egregious cases, and is narrowly applied; it is not enough to show a possibility that a court was misled, and instead, there must be an actual showing that the trial court's decision was influenced. Id.

In concluding that Putative Father showed that the trial court's decision was actually influenced by Mother's and Maternal Grandfather's misrepresentations, and that a fraud upon the court had been committed, the Court noted: (1) Mother misrepresented the facts about Putative Father's legal relationship to and status with the child; (2) Mother and Maternal Grandfather misrepresented their knowledge about Putative Father's existence; (3) as a result of those misrepresentations, Putative Father never filed with the putative father registry; and (4) as a result of those misrepresentations, the trial court granted the adoption. Id. at 772. The Court again noted Putative Father's high level of involvement in the child's life, and the Court noted the trial court's strong language in its order indicated that the trial court felt that it would not have granted the adoption if the trial court had known of Putative Father's existence and that Mother and Maternal Grandfather were misrepresenting their knowledge of him. Id.

Under this set of facts, Putative Father's failure to register with the putative father registry did not prevent Putative Father from being granted relief on equitable grounds, especially given that Mother and Maternal Grandfather's fraud affected Putative Father's understanding of his legal relationship to the child. Id. at 773. The Court acknowledged that IC 31-19-5-18 provides that a putative father while fails to register within the specified time period waives notice of an adoption and has his consent irrevocably implied. Id. at 772. The specified time period applicable to this case is within thirty days of a child's birth, or by the date on which the adoption petition is filed, whichever comes later. Id., citing IC 31-195-12(a). The Court also acknowledged that case law provides that a putative father's whose consent is implied

may not challenge an adoption petition. Id. (internal citations omitted). However, Mother and Grandfather intentionally failed to comply with statutory requirements pursuant to IC 31-19-5-1(a), which provides in relevant part that the putative father registry applies to a putative father whenever an adoption petition has been filed, and the mother has not disclosed the name or address or both of the putative father to the attorney or agency arranging the adoption. Id. and 772-73. Since this fraud deprived the trial court of its ability to address the child's best interests with respect to the child's relationship with Putative Father, the Court concluded that under this set of facts, Putative Father was entitled to equitable relief notwithstanding his failure to register with the Putative Father registry. Id. at 773.