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The Children's Law Center of Indiana

Adoption

10/11/01

In Re Paternity of M.G.S., 756 N.E. 2d 990 (Ind. Ct. App. 2001)

In **In Re Paternity of M.G.S.**, 756 N.E. 2d 990 (Ind. Ct. App. 2001), the Court affirmed the decision that the putative father's consent to adoption of the child was irrevocably implied because the putative father failed to file a paternity action within thirty days of receiving pre-birth notice. Prior to the child's birth the mother considered the two options of placing the child for adoption with the maternal aunt and uncle or of establishing a permanent relationship with the putative father and raising the child together. Before the child's birth the putative father was personally served with pre-birth notice by a maternal uncle. The notice, pursuant to I.C. 31-19-3-1, informed the putative father that the mother intended to place the child for adoption; the putative father must file a paternity action within thirty days after he received the notice or his consent to adoption would be irrevocably implied; that he would lose his right to contest the adoption, the termination of parent-child relationship and the validity of his implied consent to termination of the parent-child relationship; and that nothing the mother or anyone else told him about intentions regarding possible adoption relieved him of the obligations imposed on the putative father by receipt of the notice. The putative father kept the notice, did not execute the acknowledgement, and did not file a paternity action within thirty days of receipt of the notice. The putative father visited the child at the hospital, took flowers to the hospital, and bought a car seat and baby clothes. He registered with Indiana Putative Father Registry three weeks after the child's birth. Two weeks after the child's birth, the mother told the father that their relationship was over. When the child was one month old the mother consented to the child's adoption by the maternal aunt and uncle. The putative father filed a paternity petition in Porter Circuit Court fifty-six days after the child's birth. The maternal aunt and uncle filed motions to dismiss and to intervene in the paternity action. The maternal aunt and uncle filed a petition for adoption in the St. Joseph Circuit Court. Porter Circuit Court held a consolidated hearing on the adoption and paternity issues and found that the putative father was not entitled to contest the adoption, the validity of his implied consent to adoption or to establish paternity.

Putative father has only thirty days from receipt of actual pre-birth notice to file paternity petition. The Court opined that I.C. 31-19-9-15, which provides that if the putative father fails to file a paternity action within thirty days after receiving actual pre-birth notice under I.C. 31-19-3 of the mother's intent to place the child for adoption, his consent to adoption is irrevocably implied, is a nonclaim statute. A nonclaim statute imposes a condition precedent to the enforcement of a right of action and is not subject to equitable exceptions. *Id.* at 997. No right of action exists outside the thirty-day limit. The court had no jurisdiction to consider a paternity action filed outside the thirty-day limit. *Id.* at 1001.

Statutory pre-birth notice requirements were met by the notice which substantially complied with I.C. 31-19-3-4 and was personally served by the maternal uncle. The Court was not persuaded by the putative father's allegations that the pre-birth notice with which he had been served was defective. The Court observed that I.C. 31-19-3-4 requires



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only substantial compliance with the suggested notice form, not strict compliance. The Court stated that compliance was sufficiently substantial if the notice achieves that purpose for which the statute was intended. The Court found that the omission complained of was only a minor typographical or grammatical error. It was clear from the notice that the mother was considering adoption and that the putative father was required to file a paternity action within thirty days of the notice if he wished to protect his parental rights. *Id.* at 1002. The Court also was unpersuaded that the change of attorney representation by the maternal aunt and uncle rendered the notice defective. The maternal aunt and uncle's attorney at the time of the notice was their attorney of record. Subsequent retention of a different attorney was irrelevant. *Id.* The Court also found that the pre-birth notice statute did not preclude the attorney from fulfilling the responsibility of service through another individual or entity. The statute does not require a specific mode of service and contains no prohibition against personal service. The putative father did not contest the date on which he received notice; thus expiration of the thirty-day time limit was easily calculable. *Id.* at 1003

Indiana's statutorily created irrevocably implied consent does not violate putative father's due process rights. The Court was also unpersuaded by the putative father's claim that the statute violated his due process rights. The Court cited decisions of the U.S. Supreme Court which state that, while the biological link between putative father and his child alone does not warrant significant constitutional protection, an unwed father had an opportunity interest to form a relationship with his child. Once the father has grasped this opportunity by demonstrating a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of the child, his parental rights ripen into an interest which is entitled to due process protection. *Id.* at 1005. The Court quoted decisions from other states, including Illinois, Nebraska, Alabama, Utah, and Oregon, which have considered whether due process is violated by imposition of statutory time limits within which a putative father must act to establish his parental rights. The Court also stated that the U.S. Supreme Court has recognized that limits on procedural protection for a putative father are necessary from the standpoint of a child, who needs a stable start in life. *Id.* at 1006. The Court opined that the putative father's own failure to act deprived him of the opportunity to assert his parental rights. His consent to adoption was implied only as a result of his failure to grasp that opportunity.

Appointment of a guardian ad litem may safeguard child's best interests in these situations. In a concurring opinion, Judge Robb opined that the appointment of a guardian ad litem to represent the child's best interests in the adoption would be highly appropriate. *Id.* at 1007. The Judge quoted the guardianship statute, I.C. 29-3-2-3(a), which requires the court to appoint a guardian ad litem if the court determines that a minor is not represented, or is not adequately represented by counsel. The Judge also quoted Ind. Trial Rule 17(C) regarding appointment of a guardian ad litem. The Judge noted that a paternity petition could be filed by the guardian ad litem; said petition would not be time-barred because the child could file a paternity petition at any time before the child is twenty years old.