

INDIANA HAS SUPERIOR ADOPTION LAWS

By Steven M. Kirsh^a

The 1993-94 Indiana General Assembly enacted the Putative Father Registry bringing Indiana to the forefront of states which have addressed, in a concrete way, the rights of birth fathers, birth mothers, adoptive parents, and children.

Motivated by a desire to prevent what happened to "Baby Jessica", in the last legislative session, the Indiana General Assembly added the final piece of legislation which defines the rights of the parties when a putative (which means alleged) father does not actively participate with the birth mother in an adoption plan for the child.

Indiana has one of the most straight-forward and direct laws of any of the states in this regard.

The first law, enacted by the Indiana General Assembly about six or seven years ago, provides that after the birth of the child and a birth father is served with notice of the adoption, he has thirty days within which to challenge the adoption. The significance of this law is that the thirty day time period to contest an adoption created an absolute bar to a birth father challenging the adoption after that thirty day time period had expired. Under that statute, if a birth father failed to contest the adoption within the thirty day time period, his consent to the adoption was irrevocably implied. At that point, no longer could he challenge the adoption nor could he establish paternity of the child.

That law was (and still is) important because, for the first time, it made clear the time limits for action and because it let all parties know where they stood after the expiration of the time period.

The next piece of legislation, Indiana Code § 31-3-1-6.4, enacted by the Indiana General Assembly, went into effect on July 1, 1993. With the enactment of Indiana Code § 31-3-1-6.4, Indiana became one of the first and only states to provide for notice to a putative father prior to the birth of the child. If the attorney or agency arranging the adoption gives the putative father "actual" notice of the adoption prior to the birth of the child, the putative father has thirty days

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after receiving that notice to file a paternity action (even if the child will not be born within the thirty day time period). If he files a paternity action within the thirty day time period, he preserves his right to contest the adoption. In fact, if he legally establishes paternity, he acquires rights exactly equal to the birth mother, that of an absolute veto of the adoption.

Indiana Code § 31-3-1-6.4 requires "actual" notice. In other words, the agency or attorney arranging the adoption must establish to the court that the birth father actually received the Section 6.4 Notice.

This legislation benefits a putative father by assuring him notice of an adoption and an opportunity to absolutely, unquestionably protect his parental rights by assuming financial and legal responsibility for the child.

On the other hand, birth mothers and adoptive parents are also protected because if a birth father does not initiate a paternity action and make himself legally and financially responsible for the child, his consent to the adoption becomes irrevocably implied and he loses the right to ever challenge the adoption.

This legislation was particularly important because prior to its enactment, neither the birth mother nor the adoptive parents had any concrete way of judging a birth father's sincerity when he said he opposed the adoption. Under prior law, which provided that notice could not be served upon the birth father until after the birth of the child, a number of birth mothers and adoptive parents elected not to proceed with adoptions. They were concerned that, if the adoptive parents assumed custody of the child, the birth father, after receiving formal notice of the adoption (after the birth of the child), would assert his parental rights and disrupt the adoption.

Therefore, in those cases in which the birth mother discloses the identity of the birth father and is able to provide his exact whereabouts, the agency or attorney arranging the adoption may give the birth father actual notice of the adoption prior to the birth of the child. Thirty days after the receipt of that notice, all parties will know whether or not the birth father has an interest in asserting his parental rights.

The last piece of legislation, enacted by the Indiana General Assembly, went into effect on July 1, 1994. This legislation, codified as Indiana Code § 31-3-1.5, creates a Putative Father Registry. This legislation was designed to prevent what happened to "Baby Jessica" in Iowa and Michigan where the little girl known as "Baby Jessica" was taken from her adoptive parents when she was 2 1/2 years of age.

In the "Baby Jessica" case, the birth mother knowingly identified the wrong man as the father of the child, that man signed a consent to the adoption admitting to be the father, and then the true biological father later appeared. After 2 1/2 years of litigation, the court granted his parental rights and awarded him custody of the then 2 1/2 year old child. Virtually everyone touched by adoption and many of those who are not particularly watchful of adoption stories will

remember the tearful cries of "Baby Jessica" as she was taken from her adoptive home and placed in an automobile to be delivered to the birth father.

The Indiana General Assembly wanted to assure that that kind of situation would never happen in Indiana. Under the provisions of the Indiana Putative Father Registry, unless the birth mother has identified the putative father to the agency or the attorney arranging the adoption, if a putative father wishes to receive notice of the adoption, he must submit a confidential registration to the Indiana State Board of Health prior to the birth of the child or up to thirty days after the birth of the child in the case of a newborn adoption.

If a putative father registers in a timely manner, he will receive notice of the adoption at the address he provides in his registration and will have an opportunity to object to the adoption including a right to veto the adoption if he establishes paternity. On the other hand, if he fails to register within the thirty day time period, his consent to the adoption is irrevocably implied. In other words, he will lose his right to challenge the adoption.

Other states have enacted various forms of the Putative Father Registry. The beauty of the Indiana Registry is its simplicity. Many states still require that "unfitness" of a putative father be proved before his consent is no longer required. The Indiana General Assembly has taken the approach that a man who establishes paternity in a court proceeding, thus making himself legally and financially responsible for the child, is entitled to have his parental rights fully protected. If a man is not willing to make himself legally and financially responsible for the child, he still has an opportunity to challenge the adoption, but he must establish that it is in the best interests of the child that the adoption not be granted. In either case, the rights of the child are protected. If a man makes himself legally and financially responsible for the child, the child's future is secure. If he does not do so, the court will determine what is in the child's best interests. If the father does nothing, the adoption will proceed without any further involvement of the birth father.

In a 1992 case, the Indiana Supreme Court held:

The case law of the U. S. Supreme Court suggests some distinction between unwed fathers who are active parents and those who are not. A statutory scheme based on this distinction could require consent from unwed fathers who have participated in the upbringing of the child and not require it from those who have not. This, however, would cause litigation of the wrong question in an adoption proceeding. Before a court could decide who was required to consent to the adoption and before the court would reach the basic question of whether or not the child should be adopted, the court would have to determine how good an unwed father someone has been. Our legislature has not chosen such a scheme, and we conclude it is not constitutionally mandated. Such a scheme would not promote our adoption statute's purposes and goals.

Adoptive parents of M.L.V. v. Wilkens, 598 N.E.2d 1054, 1059 (Ind.1992)

Therefore, in spite of the headline making cases that have taken place in other states, adoptive parents, birth parents, and the children who are adopted in Indiana can rest assured that their adoptions will not be disrupted so long as the statutorily prescribed procedures are strictly followed.

The Indiana General Assembly deserves tremendous credit for its work in enacting legislation which safeguards the right of all parties.