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## **Adoption**

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In **In Re Adoption of Fitz**, 805 N.E. 2d 1270 (Ind. Ct. App. 2004), the Court of Appeals, 778 N.E. 2d 432, reversed and remanded for hearing on the putative father's motion for relief from judgment. On remand, the Hamilton Superior Court denied putative father's motion for relief from judgment, as well as his further motion to strike appearance of substitute adoptive parents and to vacate adoption. Father appealed. The Court of Appeals held that the putative father's consent to adoption was irrevocably implied by his failure to timely file a paternity action and the putative father could not challenge substitution of adoptive parents or the adoption decree due to his failure to contest the adoption within thirty days of service of notice.

When the putative father and mother ended their relationship, the mother decided to place their unborn child for adoption. The putative father refused to consent, and on Dec. 3, 2000, he and his new wife were served with written notice pursuant to IC 31-19-3-1 that he would lose his right to contest the adoption if he did not file a paternity action within 30 days of receiving the notice. The putative father then registered with the Putative Father Registry, but did not file the paternity action. The child was born in Dec. 2000. On Jan. 2, 2001, the adoptive parents filed a petition in Hamilton County to adopt the putative father's child. The next day, thirty-one days after the putative father received the statutory notice, the attorney for the adoptive parents called the putative father to inform him that, because he had failed to file his paternity action, he had lost the opportunity to contest the adoption. The putative father filed a paternity action in White County on the same day. On Jan. 5, 2001 he filed a notice contesting the adoption in Hamilton Superior Court, which consolidated the putative father's paternity action with the adoption proceeding. On Jan. 12, 2001 a second attorney entered an appearance on behalf of adoptive parents. The first attorney's motion to withdraw was granted on Jan. 29, 2001. Evidentiary hearings on the consolidated adoption and paternity petitions were held on Feb. 14 and Feb. 20, 2001. The adoptive parents did not appear in court. On July 30, 2001, the trial court found that the putative father's consent had been irrevocably implied because he filed his paternity action one day too late.

On Nov. 2, 2001 the putative father filed a T.R. 60(B) motion. Attached to the motion was an affidavit stating that on Aug. 24, 2001, the adoptive mother contacted the putative father's current wife to tell her that the adoptive parents had returned the child to the adoption agency on Jan. 15, 2001, upon learning that the putative father was contesting the adoption. At the time, per the affidavit, the adoptive parents informed their attorney (the second attorney, who had filed his appearance on Jan. 12, 2001), that they no longer

wanted to contest the putative father's efforts to establish paternity. The adoptive mother stated that she and her husband were not the party opposing the putative father at the February hearings. The T.R. 60(B) motion complained that, at the time of the hearing, opposing counsel either had no clients or was acting against the wishes of his clients. On Nov. 26, 2001, the adoptive parents' second attorney filed a motion to strike the putative father's T.R. 60(B) motion. On Dec. 12, 2001, the trial court, without a hearing, struck the putative father's motion from the record as being improperly filed. On Dec. 21, 2001, a second adoptive parents' attorney entered an appearance on behalf of the new adoptive couple, filed an amended adoption petition on their behalf, and asked the court to substitute the new adoptive couple for the first adoptive couple. There were indications that the petition to substitute had been circulated among the parties and counsel in February 2001, before the evidentiary hearings were held. On Dec. 27, 2001, the trial court granted the motion to substitute and entered a decree of adoption in favor of the second adoptive couple.

**To assert a claim of fraud on the court, the Court of Appeals found that it was not enough for the party to show a possibility that the trial court was misled. Instead, there must be a showing that the trial court's decision was actually influenced. Fraud on the court has been narrowly applied and is limited to the most egregious of circumstances involving the courts.** The party seeking to establish fraud must show there was actually an unconscionable plan or scheme which was used to improperly influence the court's decision and that such acts prevented the losing party from fully and fairly presenting its case or defense. Stronger v. Sorrell, 776 N.E.2d 353, 357 (Ind. 2002). The court concluded that the putative father failed to comply with IC 31-19-3-1. Thus, his consent under IC 31-19-9-15 to the adoption of Infant Female Fitz was irrevocably implied. In addition, the Court of Appeals found that the matter of substituting adoptive parents was irrelevant to the issue of whether the court's order that the putative father's consent was irrevocably implied had been procured by fraud. The court stated that IC 31-19-3-4, which specifies the language and the information that the notice must contain, does not require the adoptive parents be named. Thus, the identity of the prospective adoptive parents is not relevant to the putative father's duty to timely file a paternity action to preserve his right to contest an adoption. Accordingly, the putative father produced no evidence that the trial court's determination that he failed to timely file a paternity action was procured by fraud. Therefore, the trial court did not err in denying the putative father's motion to set aside the judgment.

**Person served with notice of an adoption is prohibited from contesting an adoption after thirty days.** Finally, on the issue of whether the trial court erred in denying the putative father's motion to strike the new adoptive parents appearance and adoption decree, the Court of Appeals concluded that IC 31-19-14-3 provided that a person who is served with notice of an adoption is prohibited from contesting the adoption more than thirty days after the date of service of the notice and may not otherwise challenge an adoption decree. The putative father was served with notice of the adoption, but failed to raise his challenge within the thirty day period. Therefore, the putative father may not now challenge the adoption decree.