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Adoption

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In **In Re Adoption of K.S.P.**, 804 N.E.2d 1253 (Ind. Ct. App. 2004), the Court of Appeals held that a biological mother's two children could be legally adopted by her same-sex domestic partner, without divesting biological mother of her parental rights.

Domestic partner petitioned to legally adopt biological children of her same sex partner. The Circuit Court, Newton County denied the petition. Domestic partner appealed. J.P, born May 21, 1990, and K.S.P., born January 8, 1993, are the biological children of the mother. Mother and father were legally divorced in October 1994. Mother has retained legal custody of her children since the divorce. While the father has visitation with the children, he has not consistently paid child support and, in addition to being an alcoholic, has been in and out of jail for several years. On March 5, 2003, the domestic partner filed a petition with the trial court. Along with the petition, Mother and Father each filed written consents to said adoption. Father consent expressly provided in part: "I hereby relinquish all parental rights with regard to said children and fully acknowledge and understand the legal consequences of my actions and the consent that I have given herein, whereupon the adoption being finalized, my parental rights will be terminated." On May 28, 2003, as required by statute, the Newton County Office of Family and Children (OFC) filed with the trial court an Adoptive Family Preparation Summary regarding proposed adoption. The OFC endorsed the proposed adoption. A specialist concluded in its summary assessment that the adoptive parent had been an immediate member of the family of the biological mother and of the two children for seven years. The adoptive parent has provided love, support, and day-to-day care. The adoption would allow the children to be insured through the adoptive parent and the adoption is in the best interest of the children. The trial court held a hearing on the uncontested adoption petition on July 9, 2003. Both the adoptive parent and the biological mother expressed interest in sharing parental rights. They expressed the children's need for stability, which they have not received from their relationship with Father. In addition, the adoption was necessary for legal and medical reasons. In particular, the adoptive parent noted that the adoption would allow the children to receive medical insurance coverage through her employer.

"The strength and genius of common law lies in its ability to adapt to the changing needs of the society it governs." "We can not close our eyes to the legal and social needs of our society, and this court should not hesitate to alter, amend, or abrogate the common law when society's needs so dictate." Moreover, the court stated that Indiana's General Assembly announced that the policy of this state is to, inter alia, "recognize the importance of family and children in our society" and "strengthen

family life by assisting parents to fulfill their parental obligations.” I.C. 31-10-2-1(1) and (4). “Thus the liberal construction rule must be tempered by a counterbalancing rule, that is, neither should the adoption statute be so liberally construed that it would destroy the safeguards erected for preservation of the family.” (quoting Adoption of Thomas, 431 N.E.2d 506, 512 (Ind. Ct App.1982). The Court of Appeals looked to I.C. 31-19-15-1 (the divesting statute) which provides, “Except as provided in section 2 of this chapter or I.C. 31-19-16, 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 after the adoption.” This statute provides two specific exceptions to the general rule that an adoption divest all parental rights of a living biological parent. The exception pertinent to the present case I.C. 31-19-16-2 addresses stepparent adoption. The Code states in pertinent part that, (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) After the adoption, the adoptive mother or father, or both: (1) occupy the same position toward the child that the adopted father or the adoptive mother, or both, would occupy if the adoptive father or mother, or both, were the biological father or mother; and (2) are jointly and severally liable for the maintenance and education of the person. The court found that the legislature could not have intended such a destructive and absurd result. The court stated, “The strength and genius of common law lies in its ability to adapt to the changing needs of the society it governs.” “We can not close our eyes to the legal and social needs of our society, and this court should not hesitate to alter, amend, or abrogate the common law when society’s needs so dictate.” Moreover, the court stated that Indiana’s General Assembly announced that the policy of this state is to, inter alia, “recognize the importance of family and children in our society” and “strengthen family life by assisting parents to fulfill their parental obligations.” I.C. 31-10-2-1(1) and (4). “Thus the liberal construction rule must be tempered by a counterbalancing rule, that is, neither should the adoption statute be so liberally construed that it would destroy the safeguards erected for preservation of the family.” (quoting Adoption of Thomas, 431 N.E.2d 506, 512 (Ind. Ct App.1982). Additionally, the court found that despite the narrow wording of the step parent exception, it could not conclude that the legislature ever meant to terminate the parental rights of a biological parent who intended to continue raising a child with the help of a partner. Such a narrow construction would produce the unreasonable and irrational result of defeating adoptions that are otherwise indisputably in the best interest of children. Further, the court states, that when social mores change, governing statutes must be interpreted to allow for those changes in a manner that does not frustrate the purposes behind the enactment. To deny children of same-sex partner, as a class, the security of a legally recognized relationship with their second parent serves no legitimate state interest. By allowing same-sex adoptions to come within the step-parent exception of section 448, we are furthering the purposes of the statute as was originally intended by allowing the children of such unions the benefits and security of a legal relationship with their de facto second parents.

The Court found that it was not their duty to approve or disapprove of the relationship between the natural mother and her same-sex partner. Whether the court approved or not,

the fact remains that the natural mother's same-sex partner has acted as a parent of the children from the moment they were born. To deny legal protection of their relationship (mother's partner and the children), as a matter of law, is inconsistent with the children's best interest and therefore with the public policy of this state, as expressed in statutes affecting children. In addition, there are many benefits of a second parent adoption such as allowing a second-parent to share legal responsibility for the financial, spiritual, educational, and emotional well-being in a stable, supportive, and nurturing environment can only be in the best interest of the child. Entitlement to these benefits from a second parent can not rationally hinge on whether the child's natural parent is a biological or adoptive parent.