

Children's Law Center of Indiana



Adoption

12/28/2006

In **In Re Adoption of J.E.H.**, 859 N.E.2d 388 (Ind. Ct. App. 2006), the Court affirmed the trial court's denial of Stepmother's adoption petition. Father had two children with his prior wife and was awarded custody of them at the time the marriage was dissolved. He later married Stepmother who subsequently filed a petition to adopt the two children. The Stepmother attached to the petition the Father's consent to the adoption and alleged that the Mother had abandoned the children. Following a hearing, the trial court denied the petition. The trial court found that the petition must be denied as to the older boy who was fourteen years old at the time of the hearing because he had not executed a written consent as mandated by IC 31-19-11-1. The trial court also denied the petition as to the younger boy finding that it would not be in the best interests of the younger child to have a different mother from his older brother. On appeal, Stepmother argued that the older boy's consent was not statutorily required because he was only thirteen years old when she filed the adoption petition.

The clear language of IC 31-19-9-1(a) provides that a trial court may not grant a petition for adoption of a child who is more than fourteen years of age at the time the trial court is called upon to grant the petition, unless the child has executed a written consent to the adoption. *Id.* at 390. The Court held that the IC 31-19-9-1(a) was not ambiguous, and, thus, courts must apply the first rule of statutory construction and "[w]ords and phrases shall be taken in their plain, or ordinary and usual, sense." *Id.* Therefore, inasmuch as the child, who was fourteen years old at the time of the hearing, had not executed a written consent to his adoption, the trial court could not grant the petition and did not err in denying the adoption petition.