

Children's Law Center of Indiana



Adoption and Paternity Establishment

2/27/13

In ***In Re Paternity of G.W.***, 983 N.E.2d 1193 (Ind. Ct. App. 2013), the Court reversed the trial court's decision to deny Mother's two motions to dismiss the paternity action filed by Birth Father. The child was born to Mother on July 27, 2010. Prior to Mother's pregnancy with the child, Mother was in a relationship with Birth Father, who claims to be the child's biological father. Birth Father was never married to Mother, did not sign the child's birth certificate or a paternity affidavit, and did not register with the putative father registry. Birth Father knew about Mother's pregnancy, attended doctor appointments with Mother, and was present during the child's birth. Birth Father saw the child regularly until April 2011, when Mother stopped all visitation. When she was six months into her pregnancy with the child, Mother began dating Stepfather. Stepfather and Mother married on July 12, 2011, when the child was almost one year old. On August 22, 2011, Stepfather filed a petition to adopt the child, to which Mother consented, in the Floyd Circuit Court. Although Birth Father was named in the adoption petition as "the biological father", and a search of the putative father registry was conducted, Birth Father did not receive notice of the adoption proceedings. On August 10, 2011, twelve days prior to the filing of the adoption petition, Birth Father signed a petition to establish paternity at the Clark County prosecutor's office, and the State of Indiana, as the child's next friend, filed the verified petition on August 26, 2011, in the Clark Circuit Court. On September 16, 2012, Mother filed a motion to dismiss the paternity action. On September 21, 2011, Birth Father filed a response and cross-petition in the paternity action in the Clark Circuit Court and a motion contesting the adoption in the Floyd Circuit Court. On November 4, 2011, the paternity action and the adoption proceedings were consolidated in the Floyd Circuit Court and the State withdrew its appearance in the paternity action. On January 12, 2012, Mother, as the child's next friend, filed a motion to dismiss the complaint to establish paternity. On April 30, 2012, after conducting an evidentiary hearing on Mother's two motions to dismiss, the trial court denied Mother's motions and certified its order for interlocutory appeal. The Court accepted the case and Mother appealed.

The Court opined that the trial court erred in denying Mother's motion to dismiss the paternity action, finding that, as Birth Father failed to timely register with the putative father registry, he had impliedly consented to the child's adoption and is now barred from establishing paternity. *Id.* at 1198. The Court addressed Mother's assertion that, because Birth Father failed to timely register with the putative father registry, did not sign the paternity affidavit or birth certificate, and did not timely file a paternity petition, he impliedly consented to

the adoption and is barred from seeking to establish paternity due to lack of standing. The Court noted that Mother had brought her initial motion to dismiss under Ind. Trial Rule 12(B)(6), and that if, on a 12(B)(6) motion, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided by Ind. Trial Rule 56. *Id.* at 1196. The Court said that in this case, the trial court conducted an evidentiary hearing and the parties tendered briefs in support of their respective positions, so the Court would proceed under the summary judgment standard of review. *Id.* The Court, citing T. R. 56(C), noted that summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to a judgment as a matter of law. *Id.* The Court said that, on appeal, the Court “stands in the shoes of the trial court” and must determine whether there is a genuine issue of material fact and whether the trial court has correctly applied the law. *Id.*, citing First Famers Bank & Trust v. Whorley, 891 N.E.2d 604, 607-08 (Ind. Ct. App. 2008), *trans. denied*.

Mother asserted that Birth Father’s failure to take timely action resulted in his implied consent to the child’s adoption and waiver of any notice of the adoption proceedings. Birth Father argued that, while acknowledging his lack of registration, the provisions of the putative father registry are not applicable to him because Mother disclosed his name to her attorney and a search of the putative father registry was conducted. The Court looked to the Indiana Putative Fathers’ Registry established in 1994 and observed that the statute imposes registration requirements on putative fathers who wish to contest their child’s adoption or those who petition for paternity while an adoption petition is pending. *Id.* at 1196-97. The Court quoted IC 31-19-5-1, which provides:

- (a) This chapter applies to a putative father whenever:
 - (1) an adoption under [I.C. ch.] 31-19-2 has been or may be filed regarding a child who may have been conceived by the putative father; and
 - (2) on or before the date the child’s mother executes consent to the child’s adoption, the child’s mother has not disclosed the name *or* address, or both, of the putative father to the attorney or agency that is arranging the child’s adoption.
- (b) This chapter does not apply if, on or before the date the child’s mother executes consent to the child’s adoption, the child’s mother discloses the name *and* address of the putative father to the attorney or agency that is arranging the child’s adoption.

(Emphases in original.) *Id.* at 1197.

The Court said that a putative father who registers within thirty days after the child’s birth or the date the adoption petition is filed, whichever occurs later, is entitled to notice of the child’s adoption, citing IC 31-19-5-4 and IC 31-19-5-12. *Id.* The Court, citing IC 31-19-5-5, said that if, on or before the date the Mother executes a consent to adoption, she does not disclose to the attorney or agency that is arranging the adoption, the name *or* address, or both, of the putative father, the putative father must register to entitle him to notice of the child’s adoption (emphasis

in original). Id. The Court opined that the repercussions of failing to register with the putative father registry are far-reaching and include foregoing notice of the adoption proceeding and “an irrevocably implied consent to the child’s adoption,” quoting IC 31-19-5-18. Id. The Court said that the requirement that the putative father registers within a certain time limit also carries its mirror consequences into the paternity proceedings, in that IC 31-14-5-7 requires that a man who files or is a party to a paternity action “shall register with the putative father registry under [I.C.] 31-19-5.” Id. The Court also quoted IC 31-14-5-9, which states that “a man who is barred under [I.C.] 31-19 from establishing paternity may not establish paternity by: (1) filing a paternity action as next friend of a child; or (2) requesting a prosecuting attorney to file a paternity action.” Id. The Court said that the evidence reflects that, although Mother disclosed Birth Father’s name to the attorney arranging the child’s adoption by Stepfather, Mother never divulged Birth Father’s address. Id. The Court found that the provisions of the registry applied to Birth Father because both the name and address have to be revealed to fall outside the application of the putative father registry. Id. The Court concluded that, as Birth Father acknowledges that he never registered, he is not entitled to notice of the adoption proceeding, and has irrevocably and implicitly consented to the child’s adoption by Stepfather. Id. The Court said that its conclusion is supported by Indiana’s strong interest in providing stable homes for children, as “early and permanent placement of children with adoptive families is of the utmost importance,” quoting In Re Paternity of Baby Doe, 734 N.E.2d 281, 287 (Ind. Ct. App. 2000). G.W. at 1197.

The Court opined that the trial court erred in denying Mother’s motion to dismiss Birth Father’s paternity action because Birth Father cannot serve as the child’s next friend. Id. at 1198. Quoting IC 31-14-5-9, the Court agreed with Mother’s argument that Birth Father, a man who is barred under IC 31-19 (adoption statutes) from establishing paternity, may not file a paternity action as next friend of a child or request a prosecuting attorney to file a paternity action. Id.