

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Ralph C. Melbourne
Church Langdon Lopp & Banet, LLC
New Albany, Indiana

ATTORNEY FOR APPELLEE

Rachele L. Cummins
Jeffersonville, Indiana

IN THE COURT OF APPEALS OF INDIANA

H.I.,

Appellant-Proposed Intervenor,

v.

B.K.,

Appellee-Petitioner.

July 20, 2022

Court of Appeals Case No.
22A-AD-396

Appeal from the Clark Circuit
Court

The Honorable Vicki L.
Carmichael, Judge

Trial Court Cause No.
10C04-2012-AD-67

Weissmann, Judge.

[1] Months after Child’s stepfather, B.K. (Adoptive Father), adopted her, H.I. (Biological Father¹) moved to intervene, claiming to be Child’s legal father. The trial court summarily denied the motion. Finding Biological Father adequately alleged his statutory right to intervene, we conclude his motion was denied in error. We therefore reverse and remand for further proceedings consistent with this opinion.

Facts

[2] Shortly after marrying D.K. (Mother), Adoptive Father petitioned to adopt Mother’s five-year-old child (Child). In his petition, Adoptive Father alleged that “[t]he natural father of the child is unknown” and “[t]he mother of the child did not disclose to the attorney arranging the adoption the identity or address of the putative father.” App. Vol. II, p. 9. The petition also alleged that no putative father was ever registered in either Indiana or Kentucky, where Child was born. Accordingly, Biological Father—whose surname was the same as Child’s prior to the adoption proceedings—never received notice of the adoption petition.

[3] The trial court granted the uncontested adoption on March 11, 2021. As part of its decree, the court ordered: “The rights of the child’s unknown natural and

¹ Both parties refer to H.I. as biological father. His genetic relationship to Child does not appear to be in dispute.

biological father . . . are now forever terminated and the child shall be under no lawful obligation to him.” App. Vol. II, p. 29.

[4] Ten months later, on January 14, 2022, Biological Father moved to intervene so he could file a motion for relief from judgment. Biological Father claimed he was Child’s legal father at the time of the adoption—and therefore a required party—because he executed a paternity affidavit and his name is on Child’s birth certificate. Mother filed an objection, arguing that Biological Father was never Child’s legal father. The trial court summarily denied Biological Father’s motion. Biological Father now appeals.

Discussion & Decision

[5] Biological Father argues that denial of his Indiana Trial Rule 24 motion to intervene was an abuse of discretion because he had a statutory right to intervene as Child’s legal father, among other things. We find this issue dispositive. Because Biological Father alleged grounds upon which a motion to intervene must be granted, we reverse and remand.

I. Trial Rule 24

[6] Indiana Trial Rule 24(A) states:

Upon timely motion anyone shall be permitted to intervene in an action:

(1) when a statute confers an unconditional right to intervene;
or

(2) when the applicant claims an interest relating to a property, fund or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect his interest in the property, fund or transaction, unless the applicant's interest is adequately represented by existing parties.

Because the rule is written in the disjunctive, Biological Father only needed to satisfy one of these two prongs to intervene.

[7] Post-judgment intervention to file a motion under Indiana Trial Rule 60 is permitted but generally disfavored. T.R. 24(C); *JPMorgan Chase Bank, N.A., v. Claybridge Homeowners Ass'n, Inc.*, 39 N.E.3d 666, 669 (Ind. 2015). “[H]owever, extraordinary and unusual circumstances will warrant granting such [a] request,” including where “the petitioner’s rights cannot otherwise be protected.” *Bd. Comm’rs Benton Cnty. v. Whistler*, 455 N.E.2d 1149, 1153 (Ind. Ct. App. 1983). An example of such a circumstance is lack of notice attributable to one of the parties in the suit. *See CitiMortgage, Inc. v. Barabas*, 975 N.E.2d 805, 816 (Ind. 2012). We review the trial court’s denial of a motion to intervene for an abuse of discretion, taking all the facts alleged in the motion as true. *JPMorgan Chase Bank, N.A.*, 39 N.E.3d at 669.

II. Statutory Right to Intervene

[8] Biological Father argues he is Child’s legal father and has a statutory right to intervene in her adoption because he executed a paternity affidavit in the hospital when Child was born. Subject to certain limitations not relevant here, “[a] man is a child’s legal father if the man executed a paternity affidavit”

Ind. Code § 31-14-7-3. Biological Father further argues that legal fathers have a fundamental constitutional interest in the care, custody and control of their children protected by the Fourteenth Amendment. *See generally In re O.R.*, 16 N.E.3d 965, 972 (Ind. 2014) (citing *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). Indiana statutes require that legal fathers be notified of adoption proceedings concerning their children, which cannot go forward without their consent. Ind. Code §§ 31-19-2.5-3(a)(1); -9-1(a)(2).

[9] Adoptive Father disagrees—not because he disputes legal fathers’ rights, but because he believes Biological Father is not and never was Child’s legal father. To evaluate this dispute, we turn to our standard of review, which demands that we take all facts alleged in the motion to intervene as true. *J.P. Morgan Chase Bank, N.A.*, 39 N.E.3d at 669. In his motion, Biological Father alleged the following:

[Biological Father] was present at [Child’s] birth, believes he executed a paternity affidavit at the hospital, and believes he is/was listed as the father on her birth certificate. The child previously had his last name . . . until changed . . . by this Court.

App. Vol. II, p. 35. Taking these allegations as true, Biological Father is Child’s legal father, yet he was never notified of the adoption proceedings and never consented to them as required by statute. *See* Ind. Code §§ 31-19-2.5-3(a)(1); -9-1(a)(2). Biological Father implies that Mother and Adoptive Father conspired to deprive Biological Father of his constitutional interest in the care, custody and control of Child, and were unwittingly aided in this illicit endeavor by the State.

Adoptive Father denies these allegations, but no evidence in the record clearly negates Biological Father's claims.² These are the sort of "extraordinary and unusual circumstances" that render post-judgment intervention appropriate. *See Barabas*, 975 N.E.2d at 816; *Whistler*, 455 N.E.2d at 1153.

[10] We therefore find that the trial court erred in summarily denying Biological Father's motion to intervene. We reverse and remand for the trial court to grant Biological Father's motion and permit him to file a Trial Rule 60 motion for relief from judgment. The trial court may then hear and evaluate evidence as permitted by that rule. *See, e.g., In re A.K.S.*, 713 N.E.2d 896, 898 (Ind. Ct. App. 1999) (reviewing trial court judgment under similar circumstances, but where trial court held a hearing on biological father's motion to set aside).

[11] Reversed and remanded.

Robb, J., and Pyle, J., concur.

² Adoptive Father alleges in his brief that there is no father's name listed on Child's birth certificate and that Biological Father made no attempt to establish paternity until five years after Child was born. Biological Father moved to strike these allegations, arguing that these assertions are not supported by citations to the record as required by Indiana Appellate Rule 22 and/or do not exist in the record on appeal. Because we find in Biological Father's favor, his motion is moot.