

# Children's Law Center of Indiana



## Adoption

7/21/10

In **In Re Adoption of A.M.**, 930 N.E.2d 613 (Ind. Ct. App. 2010), the Court reversed and remanded the trial court's denial of maternal Grandfather's uncontested petition to adopt his biological granddaughter. On remand, the Court instructed the trial court to ensure that all statutory requirements are met. The child was born on September 8, 2005. Grandfather filed a petition for adoption on April 24, 2009. Mother and Father of the child consented to the adoption. The adoption petition stated that Mother... "joins in this Petition for Adoption for purposes of maintaining her maternal rights" and "[Mother] is not terminating or relinquishing her legal maternal rights." The trial court entered a decree which granted Grandfather's petition for adoption on September 30, 2009. The decree stated that "[Mother] is not divested of her maternal rights due to the fact that she and [Grandfather] are not married." On October 26, 2009, the trial court entered an Order Vacating Decree of Adoption, setting the matter for hearing on January 7, 2010, and ordering the Petitioner to provide notice of the hearing and Father to attend the hearing. On November 17, 2009, Grandfather filed a motion to correct error and argued that Father's attendance at the hearing was not required or necessary. After a hearing on December 2, 2009, the trial court stated that there was one issue: whether or not the adoption could be done under Indiana law. On December 23, 2009, the trial court denied Grandfather's motion to correct error and petition for adoption, finding, inter alia, that: (1) there is no statutory authority that would allow a biological parent to maintain parental rights following the issuance of an adoption decree by a grandparent; indeed, IC 31-19-15-1 appears to preclude this outcome; (2) Grandfather notes that, in certain narrowly defined situations, a biological parent has been allowed to maintain parental rights following an adoption by a third party. See **In Re Adoption of K.S.P.**, 804 N.E.2d 1253 (Ind. Ct. App. 2004); **In Re Adoption of M.M.G.C.**, 785 N.E.2d 267 (Ind. Ct. App. 2003); **In Re Infant Girl W.**, 845 N.E.2d 229 (Ind. Ct. App. 2006), *trans. denied*; **Mariga v. Flint**, 822 N.E.2d 620 (Ind. Ct. App. 2005); (3) the above cases are highly fact specific. They share a common component: the adoptive parent and the consenting parent cohabite, forming a cohesive family unit. The adoptive parent provides primary, day-to-day care for the child; (4) [Grandfather] sees the child three to four times per week, is the primary male figure in the child's life, and provides significant financial support for the child, but it cannot be said that Grandfather, Mother and child form a family unit as contemplated by the Appellate Court in **K.S.P.**; (5) it is beyond the authority of the trial court to grant this relief; modification of the Indiana adoption statutes requires legislative, and not judicial action.

**The Court concluded that the trial court erred in denying Grandfather’s petition to adopt the child.** *Id.* at 621. The Court reviewed Indiana adoption case law, noting that: (1) the best interests of the child is the primary concern in an adoption; (2) the adoption statute creates a proceeding unknown at common law; (3) the Court must strictly construe the statute in favor of the rights of biological parents; (4) the statute is not to be so strictly construed as to defeat its purposes. *Id.* at 616 (multiple citations omitted). The Court then discussed In Re Adoption of M.M.G.C., 785 N.E.2d 267 (Ind. Ct. App. 2003), in which the Court addressed whether a second adoptive parent may adopt a child without divesting the rights of the first adoptive parent. *A.M.* at 617. The M.M.G.C. Court “concluded that Indiana’s common law permits a second parent to adopt a child without divesting the rights of the first adoptive parent.” M.M.G.C. at 270-71. *A.M.* at 617. The M.M.G.C. Court limited its holding by noting that it did not “reach the question of whether a second-parent adoption would divest all rights of a biological parent with respect to the child where the child’s prospective adoptive parent and the child’s biological parent are not married to each other,” nor “the question of whether two unmarried adults may adopt a child by filing a joint petition for adoption.” M.M.G.C. at 270 n.1. *A.M.* at 617-18. The Court further considered In Re Adoption of K.S.P., 804 N.E.2d 1253 (Ind. Ct. App. 2004), where one of the issues reserved in M.M.G.C. was addressed. *A.M.* at 618. The issue addressed in K.S.P. is whether a second-parent adoption would divest all rights of a biological parent with respect to the child where the prospective adoptive parent and the biological parent are not married to each other. K.S.P. at 1256. *A.M.* at 618. The K.S.P. Court reversed the trial court’s denial of the birth mother’s domestic partner’s petition to adopt birth mother’s children as a second parent. K.S.P. at 1260. *A.M.* at 619. In K.S.P. the Court examined the divesting statute (IC 31-19-15-1) and the stepparent adoption statute (IC 31-19-15-2). The Court concluded that, although a strict literal reading of these two statutes would seem to support the trial court’s determination that granting the domestic partner’s petition for adoption would divest the birth mother’s parental rights to her children, “the legislature could not have intended such a destructive and absurd result.” K.S.P. at 1257. *A.M.* at 618. The K.S.P. Court concluded that where the prospective adoptive parent and the biological parent are both in fact acting as parents, Indiana law does not require a destructive choice between the two parents. K.S.P. at 1260. *A.M.* at 619.

The Court reviewed IC 31-19-15-1, the divestiture statute, which, effective July 1, 2009, provides:

(a) Except as provided in section 2 [stepparent adoption] of this chapter or IC 31-19-16 [postadoption contact], if the biological parents of an adopted person are alive, the biological parents are:

- (1) relieved of all legal duties and obligations to the adopted child; and
- (2) divested of all rights with respect to the child;

and the parent-child relationship is terminated after the adoption unless the parent-child relationship was terminated by an earlier court action, operation of law, or otherwise.

The Court also reviewed IC 31-19-15-2, the stepparent adoption statute, which reads:

- (a) If the adoptive parent of a child is married to a biological parent of the child, the parent-child relationship of the biological parent is not affected by the adoption.
- (b) If the adoptive parent of a child is married to a previous adoptive parent, the parent-child relationship of the previous adoptive parent is not affected by the adoption.
- (c) After the adoption, the adoptive father or mother, or both:
  - (1) occupy the same position toward the child that the adoptive father or the adoptive mother, or both, would occupy if the adoptive father or adoptive mother, or both, were the biological father or mother; and
  - (2) are jointly and severally liable for the maintenance and education of the person.

After considering the M.M.G.C. and K.S.P. opinions and reviewing IC 31-19-15-1 and -2, the Court looked to IC 31-10-2-1, which provides, inter alia, that it is the “policy of this state and the purpose of this title to: (1) recognize the importance of family and children in our society; (2) recognize the responsibility of the state to enhance the viability of children and family in our society;...(4) strengthen family life by assisting parents to fulfill their parental obligations”. A.M. at 621. The Court stated that, while the legislature did not define “family,” IC 31-9-2-44.5 provides that “[a]n individual is a ‘family or household member’ of another person if the individual...is related by blood or adoption to the other person.” Id. The Court said that Grandfather is considered family under the statute. Id. The Court noted that: (1) Grandfather is the child’s biological grandfather; (2) Mother and Grandfather live only fifteen minutes apart; (3) the child stays overnight with Grandfather almost every weekend and has contact with Grandfather three or four times per week; (4) Grandfather takes the child to church, dance class, and the park; (5) Grandfather provides discipline and financial support. Id. The Court said, “[i]n summary, the record reveals that Grandfather and Mother are both acting as parents.” Id. The Court concluded that preventing the adoption in this specific case on the basis of IC 31-19-15-1 and -2 would cause an absurd result not intended by the legislature. Id. The Court based this conclusion on the reasoning in K.S.P., the idea that the best interests of the child is the primary concern in an adoption proceeding, the purposes of the adoption statutes as stated by the legislature, and the trial court’s initial determination that adoption was in the child’s best interests. Id.

The Court instructed the trial court to ensure that all statutory requirements for adoption are met. Id. The Court observed that the record did not show that a proper criminal history check required by IC 31-19-2-7.5 had occurred. Id. at 616, n.2.