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**Adoption**

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In **In Re The Adoption and Paternity of K.A.W.**, 99 N.E.3d 724 (Ind. Ct. App. 2018), the Court held that the trial court did not err by finding that Putative Fathers’ consent to the adoption of the child was irrevocably implied by his failure to timely register with the Putative Father registry. Id. at 724.

The child was born to Mother and Putative Father in 2014, who was incarcerated before the child’s birth. Mother was periodically incarcerated throughout the child’s life. The child has always lived with Adoptive Parents. In December 2015, Putative Father filed a petition to establish paternity and a request for a DNA test. In February 2016, Adoptive Parents filed a petition to adopt the child. The paternity and adoption cases were consolidated and the trial court granted Putative Father’s request for a DNA test. The DNA test showed that there was a 99.99% probability that Putative Father was the child’s biological father. In December 2016, Putative Father filed a petition to contest the adoption. Mother consented to the adoption in August 2017, and Adoptive Parents requested that the trial court deem Putative Father’s consent to be irrevocably implied as he had not yet registered with the Putative Father Registry. On August 26, 2017, Putative Father registered with the Putative Father Registry, and the trial court entered an order on August 30, 2017, staying Putative Father’s petition to establish paternity. The trial court found that Putative Father’s consent to the adoption was irrevocably implied, as he failed to timely register with the Putative Father Registry. The trial court also made findings about Father’s current incarceration, his abuse of illegal substances, and his lack of contact with the child. The trial court dismissed Putative Father’s petition to establish paternity, and Putative Father appealed.

**The Court held that the trial court did not err in finding that Putative Father’s consent was irrevocably implied.** Id. at 727. IC 31-19-5-18 provides that a “putative father who fails to register within the period specified by [IC 31-19-5-12] of this chapter waives notice of an adoption proceeding. The putative father’s waiver under this section constitutes an irrevocably implied consent to the child’s adoption.” Id. 726. In order to adhere to IC 31-19-5-12, Putative Father had to register with the Putative Father Registry within thirty days of the child’s birth or by the date on which the adoption petition was filed. Id. Putative Father did not meet either of these deadlines; he did not register until the child was more than three years old, and the adoption petition had been filed eighteen months prior. Id. at 727. Putative Father attempted to invoke another portion of IC 31-19-5-12 which allows a putative father to register by the date of the filing of a petition to terminate the parent-child relationship between the child and the child’s mother; Putative Father argued that when Mother consented to the adoption her rights were effectively terminated, and thus, as long as he registered before Mother gave her consent to the adoption, he should be determined as having registered in time. Id. at 726, n.2. The Court dismissed this argument, noting that it was obvious that this portion of the statute did not apply because no termination of the parent-child relationship petition had been filed in this case, and furthermore, Putative Father still did not register until after Mother consented to the adoption. Id.

**Despite Putative Father’s compelling argument that the purpose of the Putative Father Registry was to ensure notice was given to putative fathers if someone was seeking to adopt their child, and that Putative Father was not in need of such notice via the Registry because he had other notice, the Court determined that the plain language of the statute supported the trial court’s determination.** Id. at 727. Putative Father argued that the purpose of the Putative Father Registry is to make sure that putative fathers receive notice if someone attempts to adopt their child. Id.; see also IC 31-19-5-3. Putative Father had notice, filed a pro se paternity petition, and took part in the adoption proceedings. Putative Father argued that because he had notice, he did not need the protection of the Putative Father Registry, that there was no reason for him to register, and that requiring him to register under these facts was against the policy of the statute. Id. at 727. The Court agreed that the result felt “nonsensical”, like “the ultimate ‘gotcha’ outcome”, and noted that in “a perfect world, we would reverse.” Id. However, the Court opined that the statute plainly stated that failure to register within the provided timeframe leads to implied consent, and thus, the trial court did not err. Id. The Court cautioned practitioners that the best practice in circumstances such as this would be to have a putative father register with the putative registry at the same or before the filing a paternity action. Id. at 727, n.3.

**The departure from the statutory procedure found at IC 31-19-11-1(a)(4), which requires the submission of an affidavit from the State Department of Health stating whether Putative Father had registered with the Putative Father Registry or had filed a petition to establish paternity, was harmless error.** Id. at 727. IC 31-19-11-1(a)(4) requires that, in the course of an adoption case, prospective adoptive parents must submit an affidavit from the State Department of Health stating whether he had registered as a putative father or had filed a petition to establish paternity. Id. Putative Father argued that because Adoptive Parents failed to submit this affidavit, the trial court erred in granting the adoption petition. Id. The Court determined that although Putative Father was correct that the affidavit was required, all parties to the case and the trial court were on notice that Putative Father had filed a petition to establish paternity and eventually registered as a putative father. Id. The Court also noted that the error was harmless because Putative Father knew about and participated in the adoption proceedings. Id.

**Practice Note: In footnote 1, the Court noted that IC 31-19-9-12(1) provides that a putative father’s consent to an adoption can be irrevocably implied if he fails to file a motion to contest the adoption within thirty days of service of notice of the adoption; however, the Court felt that In Re B.W., 908 N.E.2d 586, 592-94 (Ind. 2009) made Putative Father’s doing so unnecessary in this case.** Id. at 726, n.1. IC 31-19-9-12 provides that a putative father’s consent to an adoption is irrevocably implied if he does any of the following: (1) fails to file a motion to contest the adoption within thirty days after service of notice under IC 31-19-4 in the court in which the adoption is pending; (2) if he files a proper motion to contest the adoption, he then fails to appear at the hearing set to contest the adoption; (3) if he files a paternity action in Indiana or any other jurisdiction, he then fails to establish paternity in the action; or (4) if he is required to but fails to register with the putative father registry within the period under IC 31-19-5-12. The Court acknowledged that this statute provides that if a putative father fails to file a motion to contest the adoption within thirty days of service of notice of the adoption, his consent is deemed irrevocably implied without further court action. Id. at 726, n.1. The Court also acknowledged that Putative Father failed to file his motion to contest the child’s adoption within that time frame. Id. However, the Court cited **In Re B.W.**, 908 N.E.2d 586, 592-94 (Ind. 2009) as holding that the filing of a petition to establish paternity is the equivalent of a motion to contest the adoption. Id. Based on this holding, the Court dismissed the argument that Putative Father’s consent was also irrevocably implied because of his failure to timely file a motion to contest the adoption. Id. However, **In Re B.W.**, 908 N.E.2d 586, 592-94 (Ind. 2009), the Indiana Supreme Court specifically held that under IC 31-19-9-12(1), to be deemed to have implied his irrevocable consent to an adoption, a putative father must have failed to file *both* a paternity action and a motion to contest the adoption. (emphasis in opinion). At the time In Re B.W. was decided, IC 31-19-9-12(1) was written very differently than it was at the time the trial court decided the present case. In 2010, the Indiana Legislature amended IC 31-19-9-12(1), which originally read: “…fails to file: (A) a motion to contest the adoption in accordance with IC 31-19-10; and (B)a paternity action under IC 31-14;”. This is quite different from the current version of IC 31-19-9-12, which provides that a putative father’s consent to an adoption is irrevocably implied if he does any of the following, one of which is subsection (1), failing to file a motion to contest the adoption within thirty days after service of notice under IC 31-19-4 in the court in which the adoption is pending. Since **In Re B.W.**, 908 N.E.2d 586 (Ind. 2009) was issued before the 2010 statutory amendments, which significantly changed the statute on which B.W. relied in its opinion, practitioners should be cautious in using footnote 1 of the K.A.W. opinion as a valid legal argument.