

On February 27, 2013, the Indiana Court of Appeals issued a new opinion, "for publication," *In The Matter of the Paternity of G.W.; J.W. v. R.M.*"; No. 22A01-1205-JP-234. It is an appeal from the Floyd County Circuit Court, The Honorable J. Terrance Cody.

The case can be found on the Indiana Court of Appeals website.

Mother (J.W.) appealed the trial court's denial of her two motions to dismiss the paternity action begun by Father (R.M.). Mother had filed to dismiss the paternity action in her own name, and also to dismiss Father's action as the next friend of child. Trial Court denied both of Mother's motions. **Court of Appeals REVERSED trial court's denial. Trial court erred in denying Mother's two motions to dismiss.**

Child was born on July 27, 2010. Father was present at the child's birth, attended doctor appointments with Mother, and saw the child regularly until April, 2011, when Mother stopped all visitation between Father and child. Father never signed a Paternity Affidavit, nor did he register with the Putative Father Registry. He was not married to Mother at the time of child's birth.

While Mother was pregnant with child, she began dating another man (J.U.). Mother married J.U. on July 12, 2011.

J.U. filed a petition to adopt child on August 22, 2011. Mother's consent was filed with the Petition. Father was named in the adoption petition as "biological father", but Father did not receive notice of the adoption proceedings.

Twelve days prior to J.U. filing his petition for adoption, Father met with the Clark County Prosecutor's Office and signed a Petition to Establish Paternity. That Petition was not filed until **four days after** the adoption petition was filed by J.U. The Petition was filed by the State of Indiana as child's "next friend."

On September 16, 2011, Mother filed a Motion to Dismiss the paternity action. On September 21, 2011, Father filed a response and cross-petition in the paternity action. Father also filed to contest the adoption action. The paternity and adoption actions were consolidated in the Floyd Circuit Court. The State then withdrew its Appearance in the paternity action. Mother then filed a Motion to Dismiss the paternity action as the child's "next friend."

On April 30, 2012, the trial court conducted an evidentiary hearing on Mother's two motions to dismiss. Both motions were denied. The trial court then certified its order for interlocutory appeal.

On appeal, Mother alleged that Father failed to timely register with the putative father registry, sign the child's birth certificate or timely file a paternity action, therefore Father implicitly consented to the adoption and is barred from seeking paternity as he no longer has standing to bring such a claim.

Father, on appeal, argued that the provisions of the putative father registry are not applicable to him because Mother disclosed his name to her attorney.

The Putative Father Registry was established in 1994. The statute governing the registry, IC 31-19-5-2, imposes registration requirements on putative fathers who wish to contest their child's adoption or petition for paternity while an adoption is pending. *See In Re: Adoption of J.D.C.*, 751 N.E.2d 747, 749 (Ind. Ct. App. 2001).

Here is the applicable provisions of I.C. 31-19-5-1:

"Applications of Chapter.

Sec. 1 (a). This chapter applies to a putative father whenever:

(1) an adoption under (I.C.) 31-19-2 has been or may be filed regarding a child conceived by a putative father; and

2) on or before the child's mother executes a 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 of, on or before the date the child's mother executes a 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 adoption."

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In other words, for requirements of I.C. 31-19-5-1, NOT to apply, the mother must have disclosed BOTH the father's name, and the father's address, to the attorney or agency arranging the adoption. That did not happen in this case as Mother disclosed Father's name but not Father's address, to her attorney.

Since Mother did not disclose BOTH Father's name and address to her attorney, then the provision of the Putative Father Registry apply. Under the Registry provisions, Father is not entitled to notice of the adoption proceeding and has irrevocably and implicitly consented to the adoption proceeding.

This is supported by the State's strong interest in providing stable homes for children as "*early and permanent placement of children with adoptive families is of the utmost importance.*" *In Re: Paternity of Baby Doe*, 734 N.E.2d 281, 287 (Ind. Ct. of App. 2000).

**Since Father failed to timely register with the putative father registry, he has impliedly consented to the adoption of his minor child and is now barred from establishing paternity, in his own name, under I.C. 31-14-5-7. The trial court erred in denying Mother's motion to dismiss the paternity action.**

Father is also barred from establishing paternity as child's "next friend". Under I.C. 31-14-5-9, a man who is barred from establishing paternity under I.C. 31-19, may not establish paternity by filing as next friend.

Sincerely,

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