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FAMILY LAW FOCUS

Grandma Misleads Court to Adopt

If you envision what a grandma is . . . and an image of a cookie-baking, story-reading lady springs to mind, you have the wrong gal.

The woman herein not only misled a trial court but committed fraud in adopting her grandson.

In the case at hand, a baby boy was born to a couple of unmarried 17-year-olds in March, 2010. At the time, Mom was a resident of Virginia but gave birth in Tennessee.

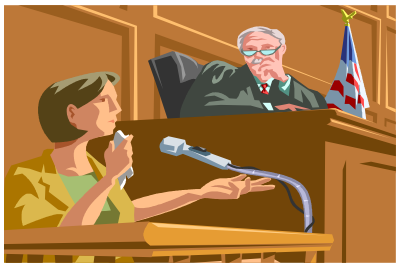
Young Parents Lived in Virginia

For the first three months of the child's life, they lived in Virginia with Dad's father and step-mother.

In June of that year, they moved to a small town in Indiana to reside with his parents (Grandparents).

On June 23, Mom and Dad executed a paternity affidavit in Tennessee; and the next day, they wed.

SPOTLIGHT ON:



Grandma told court she and husband had cared for baby boy since birth.

In August, they went back to Virginia after being "relentlessly pressured . . . to relinquish custody of their baby" by his mother.

Five months later, they returned to the Grandparents upon whom they were financially dependent.

In December, Mom and Dad visited the Grandparents' lawyer where she notarized their consents to adopt . . . even though her notary commission had expired.

Grandparents Sought to Adopt

The Grandparents then filed a petition to adopt their grandson, supported by the parents' consents.

With only the Grandparents and lawyer appearing in court, the adoption was granted. (Dad took Mom to Virginia where he stranded her with no money. He came back to his parents and son in Indiana.)

Mom went to court to undo the adoption, but her motion for relief from judgment was denied.

On appeal, she contended the court had abused its discretion in that its finding was contrary to law.

Mom argued she had signed her consent after threats of harm and being separated from her child.

She also pointed to defects in the lower court's record.

Not only was a report of substantiated child abuse by Grandpa not there, but Grandma testified (incorrectly) they had cared for the infant continuously since his birth.

Home Study Was Missing

What about the statutorily required home study? (It was missing. The only relevant court order was for another child.)

And the criminal background check in accordance with Ind.Code §31-9-2-22.5? (There was none.)

"The record is replete with evidence of procedural error, involuntariness, and fraud upon the court," stated the Court of Appeals. "Mother has met her burden to set aside the adoption. Her consent was invalid as a matter of law."

Remanded to trial court to vacate adoption and vest sole legal custody in the biological mother.

In Re Adoption of M.P.S., Jr., 963 N.E.2d 625 (Ind.App. 2012).♦

REALITY CHECKS:

When two families with kids merge into one, parenting issues become more complicated.

√ With 65% of remarriages involving children from the prior marriage, couples in this scenario have lots of company.

√ One of three Americans is currently a stepparent, a stepchild, a stepsibling or some other member of a blended family.

√ On the average, couples in stepfamilies have three times the stress than do couples in first marriages during the first few years.

√ If you find yourself in this situation, there are some helpful skills and coping mechanisms for negotiating the difficult times . . . with a spouse or a stepchild.

√ Try to remember that you cannot control what other family members do or how they react.

√ Make a serious effort to avoid past behavioral triggers.

√ If former in-laws or family members are triggers, interact with them as little as possible.

√ Be forewarned, though: the divorce rate for second marriages is 60 %; for third, 73 %.

SOURCE: See a variety of articles and helpful discussions about blended families at single-parenting.families.com; smartstepfamilies.com; winningstepfamilies.com as well as strongerfamilies.org.♦

Dad Pushes Claim for Child after Splitting Up with Mom

Once his baby girl was born, Dad asked trial court for access to her.

Admittedly, it is odd for a married, six-months-pregnant woman to file a petition for divorce.

Even stranger, though, is her request to the trial court to end the marriage before the birth.

Wed in mid-2009, Mom petitioned for divorce in early January 2011. Both parties moved to expedite the proceedings, and the marriage was dissolved in April.

In May, Dad wrote the court, stating his child had been born and he was being denied access to her.

Dad Wanted to Modify Decree

On June 1, seeking a modification of the decree to reflect the parties' child having been born, he filed a "Motion to Set Aside Judgment Pursuant to Trial Rule 60."

His motion was granted. Mom appeals, arguing he should initiate a paternity action to assert his claim he is the father of her child.

The Court of Appeals, however, disagreed.

While neither party testified Dad is the biological parent of the child born after the divorce decree was entered, the paternity of her child was never a disputed fact.

Indeed, Mom even stated in her petition that she was pregnant with a child of the marriage.

Additionally, the Court noted, the lower court was entitled to rely upon the presumption that a child conceived during a marriage is a child of the marriage. Ind.Code §31-14-7-1(1).

What Is "Better Practice"?

Although it is "better practice" not to grant a divorce decree while a wife is pregnant, it stated, an unusual procedure does not overcome the presumption of legitimacy.

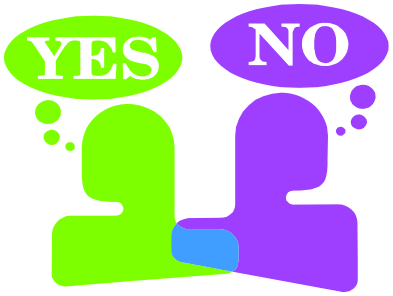
The "[f]ather should not be compelled to initiate paternity proceedings, as if the child were an out-of-wedlock child."

Although the little girl "was not born during the marriage, the child is—according to the parties' affirmative representations to the court and statutory presumption—a child of the marriage."

Affirmed.

In Re Marriage of K.Z. and M.H., 961 N.E.2d 1023 (Ind.App. 2012).♦

Divorced Parents Clash over Kids



Despite the "best interests" of the kids being involved, the parents bickered.

Initially, the divorced couple in the case at hand managed to put aside their differences for the "best interests" of their two children.

The process of their splitting up was quite civil, in fact, after Mom petitioned for dissolution in 2007. Their daughter was ten years old, and their son, eight.

Mom and Dad negotiated and filed a settlement agreement with the trial court in November 2008. Soon thereafter, it dissolved the marriage and incorporated their agreement into its order.

Mom Filed Motion to Relocate

All was well for two years until Mom filed a notice she was moving to the south side of Indianapolis due to her remarriage.

In response, Dad filed a motion for joint legal custody — instead of their agreed-upon arrangement of her having sole legal custody and primary physical custody of their children.

He also requested more parenting time and reduced child support payments. After two evidentiary hearings, his motion was granted.

Mom appeals, arguing the court abused its discretion by modifying custody and parenting time while cutting Dad's support obligation.

Looking to the Findings of Fact and Conclusions of Law entered by the court, the Court of Appeals said it does not "set aside the findings or judgment unless clearly erroneous."

To make this decision, it added, due regard is given to the court's chance to judge witness credibility.

Statutes Control Custody Change

The modification of legal custody spins around three statutes: Ind.Code §§31-17-2-8, -15 and -21.

Generally, these sections preclude a court from modifying a custody order unless it is in the best interests of the child and there is a substantial change from the factors underlying the original order.

Despite Dad's testimony stating "he was more stable, had more child-rearing experience, and had a stronger bond" with the kids than at the time of the settlement, the Court felt his comments were self-serving.

They failed to support the requirement of a "substantial change" to justify modifying custody. Therefore, as it pertains to legal custody, the trial court's order was reversed.

His request for more parenting time, though, was another matter.

Unlike a modification of physical custody, a modification of parenting time does not need a showing of a substantial change.

Modification of Parenting Time

When a modification of parenting time would serve the best interests of a child, it may be changed.

(At this point in the process, parents start squabbling about custody, child support, parenting time, the number of days as well as overnights and holidays each gets.)

Mom contended the extension of Dad's parenting time was so great that it amounted to a *de facto* modification of physical custody. But the Court was unimpressed.

Not only did she lack any clear legal authority to support her argument, it noted, but the change in his parenting time (going from roughly 35% to 40% of overnights) could not be viewed as a *de facto* modification of physical custody.

Mom's Support Claim Failed

Mom's claims about child support were likewise unpersuasive.

While urging more income be imputed to Dad (he lived with his folks) in figuring his "weekly gross income," she offered no evidence as to expenses paid by his parents.

Affirmed in part, and reversed in part.

See *Miller v. Carpenter*, 965 N.E.2d 104 (Ind.App. 2012).♦

Multistate Issues Can Be Difficult

For those thinking the custody issues of a couple married in Indiana and divorced in Nevada might be tricky, they would be correct.

Wed in 1995, the pair divorced in 1996 with two small children.

A Nevada court issued the dissolution decree, ordering Dad to pay $363 monthly in child support. Mom took the kids back to Indiana, and Dad moved to Maryland.

Decree Is Registered in Maryland

In 2002, Mom registered the decree in Maryland under the Uniform Interstate Family Support Act ("UIFSA"). And in 2004, a court there entered an order, approving their agreement to increase support.

In 2009, Mom filed in Indiana to modify child support. Dad (still in Maryland) moved to dismiss for lack of personal jurisdiction.

After a hearing, the trial court instead dismissed her petition for lack of subject matter jurisdiction.

Nevada divorce decree was registered in Maryland under interstate pact.

On appeal, Mom asked why.

Subject matter jurisdiction is the power of a court to hear and to determine a general class of cases, explained the Court of Appeals. It gets such jurisdiction only from the constitution or from statutes.

Out-of-state Support Order

According to Ind.Code §31-18-6-11, a child support order issued in another state (after it has been registered in Indiana) may be modified only if the responding court finds certain things.

"[N]either the child nor either parent lives in the issuing state," observed the Court. "[T]he person seeking modification is a non-resident of Indiana, and the person against whom modification is sought is subject to personal jurisdiction in Indiana."

Nevada Was State Issuing Decree

Here, no one stayed in Nevada. And Indiana had personal jurisdiction over Dad as he lived in the state when he was married with kids.

But Mom is an Indiana resident. Hence, this statute was not available to her — despite her claim the federal Full Faith and Credit for Child Support Orders Act ("FFCCSOA") "preempts" the Indiana statute because it does not impose a non-residency requirement.

Unfortunately for her, though, the Indiana Supreme Court held to the contrary in *Basileh v. Alghusain*, 912 N.E.2nd 814, 820 (Ind. 2009).

Affirmed.

See *Jackson v. Holiness*, 961 N.E.2d 48 (Ind.App. 2012).♦

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