

INDIANA LEGISLATORS TO BE COMMENDED: INDIANA HAS A GOOD ADOPTION LAW

By Steven M. Kirsh^{*}

As President of the American Academy of Adoption Attorneys, an organization of about 200 adoption attorneys, representing 43 states and the District of Columbia, I have had the opportunity to learn about adoption laws in various states. Additionally, in that I limit my own practice to this area of law, including several interstate adoptions each year, I have worked with the adoption laws in several states. Compared to many states, Indiana has very favorable adoption laws.

The two factors that contribute significantly to the effectiveness of Indiana law are: (1) simplicity and (2) fairness.

Simplicity

With respect to simplicity, the problem with the laws of many states is that the legislators have “over-legislated”. In those states, the lawmakers have tried to legislate for every contingency. For example, they specify on what day or precisely how many hours after birth, a birth parent must wait to consent to the adoption; what and how much counseling is appropriate; and the number of days within which court appearances must take place, and other things. There are a number of problems with this approach. Most importantly, the legislators in the state capitol are trying to address issues which are very case and fact sensitive.

For example, to prohibit a birth mother from signing a consent until 72 hours or 5 days after the birth of the child may be appropriate in some circumstances. In other cases, it puts tremendous additional stress on a birth mother who wants to decide, sign the consent, and leave the hospital knowing that she has made all of the arrangements for the adoption. Under Indiana law, a birth parent may sign a consent any time after birth. Of course, good practice dictates that at least 24 hours pass before a consent is signed, but Indiana does not impose artificial time constraints.

Additionally, with respect to the consent signing, the consent may be signed before a judge, agency representative, or notary public. No special court proceeding is required. Again, most birth parents do not want to make a production out of the consent signing. Many will have a family member or friend with them, but they do not want to travel to court, appear before a person whom they have never met, and have other attorneys court personnel, and the general public around when they sign the consent to the adoption.

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On the other hand, if the circumstances merit a court appearance, Indiana law permits a birth parent to appear before a judge for a consent signing.

In Indiana, judges have the authority to determine what is appropriate given the facts of the particular case. Clearly, a judge is better able to decide what is best in a specific case than is a legislator in the state capitol.

Another example of the simplicity of Indiana adoption law is that transferring custody of the child from the hospital to the care of the adoptive parents can usually take place within a matter of a couple of days after the child is born and without extensive court proceedings. In fact, if the adoptive family has already received written approval of a licensed, child-placing agency, most courts will issue an order granting the family custody of the child without a hearing. Because of the ease of this process, the child can go immediately into the home of the adoptive parents without foster care. Neither birth parents nor adoptive parents favors foster care.

Fairness

In addition to being easy to administer, Indiana adoption laws are also fair.

One way the fairness issue is manifested relates to the finality of the consent to adoption. Under Indiana law, a birth parent may not consent to the adoption until after the baby is born. However, once given, a birth parent may not withdraw their consent unless they prove that the best interest of the child mandates such withdrawal. For all intents, adoptive parents whom received custody of a child shortly after a consent is signed are secure in knowing that their retaining custody is not going to be disrupted except in the most unusual circumstances.

In some states a birth parent has time after consenting to withdraw their consent for any reason, or no reason whatsoever. For example, in Georgia, a birth mother has 10 days to withdraw her consent, in North Carolina, she has 30 days (recently shortened from 90 days) to withdraw her consent.

Under Indiana law, a birth parent has no obligation to proceed with an adoption before the birth of the child and prior to signing a consent. However, once consenting, the birth parent makes a commitment that this is their plan for the child's future, a commitment upon which the adoptive parents can rely in assuming custody of the child.

Another aspect of the fairness issue is that Indiana la does not discriminate between agency and independent placements. The law relating to agency placements is exactly the same as the law relating to private or independent placements. Agency adoptions and private/independent adoptions each present their own advantages and disadvantages to birth and adoptive parents. By not encumbering either type of adoption with differing restrictions, birth and adoptive parents are free to choose which type of adoption best suits their needs.

One other example of fairness is that adoption records are confidential and may only be opened with the consent of all three parties to the adoption triangle. All three parties have equal rights. If all want to have their identities disclosed, the Indiana State Board of Health may release identifying information. However, if one of the parties to the adoption triangle does not want their name, address, and telephone number disclosed, their anonymity will be preserved.

Some would argue that adoption records should be opened in Indiana unless action is taken to block the disclosure. This approach, although seemingly accomplishing the same end, would not be fair

to those parties who are unaware of the change in the law. When the birth and adoptive parents entered into the adoption, each believed that their identity would not be disclosed. To change the rules, for some people thirty, forty or fifty years, after the fact, may not permit those people to protect their anonymity. Changing the law retroactively without being able to assure that every person involved in an adoption is given the right to block disclosure of identifying information is inherently unfair to those people who choose not to be contacted.

The only problem with the existing law is that it is not well enough publicized. If the proponents of opening records would instead direct their energies toward publicizing the existing law, adoption records would be opened for those people who wanted them opened.

Conclusion

One of the few areas of the Indiana Adoption Law which could use improvement is with respect to birth father challenges. Under Indiana Law, a man who has shown no interest in the child nor provided any assistance to the birth mother during the pregnancy, can disrupt the adoption up to 30 days after receiving notice. The problem is that notice cannot be given until after the baby is born. Because the child will already be in the home of the adoptive parents, the father has the potential for causing the disruption of the adoption at the "eleventh hour".

This circumstance could be easily resolved by allowing that notice of the intended adoption be given to the alleged father before the birth of the child. Upon receipt of the notice, if the man really has interest in establishing a relationship with the child, he would then have an opportunity to file a paternity case, even before the baby is born. By filing a paternity case, the man would be asking the court to impose upon him the same obligations toward the child as he would have if he were the birth mother's husband. If he is not willing to assume those responsibilities, then he should not be able to later interfere with the adoption.

This change would not only protect the adoptive parents from a challenge in their right to retain custody of the child, but would also provide to a birth mother a tangible way to judge the support which she might expect to receive from the birth father if she chooses to parent the child at his insistence.

Indiana adoption laws are well reasoned and effective. The Indiana Legislators are to be commended for not "over-legislating".