

Children's Law Center of Indiana



Adoption

3/14/12

In **In Re Adoption of M.P.S., Jr.**, 963 N.E.2d 625 (Ind. Ct. App. 2012), the Court reversed the trial court's judgment which denied Mother's request to set aside the child's adoption by Indiana Grandparents. The Court remanded to the trial court with instructions to vacate the adoption decree, and to comply with IC 31-14-13-1, which vests sole legal custody of a child born out of wedlock in the biological mother. The child was born on March 2, 2010, to seventeen-year-old parents. Mother was a resident of Virginia, but gave birth in Tennessee. For the first three months following the birth, Mother, Father, and the child resided in Virginia with paternal grandfather and step grandmother (Virginia Grandparents). During June 2010, Mother moved to the home of paternal grandmother and step grandfather (Indiana Grandparents) in Salem, Indiana to live with Father. On June 23, 2010, Mother and Father (and Indiana Grandmother due to Father's status as a minor) executed a paternity affidavit in Tennessee, which was then filed with the State of Tennessee Office of Vital Records. The following day, the parents were married. The child's name was changed to Father's last name on the birth certificate. Mother, Father, and the child moved out of Indiana Grandparents' home during August of 2010 and returned to the home of Virginia Grandparents. According to Mother, she had encouraged Father to return to Virginia because Indiana Grandmother had relentlessly pressured them to relinquish custody of the child. In the summer, Mother and Father had signed documents, apparently consents to Indiana Grandparents' adoption of the child, but Father purportedly destroyed them at Mother's insistence. After moving back to Virginia, the parents briefly separated. They soon reconciled, and moved back in with Indiana Grandparents on November 10, 2010. In Indiana, the parents were unemployed and financially dependent upon Indiana Grandparents.

On December 15, 2010, Mother and Father went to the office of Indiana Grandparents' attorney, Alice Bartenen-Blevins and signed consents to have the child adopted by Indiana Grandparents. Bartenen-Blevins purportedly notarized their signatures; however her notary commission had recently expired. She explicitly advised the parents that they were executing consents which were revocable up until the time of the adoption hearing, but she urged that revocation should take place within thirty days if at all. Bartenen-Blevins further advised that she was acting solely as counsel for Indiana Grandparents. On December 30, 2010, Indiana Grandparents filed a petition to adopt the child, falsely claiming that they "have had the care and custody of the minor child since March 2, 2010." They contemporaneously filed the parents' consents to adoption. On February 1, 2011, Indiana Grandparents filed a petition to accept a home study conducted by

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Social Worker. An Indiana DCS report substantiating Indiana Grandfather's abuse of his teen-aged son by choking the son and striking him, resulting in a burst eardrum, appears to have been attached to the adoption home study. No criminal history document was submitted. On February 2, 2011, the trial court accepted the home study and ordered the matter set for a final hearing six days later, on February 8, 2011. The distribution portion of the order named only Bartanen-Blevins. Father and Mother were planning a trip to Virginia to transport one of Indiana Grandmother's children to live with grandparents. The trip had been planned for February 11, 2011, but, after speaking privately with Indiana Grandmother on February 7, 2011, Father announced to Mother that the trip to Virginia would begin immediately. On February 8, 2011, Indiana Grandparents, Bartanen-Blevins, and the child appeared in court. Bartanen-Blevins advised the court that the child had been with Indiana Grandparents since birth; Grandmother testified accordingly. The trial court verbally granted the adoption and issued a written order on February 9, 2011, finding that a home study had been accepted, Grandparents had no criminal history preventing adoption, necessary consents had been given, and it was in the child's best interests to be adopted by Grandparents.

Mother awoke in Virginia on February 13, 2011, to find that Father had left. Mother later learned that Father had returned to Indiana. Mother was stranded with no money. Mother contacted the office of Bartanen-Blevins and was informed that the adoption hearing had taken place. On February 25, 2011, Mother filed a motion to correct error, or alternatively, a motion for relief from judgment. She submitted an affidavit wherein she averred that she had been threatened and intimidated into signing the consents. Following a hearing at which Mother, Father, Indiana Grandparents, Social Worker, and Bartanen-Blevins testified, the trial court denied the motions. Mother appealed.

The Court held that Mother's consent to adoption of her child was involuntary where she was assured it was revocable and she did not intend to relinquish contact with her child. *Id.* at 630. Mother claimed that she was denied due process at each stage of the proceedings, specifically when her consent was executed, when notice of the hearing was issued, and when the final adoption hearing was conducted. Mother also pointed to alleged procedural deficiencies in that the consent forms were not notarized by a person having a current notary commission, and that Mother and Father were erroneously and repeatedly advised by Bartanen-Blevins to consider their consents freely revocable. The Court observed that IC 31-19-9-2 provides that a consent to adoption may be executed at any time after the birth of the child in the presence of the court, a Notary Public, or any authorized agent of DCS or a licensed child placement agency. *Id.* at 629. The Court said that it is undisputed that the consents at issue were not signed before a Notary Public. *Id.* Indiana Grandparents argued that their attorney functioned as an officer of the court, thereby satisfying the intent of the statute, but the Court disagreed that statutory compliance may be so liberally construed in an adoption matter. *Id.* The Court cited its holding in Matter of Adoption of Topel, 571 N.E.2d 1295, 1298-99 (Ind. Ct. App. 1991), which held that a parent may not validly consent to the termination of parental rights where that consent is conditioned upon retaining a right to exercise visitation with that child. M.P.S., Jr. at 629. The

Court observed that the parents, Indiana Grandparents, and Bartanen-Blevins anticipated that parental contact would survive the execution of the consents to adopt. *Id.* at 630. The Court noted that both parents clearly expected live-in contact, but Mother's expectation was ultimately not met; at the very least Indiana Grandparents had promised her visitation. *Id.* The Court said that even if it is assumed that Mother's execution of the consent was not a product of threats and coercion, Mother's consent was nevertheless involuntary. *Id.* The Court noted that Mother did not manifest an intention to permanently relinquish all parental rights. *Id.*

The Court found that there was a lack of compliance with statutory home study procedures, and concluded that the trial court lacked adequate information to support the factual conclusions incorporated in the adoption decree. *Id.* at 631. The Court noted:

(1) Social Worker admitted that she was not licensed to perform home studies; (2) no court-ordered waiver of the home study for grandparent petitioners as allowed by IC 31-19-8-5 had been made; (3) testimony at the post-adoption hearing clearly established that the home study did not adequately apprise the trial court of the totality of relevant circumstances so that the trial court could assess the child's best interests. *Id.* at 630-31. The Court observed that Social Worker was completely unaware of the existence of Grandmother's minor child who lived in Virginia and with whom Grandmother did not exercise parenting time. *Id.* at 631. The Court also found that it was unclear whether a comprehensive criminal background check was performed in accordance with IC 31-9-2-22.5. *Id.*

The Court held that the circumstances surrounding notice of the adoption hearing indicated that Mother's consent was not consensual. *Id.* at 625. The Court noted the discrepancy between Mother's testimony and Father's testimony on whether Mother received notice of the adoption hearing and the fact that the court order setting the hearing listed for distribution only Bartanen-Blevins. *Id.* at 631. The Court did not make a factual finding as to whether Mother received a notice separate from her in-laws, and observed that IC 31-19-2.5-4(1) provides that notice does not have to be given to one whose consent has been filed with the petition to adopt. *Id.* The Court nevertheless found the circumstances surrounding the final hearing relevant to an inquiry as to the voluntariness of Mother's consent. *Id.* The Court observed that: (1) the circumstances and timing of the trip to Virginia seem potentially calculated to keep Mother from attempting to withdraw consent; and (2) parents' absence at the hearing allowed Indiana Grandparents' misrepresentations that parents had never independently cared for the child and Grandparents had cared for him continuously since his birth to go unchallenged. *Id.* at 631-32. The Court characterized the record as "replete with evidence of procedural error, involuntariness, and fraud upon the court." *Id.* at 632. The Court concluded that Mother had met her burden to set aside the adoption in light of the extremely irregular and—to some extent—fraudulent circumstances surrounding the child's adoption. *Id.*