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Adoption

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In **In Re Adoption of Infant Child Baxter**, 799 N.E. 2d 1057 (Ind. 2002), the Supreme Court accepted transfer, reversed the trial court's judgment that the consents to adoption signed by the biological parents and maternal grandparents were not properly executed and were of no force and effect, and remanded the case for further proceedings. The Court of Appeals opinion at 778 N.E. 2d 417 (Ind. Ct. App. 2002) was vacated.

The biological mother, then age seventeen, sought out acquaintances of the maternal grandmother as prospective adoptive parents for the unborn child. The biological father was eighteen years old. Counsel for the prospective adoptive parents hired an attorney to draft an adoption petition and adoption consent forms. The petition and consent forms were reviewed by the biological parents and maternal grandparents who returned the documents to correct misspelling of names. The biological parents and maternal grandparents signed the consent forms at a dinner at the home of the maternal grandparents which the prospective adoptive parents attended. The child had not yet been born.

No Notary Public was present at the time the consent forms were signed. The prospective adoptive father took the signed consent forms to the Hamilton County Sheriff's Department where a Notary Public notarized all of the consent forms. I.C. 33-16-2-2(a)(6) states that notaries shall not acknowledge the execution of an instrument unless the person who executed the instrument either signs the instrument in the notary's presence or affirms his signature to the notary. This statute was not followed in the instant case and the Court reminded notaries of this statutory obligation. Id. at 1059, fn1.

The prospective adoptive parents' attorney filed the adoption petition and consent forms and the adoptive parents were appointed guardians of the unborn child. The child was born about six weeks after the biological parents and maternal grandparents signed the consent form. The biological parents delivered the child into the custody of the adoptive parents at the hospital. A video made at the hospital showed that these events occurred knowingly and voluntarily. When the child was about two weeks old, the biological mother and maternal grandmother contacted the adoptive parents to revoke their consents and reclaim custody of the child. When the child was about one month old, the biological parents and grandparents filed court documents to set aside the guardianship and custody order, revoking the consents to adoption, and petitioning for habeas corpus and to dismiss

the adoption petition. The parents and grandparents alleged that pre-birth consents to adoption are voidable pursuant to Indiana law.
At trial the court found that the biological parents and maternal grandparents had knowingly and voluntarily signed the consent forms, but that the documents had not been executed in the presence of a notary public as required by I.C. 31-19-9-2 and that, under I.C. 33-16-2-2 the consent forms had not been properly executed and were of no force or effect. The Court of Appeals affirmed the trial court's decision at 778 N.E. 2d 417 (Ind. Ct. App. 2002).

Validity of improperly notarized consents to adoption may be satisfied by evidence that the signatures are authentic and genuine in all respects and manifest a present intention to give the child up for adoption.
I.C. 31-19-9-2, the consent statute, states that the consent to adoption may be executed at any time after the birth of the child either in the presence of (1) the court; (2) a notary public or other person authorized to take acknowledgements; or (3) an authorized agent of : (A) the division of family and children; (B) a county division of family and children; or (C) a licensed child placing agency. The parties acknowledged that the consents were not signed in the presence of any of the listed entities. The biological parents argued that the consents were not valid and were void ab initio, buttressing their argument with the long-standing principle that adoption law must be strictly construed in favor of the rights of natural parents. The adoptive parents contended that the failure of the consents to meet the statutory specifications did not render the consents invalid, but only denied the consents presumptive validity.

Citing In Re Adoption of H.M.G., 606 N.E. 2d 874 (Ind. Ct. App. 1993), the Baxter Court held that if the written consent is not executed in the presence of any one of the six specified entities, the validity of the consent may nevertheless be satisfied by evidence that the signatures are authentic and genuine and manifest a present intention to give the child up for adoption. Baxter at 1062. In H.M.G. the biological mother had executed her consent to adoption before the birth of the child and subsequently sought to revoke her consent because it did not comply with the statutory requirements. The Court of Appeals held that a pre-birth consent could be ratified by the biological mother's post-birth acts and, if so ratified, become binding. H.M.G. at 874.

In Baxter, the Supreme Court noted that ten years has passed since the H.M.G. decision and it is likely that legislative acquiescence has set in. A decade's worth of Indiana adoptions have occurred where the parties' expectations may well have been set based on the H.M.G. holding. Baxter at 1062. The Court reversed the trial court's judgment and remanded the case to the trial court for a determination as to whether the signatures are authentic and genuine and manifest a present intention to give up the child for adoption.