



## **Adoption** 1/10/2020

In **In the Matter of the Adoption of C.A.H., Minor Child**, 136 N.E.3d 1126 (Ind. 2020), the Court held that although Indiana law allows for a trial court to find that a natural parents' consent has been irrevocably implied due to failure to prosecute a motion to contest an adoption, that parent's implied consent cannot be based solely on the parent's failure to appear at a single hearing. The Court reversed the trial court's finding that Father's consent was irrevocably implied by IC 31-19-10-1.2(g), and remanded the matter for more proceedings.

The child was born in July 2015 and was placed in maternal grandparents' care in March 2016. Grandparents were made guardians in June 2016 and filed for adoption in May 2017, arguing that Father's consent was unnecessary under IC 31-19-9-8 due to abandonment, failure to communicate, and failure to pay child support. Father filed to contest the adoption in June 2017. In the meantime, the State filed to establish paternity in April 2017, and paternity was established in April 2018. Grandparents asked for a final hearing in the adoption, which was set for June 2018 but was continued to January 2019. From June 2017 through January 2019, Father was active in the adoption case through counsel, though he missed a deposition in September 2017 and required a continuance in June 2018 due to periods of incarceration. He was also late to court in July 2017. On January 4, 2019, the final adoption hearing was set and Father failed to appear. His counsel indicated that Father intended to be in attendance and had confirmed this fact with counsel on multiple occasions. The court waited over an hour for Father, who never appeared and counsel was unable to account for his whereabouts. Upon Grandparents' motion, the court moved forward with the final hearing and finalized the adoption, citing Father's failure to appear as a failure to prosecute his motion.

Upon appeal, Father argued that he did not fail to prosecute his motion, and he merely missed a hearing due to oversleeping. He pointed to his other court appearances and activity in the case as illustrative. Grandparents reply that the court's ruling should stand, relying on K.S. v. D.S., 64 N.E.3d 1209 (Ind. Ct. App. 2016). The Court of Appeals agreed with Grandparents that the cases are similar because they both involve parents who contest an adoption but then fail to appear for the final hearing, and affirmed the trial court's ruling. The Indiana Supreme Court granted transfer.

**IC 31-19-10-1.2(g) is not a statute which provides that parent's consent to an adoption can be irrevocably implied simply by a parent missing one hearing. Id. at 1129-30.** IC 31-19-10-1.2(g) provides that "[i]f a court finds that the person who filed the motion to contest the adoption is failing to prosecute the motion without undue delay, the court shall dismiss the motion to contest with prejudice, and the person's consent to the adoption shall be irrevocably implied." The adoption decree cited only to this statute and to Father's missing the hearing as the reason his consent was not required, resulting in an adoption decree that rested entirely on whether missing

one hearing was “failing to prosecute the motion without undue delay”. Id. at 1128. The Court noted that Father appeared at the first hearing, which was continued, and that when Father failed to appear at the final hearing, the trial court referred to it as a basis for consent and default. Id. The Court opined that while there was statutory basis for a parent’s failure to participate in adoption proceedings being a ground for granting an adoption over their consent, but that his failure to attend one hearing, which had been rescheduled multiple times, was insufficient to overcome his significant liberty interests at risk. Id. at 1129. The Court noted that Father had remained in contact with his attorney, and otherwise participated in proceedings. Id. The Court opined that to find otherwise would impermissibly lower the bar for finding implied consent in adoption cases. Id.

The Court lastly noted that its opinion was not dispositive with respect to whether the adoption should be granted on the other grounds which Grandparents alleged in their adoption petition. Id.