

# Children's Law Center of Indiana



## Adoption

9/16/10

### **The Indiana Supreme Court granted transfer and adopted the opinion of the Indiana Court of Appeals on February 17, 2011, at 941 N.E.2d 1042.**

In **In Re Adoption of N.W.**, 933 N.E.2d 909 (Ind. Ct. App. 2010), the Court reversed the trial court's grant of Stepmother's petition to adopt the eight-year-old child. The child resided with both parents until the parents separated four months before the child's fourth birthday. The parents divorced, and agreed in their divorce settlement that Father would have physical custody of the child, the parents would share joint legal custody, and that Mother would not be obligated to pay support "due to her economic condition." The child resided with Father and his parents in La Porte, Indiana following the separation. Mother visited with the child every weekend for 22 months. Father then moved to Mishawaka, Indiana and Mother requested a modification of her parenting time due to a change in her employment situation. Mother visited with the child every other weekend from June of 2007 until March of 2009. Father met Stepmother in August of 2008 and began living with Stepmother three weeks later. In January of 2009, Father and Stepmother married. In March of 2009, visitation ceased between Mother and the child. Mother testified that visitation halted because Father demanded child support in exchange for visitation. Father denied making demands, but acknowledged that he requested child support in March of 2009. Mother filed a contempt action against Father and a request for custody modification and Father filed a request for modification of child support. On October 13, 2009, the trial court entered findings and an order on the parent's filings, ordered Mother's parenting time in accordance with the Parenting Time Guidelines, and concluded that Mother's child support obligation would be a negative \$2.00 per week. No support order was entered against Mother. On June 8, 2009, Stepmother filed a petition to adopt the child. On June 29, 2009, Mother filed her objection to the petition for adoption and on July 14, 2009, Mother filed a motion to dismiss the adoption petition. On December 23, 2009, the trial court granted Stepmother's petition for adoption and denied Mother's motion for dismissal. The trial court found that Mother's consent to adoption was not required because she failed to support the child. Mother's motion to correct error/motion for relief from judgment was denied by the trial court on February 19, 2010, and Mother appealed.

**The Court concluded that Stepmother failed to prove by clear and convincing evidence that Mother’s consent to adoption was not required.** Id. at 914. The Court observed that the most protected status in any adoption proceeding is that of the natural parent, but the status of natural parent is not a consideration which will void all others. Id. at 913. The Court noted that, under carefully enumerated circumstances, the statute allows the trial court to dispense with parental consent and allow adoption of the child. Id. The Court quoted IC 31-19-9-8(a), which states that “[c]onsent to adoption...is not required from a parent of a child in the custody of another person if for a period of at least one (1) year the parent... (B) knowingly fails to provide for the care and support of the child when able to do so as required by law or judicial decree.” Id. Stepmother presented evidence that Mother had an income of approximately \$24,000 in 2006 and approximately \$30,000 in 2007, and argued that Mother’s consent to the adoption is no longer required because Mother knowingly failed to provide for the child’s care. The Court disagreed, stating that the mere showing that Mother had a regular income, standing alone, is not sufficient to indicate Mother’s ability to provide support. (Emphasis in original). Id. The Court cited In Re Adoption of Augustyniak, 505 N.E.2d 868, 873 (Ind. Ct. App. 1987), opinion on reh’g, 508 N.E.2d 1307, 1309 (Ind. Ct. App. 1987), trans. denied, which states that proof of employment and income are necessary components in determining the ability to provide support, but they are not the only components. N.W. at 913. The Court found that the totality of the evidence establishes that Mother provided for the child to the best of her ability, noting that: (1) at the time of the divorce decree, both parties agreed that due to Mother’s economic situation no child support payments were required; (2) on October 13, 2009, the trial court concluded that Mother had a “negative child support obligation”; (3) Mother remained under a common law duty to provide support to the child when able to do so; (4) Mother fulfilled her duty of support in non-monetary terms by providing the child with housing, clothing, food, Mother-daughter outings, and gifts during parenting time. Id. at 914.

**The Court opined that there is not a single shred of evidence indicating that this adoption could even remotely be considered to be in the child’s best interest.** Id. at 915. The Court said that a petition for adoption is not automatically granted following a showing that a natural parent failed to provide support when able to do so. Id. at 914. The Court, citing In Re Adoption of K.S.P., 804 N.E.2d 1253, 1258 (Ind. Ct. App. 2004), said that the relationship between parent and child is a bundle of human rights of such fundamental importance that adoption statutes, being in derogation of the common law, should be strictly construed in favor of a worthy parent and the preservation of such relationship. N.W. at 915. The Court noted that: (1) the child resided with both parents during the first four years of her life; (2) Mother visited the child every weekend and then every other weekend due to changes in Mother’s employment; (3) Mother wants to remain a loving presence in the child’s life; (4) the child signals, through notes to the Mother, which are part of the record, that the child wants Mother in her life; (5) Stepmother does not claim that Mother is “unworthy” or neglects the child. Id.