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FAMILY LAW FOCUS

Legislators Consider Family Laws

Reams of paperwork accompany the making of a bill into state law.

Formulating laws in the Indiana General Assembly requires not only patience but the ability to compromise and take the long view.

Currently in the midst of a session, legislators are wrestling with a number of proposed bills that deal with families and children.

You may keep track of them at www.state.in.us/legislative — the General Assembly's home page.

Several bills, which when *Family Law Focus* went to press were proceeding through the legislative give-and-take, bear watching.

Joint Legal Custody (HB 1511)

This piece of legislation would more closely conform paternity to dissolution of marriage by enabling the court to award joint legal custody in paternity cases.

Such a consideration, however, would be tempered by the "best interest of the child," . . . and it would not require an equal division of the physical custody of the child.

To help the court with this determination, House Bill 1511 establishes the factors a court must examine before making its finding.

Adoption (SB 0280)

This bill would mandate that a court, in which a paternity action is pending, stay all proceedings in the paternity action . . . if it receives notice that a court in which an adoption is pending has assumed jurisdiction of the paternity action.

The release of information about putative father registrations would be allowed to 1) attorneys who represent mothers, putative fathers and child-placing agencies; and 2) child-placing agencies involved in representing mothers and putative fathers.

There also would be clarifying changes to correspond with the current law about releasing identifying adoption information.

Child Solicitation (SB 0048)

In SB 0048, child solicitation committed by a person who is at least 21 years of age against a child under 14 years would be a Class C felony if the person shows an intent to meet the child in person.

The penalty would be a Class B felony if committed by means of a computer network, and a Class A felony if committed by means of a computer network by a person with a prior conviction for child solicitation using a computer network.

Foster & Kin Care (HB 1388)

The Department of Child Services would be required to exercise due diligence in identifying all blood and adoptive relatives of a child, alleged to be a Child in Need of Services, who is taken into custody. The court would be required to give notice to these people.

Both houses will adjourn on April 29th. And the bills — if signed by the Speaker of the House and the President of the Senate — will go to the Governor for possible signature (or veto) into law.♦

SPOTLIGHT ON:

REALITY CHECKS:

Even though voters in California, Florida and Arizona passed measures banning same-sex marriage, a recent *Newsweek* survey found growing public support for gay marriages and civil unions.

√ Fifty-five percent (55%) of the respondents approve of legally sanctioned unions or partnerships, and 39% support marriage rights.

√ Two-thirds of those folks who primarily see marriage as a legal issue support gay marriage, and two-thirds who consider it mostly a religious matter oppose it.

√ Seventy-four percent (74%) approve of allowing inheritance rights for gay domestic partners, up from 60% in 2004 when a similar survey was undertaken.

√ Seventy-three percent (73%) are in favor of extending health insurance and other employee benefits to such partners.

√ A significant majority (86%) of those questioned support the extension of hospital visitation rights to gay domestic partners.

√ Age counts — the younger the people are, the more likely they are to back same-sex marriages.

√ A gender gap exists, too: 44% of the women and 34% of the men support gay marriage.♦

SITE: http://www.newsweek.com/id/172399; Princeton Survey Research Associates Intl.

Media Wrongly Gets Access to Juvenile CHINS Records

Local paper carried story in which children's injuries were detailed.

Out of a child's death and the abuse of his siblings comes a case pitting the confidentiality of juvenile records against public interest.

On April 1, 2008, a toddler died. On April 2, two CHINS petitions were filed, asking the court to declare his siblings "children in need of services." These petitions were granted the same day.

On April 4, the State charged Mom and Dad with the little boy's death, as well as battery and neglect of their two other children.

Court Issued Its Own Order

Ten days later, the court (on its own without notice or a hearing) issued an order granting the media access to the CHINS records.

Mom appealed, claiming those records were wrongly released — and the Court of Appeals agreed.

"[T]he investigatory report and any other information gotten during the investigation of a reported child abuse or neglect is confidential," explained the Court.

The release of such information is confined to certain entities — and the media is not included among them. I.C. §31-33-18-2.

So why was access allowed?

Relying on I.C. §31-39-2-10, the court pointed to its being in the "best interests of the safety and welfare of the community."

Was Public Welfare Served?

By law, such a release must best serve the public welfare.

But it is limited to instances which involve the alleged commission of murder or a felony (if committed by an adult) or the alleged commission of an act that is part of a pattern of less serious offenses.

Such was not the case here. This was a CHINS matter — not a pending juvenile case where a murder or felony was committed.

In its order, the court noted it wanted to educate the public about child abuse. But there are "less intrusive measures" to do that, stated the Court of Appeals.

Because there was not a specific ongoing threat to the community's safety or welfare, the court abused its discretion.

Reversed.

See *In Re K.B.*, 894 N.E.2d 1013 (Ind.App. 2008).♦

Be Sure to Follow Adoption Laws

Biological Mom tells trial court "I want to hold him in my arms."

If nothing else, this case should serve as a warning to both adoptive parents as well as biological mothers. Follow the rules of Indiana's statutes about adoption — or else.

In February 2007, Mom signed an agreement with her aunt and uncle (Couple) for the adoption of her baby . . . and they covered her debts and gave her a vehicle.

Styled as a loan, it stated if the adoption was successful, the Couple would forgive her debt.

N.J.G. was born in early May. Prior to his birth, Mom signed "an undated, non-notarized 'Consent to Adoption Proceedings' which indicated her consent to the adoption."

Couple's Lawyer Drafted Papers

While hospitalized, Mom executed several other documents prepared by the Couple's lawyer.

In the Discharge Authorization, she authorized the hospital to dismiss the baby into the care of the Couple upon his release.

She also signed a document giving them visiting rights — while N.J.G. was in the hospital — and another, allowing them to make health-care decisions for the infant.

"I Don't Want the Adoption"

On May 22nd, Mom first wrote the trial court; and later in July, she testified: "[E]very second of the day I miss my son . . . I don't want the adoption to go through. I don't want to hurt my aunt and my uncle but I can't let it go through."

In September, she petitioned for sole custody of N.J.G. But the court denied her request by deciding she, indeed, had given her consent.

On appeal, Mom argued her consent was improperly obtained in contradiction of the adoption laws.

Mom Never Signed Per Statute

She never signed in the presence of a court, a notary public, a representative of the department of family and children or a licensed child-placing agency, she said.

Furthermore, Mom urged, she was prohibited by statute from signing such papers before her child's birth. See I.C. §31-19-9-2 (b).

In response, the Couple claimed she had ratified the adoption by her behavior after being discharged. But the Court of Appeals disagreed.

The statute is clear, it declared. "The child's mother *may not* execute a consent to adoption before the birth of the child."

As such, Mom, never agreed to the adoption — through her actions or in the other papers she signed.

In a footnote, the Court said it did not address Mom's argument that public policy had been violated by the agreement. It cited the case's resolution on another basis.

Reversed and remanded to the trial court for further proceedings.

See *In Re Adoption of N.J.G.*, 891 N.E.2d 60 (Ind.App. 2008).♦

NBBP Will Give Free In-services

Are you puzzled about the legal ins-and-outs of domestic law? Or are you or your clients unprepared to walk into a court of law?

If so, call one of our attorneys about scheduling a free in-service for four or more in your office.

Focusing on the interactions between the legal and psychological professions, we routinely offer these seminars during breakfast, lunch or at an office meeting.

In the past, we have explored such topics as how to deal with a subpoena, how to confidently testify in court, and how to address the issues of child custody.

Our in-services usually last about an hour. Currently, we are seeking approval for continuing education credits to be given.♦

Two Dads Share Visitation Rights

When are two fathers attempting to exercise their court-ordered visitation rights one father too many? In this case . . . never.

Mom and Dad married in 2000, and more than a year later she gave birth to a little girl named M.S.

Although Dad #1 was not the biological father and he was aware of this fact during the pregnancy, he was still listed as M.S.'s father on her birth certificate.

Dad #1 Cared for Infant Girl

He also cared and provided for the child for the first two and one-half years of her life.

In 2004, Dad #1 filed for divorce, exercising visitation with the girl during the entire proceeding.

Upon dissolution in 2006, Mom was given sole custody, and he was awarded visitation because of his custodial relationship with the girl.

No appeal was taken from this 2006 order.

DNA testing revealed real identity of little girl's biological father.

When M.S. was six, DNA testing identified the biological father. Dad #2 was thereby given parenting time and ordered to pay support.

Issues developed between the Mom and Dad #1; and he filed a motion to modify visitation.

At a hearing in 2007, his visitation was reduced — but it was not terminated, as she had requested.

Mom Argued Violation of Right

Mom appealed, urging her right "to make decisions concerning the care, custody and control of her child" had been violated. But the Court of Appeals disagreed.

Because she had petitioned for the termination of Dad #1's visitation, she bore the burden of proof.

Evidence revealed he was not only fit to care for M.S. but he had done so until the parties separated.

Mom failed to present evidence from a child psychologist or therapist to show his visitation would endanger M.S.'s physical health or emotional development.

Parent's Protest Not Sufficient

"A parent's mere protest that visitation with the third party would somehow harm the family is not enough to deny visitation in all cases," observed the high Court, "particularly where the third party cared for the children as his own."

As such, the court's determination that it was not in M.S.'s best interests to terminate (Dad #1's) visitation was not clearly erroneous.

Affirmed.

See *Schaffer v. Schaffer,* 884 N.E.2d 423 (Ind.App. 2008).♦

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