

# Children's Law Center of Indiana



## Adoption

05/29/2008

In **In Re Adoption of D.C.**, 887 N.E.2d 950 (Ind. Ct. App. 2008), the Court reversed and remanded the trial court's denial of the biological mother's motion to set aside the adoption decree. The marriage between Father and the biological mother (hereinafter Mother) was dissolved in June 1997. In July 1997, Father sought, and subsequently was awarded custody of the child. Father married Adoptive Mother in November 1998. From February 1999 through 2002, Father moved several times but did not advise the trial court or Mother of his new addresses. In August 2001, Mother was notified that her support was to be paid in Christian County, KY. Thereafter, she learned that Father had moved to Hopkinsville, KY and she registered with and made partial child support payments through Friend of the Court in Hopkinsville. At the end of 2002, Father moved back to New Albany, IN and notified Mother who last visited the child in about December 2002, within a month of Father's return to New Albany. She did not contact Father or Adoptive Mother in 2004 or 2005. In January 2005, Adoptive Mother petitioned to adopt the child. The petition listed an address for Mother which had not been valid since 2003 and notice of the adoption petition was sent to her at that address. The parties agree that she did not receive that notice. Adoptive Mother also attempted to serve Mother by publication. Father continued to receive Mother's support payments through Hopkinsville Friend of the Court, the records of which gave the Texas address of Mother's grandmother as an outdated address for Mother and showed that, in June 2004 and on February 28, 2005, about a month after the adoption petition was filed, Mother had moved to addresses different from the one at which service was attempted. Father and Adoptive Mother made no attempt to locate Mother's current address through Friend of the Court. On July 5, 2005, the trial court granted Adoptive Mother's adoption petition and issued an adoption decree. Father testified that he subsequently notified Friend of the Court of the adoption and requested that it notify Mother to terminate support payments, but Mother continued to make partial support payments after the adoption decree was entered and on into 2007. Father received all these payments. In January 2007, Mother discovered that the child had been adopted, and on March 13, 2007, filed her motion for relief from judgment alleging, among other things, that the judgment was void for lack of personal service. The trial court denied Mother's motion after determining that the adoption proceedings had been defective for lack of personal notice but that, pursuant to the terms of IC 31-19-14-4, the time period to challenge the adoption due to any such defect had expired. Mother appealed.

**As with other questions of law a determination of the existence of personal jurisdiction is entitled to *de novo* review by appellate courts who do not defer to the trial court's legal conclusion as to whether personal jurisdiction exists. However, personal jurisdiction turns on facts, and findings of fact by the trial court are reviewed for clear error which**

**exists where the record does not offer facts or inferences to support the trial court's finding or conclusions of law. *Id.* at 955.**

**Because of ineffective service of process on Mother in the adoption proceedings, the trial court did not have personal jurisdiction over Mother, and the adoption proceedings terminating her parental rights were therefore void. *Id.* at 958.** The Court opined:

(1) Ineffective service of process prohibits a trial court from having personal jurisdiction over a respondent; (2) a judgment rendered without personal jurisdiction over a defendant violates due process and is void; (3) because a void judgment is a complete nullity and without legal effect, it may be collaterally attacked at any time, and the "reasonable time" limitation under Ind. Trial Rule 60(B)(6) does not apply. *Id.* at 955 (citations omitted). The Court stated that whether process was sufficient to permit a trial court to exercise jurisdiction over a party involves two issues: whether there was compliance with the Indiana Trial Rules regarding service and whether such attempts at service comported with the Due Process Clause of the Fourteenth Amendment. *Id.* at 955-56. As to the first issue, the Court examined the attempted service on Mother by certified mail under the requirements of T.R. 4.1 and by publication under the requirements of T.R. 4.13. The Court held that the requirements of T.R. 4.1 had not been met in that (1) T.R. 4.1(A)(1) requires that service by certified mail be accompanied by a return receipt showing receipt of the letter; (2) here, it is undisputed that Adoptive Mother's attempt at service by certified mail was returned as undelivered; and (3) "unclaimed service upon a former residence is insufficient, in and of itself, to establish a reasonable probability that a party received notice or to confer personal jurisdiction. *See Munster [v. Groce]*, 829 N.E.2d [52, 59 (Ind. Ct. App. 2005)]." *D.C.* at 956. Adoptive Mother's attempted service of process by publication was also insufficient under T.R. 4.13(A) in that her filings did not include the required submission of "supporting affidavits that diligent search has been made that the defendant cannot be found, has concealed his whereabouts, or has left the state." *Id.* Regarding the second issue, whether the attempts at service comported with due process, the Court (1) cited cases holding that "An elementary and fundamental requirement of due process in any proceeding, which is to be accorded finality is notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections," and "[W]hen notice is a person's due, process which is a mere gesture is not due process[;] [t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it;" and (2) concluded that, given the trial court's factual findings, Adoptive Mother's efforts at service were not reasonably calculated to apprise Mother of the adoption proceedings and therefore did not comport with due process. *Id.* at 957-58 (citations omitted). The Court noted: (1) the trial court made the factual determination that a diligent search would have uncovered Mother's actual address; (2) the trial court found that Adoptive Mother could have easily obtained Mother's address through an inquiry to the Office of Child Support Enforcement; and (3) Adoptive Mother and Father were in adequate contact with Mother to continue to receive her child support payments up to three days before the adoption hearing and after it, yet they were somehow not sufficiently in touch to notify her of the adoption action. *Id.* at 957. The Court also found that T.R. 4.15, which provides for the validity of summonses which are technically defective but nevertheless satisfy due process, was inapplicable because the trial court determined that Adoptive Mother's efforts at service were not reasonably calculated to inform Mother of the adoption proceedings, and they therefore did not satisfy due process. *Id.*

**The Court concluded that IC 31-19-14-4, which specifies the permissible time period for challenging adoption decrees, created an unconstitutional due process violation when it was applied to bar Biological Mother’s challenge to the adoption proceedings in this case.** Id. at 959. The Court quoted (1) IC 31-19-14-2, which specifies the permissible time period for challenging an adoption decree, and IC 31-19-14-4, which provides that after the expiration of the time set forth in section 2, “a person whose parental rights are terminated by the entry of an adoption decree may not challenge the adoption decree even if: (1) notice of the adoption was not given to the child’s putative father; or (2) the adoption proceedings were in any other manner defective;” and noted that, here, parties agreed that Mother’s challenge to the adoption decree did not fall within the time specified in IC 31-19-14-4. Id. at 958-59. The Court opined that (1) Mother had the fundamental right to make decisions regarding the care, custody, and control of the child, and this right fell within the protections of the Due Process Clause of the Fourteenth Amendment; and (2) Parental rights are sufficiently vital that, under the appropriate circumstances, they merit constitutional protection that will supersede state law. Id. at 959 (citations omitted). The Court compared Stidham v. Whelchel, 698 N.E.2d 1152, 1154-56 (Ind. 1998) in which the “Supreme Court, interpreting [T.R.] 60(B)(6), clarified that a default judgment rendered without personal jurisdiction over a defendant violated due process, was null and void, and could be set aside at any time,” with this case in which Mother sought relief pursuant to T.R. 60 on the grounds that the judgment was void for lack of personal jurisdiction, not based merely on a defect in the proceedings. D.C. at 959. According to the Court, “Under Stidham [at 1155-56], due process protections mandate that there be no time limitation for such a fundamental challenge.” D.C. at 959.

Noting that it was unnecessary for the resolution of the appeal, the Court discussed various interpretations of the IC 31-19-14-4 and invited “the General Assembly to revisit and clarify section 31-19-14-4.” Id. at 959-60.