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## The Children's Law Center of Indiana

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### Adoption

6/22/01

#### **Re Adoption of J.D.C., 751 N.E. 2d 747 (Ind. Ct. App. 2001)**

In **Re Adoption of J.D.C.**, 751 N.E. 2d 747 (Ind. Ct. App. 2001), the order denying the unregistered putative father's motion to vacate the adoption decree was affirmed by the Court of Appeals. The putative father knew of the mother's pregnancy, but did not register with the Indiana Putative Father Registry (I.C. 31-19-5-1-et. seq.); therefore he received no notice of the adoption and court appointed counsel was not provided for him. The birth mother voluntarily terminated her parental rights two days after the child's birth and signed an affidavit averring that she did not know the putative father's whereabouts and was unaware of anyone who would be able to locate him. The adoption petition was granted after a check of the Putative Father Registry revealed no one had registered. Over six months after the child's adoption had been granted, the putative father moved the trial court to vacate the adoption. The Court held that the unregistered putative father was barred as a matter of the law from challenging the adoption decree. *Id.* at 752.

**No notice of adoption was required for putative father who had failed to register and impliedly consented to adoption.** The Court opined that the purpose of the Registry, which was established in 1994, was "to provide notice to a putative father that a petition for adoption has been filed." *Id.* at 749. The Court considered the "important State interest in providing a child with a permanent, capable, and loving family. *Id.* at 750. The Court cited decisions from New York, Arkansas, Illinois, South Dakota, and the U.S. Supreme Court in support of its opinion that, under Indiana statutes and case law, the putative father was not entitled to notice of the adoption because he failed to preserve his own rights by registering. *Id.* at 751

**No inquiry as to putative father's whereabouts was required due to his failure to register.** The Court further noted that the birth mother had not disclosed the putative father's address to the adoption agency. Nevertheless, the Court stated that I.C. 31-19-4-6 imposes no duty on a biological mother to disclose the identity or address of the putative father. Rather, the statute only contemplates the situation where the mother does not disclose this information.

**Unregistered putative father could not resurrect his rights by claiming status as an "interested party" pursuant to I.C. 31-19-4-10.** The putative father maintained that he had been entitled to notice as an "interested party" and relied on the Court's earlier decision, *In Re Adoption of I.K.E.W.*, 742 N.E. 2d 245 (Ind. Ct. App. 2000), to support his argument. In *I.K.E.W.* the child's foster parents and grandparents had competing adoption petitions pending, and the Court reversed the adoption decree due to lack of notice to the grandparents as "interested parties". *I.K.E.W.* at 250. In *J.D.C.* the Court distinguished the extraordinary circumstances in *I.K.E.W.* . The Court opined that, having failed to take the steps necessary to receive notice and opportunity to object as a putative father, the putative father could not resurrect that right by claiming status under another category. *Id.* at 752.



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The Court also found the following significant: the putative father's knowledge of birth mother's pregnancy; the putative father's knowledge that he and the birth mother had sexual relations during the time she became pregnant; the putative father did not move to vacate the adoption decree for over six months after the adoption became final; the putative father's failure to register at all. *Id.* The Court stated that in the interest of providing stability and permanence for children, Indiana provides a statutory scheme with a specified time by which a putative father must register. *Id.* The Court characterized the stringent requirements as not putative but ... instead necessary to advance the State's policy interest of establishing early and permanent placement of children into loving and stable homes. The putative father was not entitled to any special notice of the adoption proceeding, as the State had no obligation to assert the putative father's rights for him where he was capable of protecting his interest himself. *Id.*

**Failure to hold hearing or appoint counsel was harmless error.** The Court was unpersuaded by the putative father's allegations of error by the trial court in failing to appoint counsel for him pursuant to I.C. 34-10-1-1. The trial court had denied the putative father's petition for counsel without a specific determination of the putative father's indigency. The Court opined that, because the putative father was barred as a matter of law from challenging the adoption, there were no contested issues on which court appointed counsel would have been able to offer assistance. Any error in not holding a hearing or appointing counsel was harmless because the putative father was unable to succeed on his claim as a matter of statutory law. *Id.*