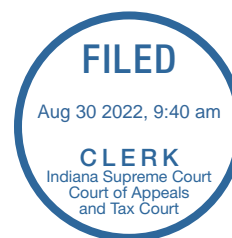


MEMORANDUM DECISION

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.



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IN THE COURT OF APPEALS OF INDIANA

P.L.,
Appellant-Respondent,

v.

M.H. and A.H.,
Appellees-Petitioners.

August 30, 2022

Court of Appeals Case No.
22A-AD-80

Appeal from the Hamilton
Superior Court

The Honorable Michael A. Casati,
Judge

Trial Court Cause No.
29D01-2006-AD-964

Mathias, Judge.

- [1] P.L. (“Father”) appeals the Hamilton Superior Court’s order awarding temporary custody of his minor son, S.L. (“Child”), to M.H. and A.H. (“Adoptive Parents”) while their adoption petition is pending. Father raises a

single dispositive issue for our review, namely, whether the temporary custody order is void because the adoption court lacks personal jurisdiction over Father. We reverse.

Facts and Procedural History

- [2] Father is the biological father of Child, who was born on August 22, 2013. When Child was twelve days old, he was removed from his biological parents' care and placed with Adoptive Parents as foster parents.¹ At that time, he stayed in the care of Adoptive Parents continuously for fourteen months. When Child was about fifteen months old, his paternal grandparents, D.P. and T.N. ("Grandparents"), who had been living in California, learned about Child's circumstances and moved to Indiana, and Child was placed with them.² Although Child was in the care and custody of Grandparents, Adoptive Parents still maintained contact with Child and provided care to him.
- [3] In May 2015, Grandparents petitioned for, and were granted, guardianship of Child, to which Father and Child's mother consented. On June 2, 2016, a joint stipulation was entered in the guardianship case that afforded Father limited supervised parenting time. On November 30, 2015, Father filed to terminate the guardianship, but his motion was denied.

¹ The record is unclear, but it appears that the Department of Child Services ("DCS") removed Child from Mother and Father's care at that time.

² Again, the record is unclear, but it appears that DCS placed Child with Grandparents when they moved to Indiana from California.

[4] Throughout Grandparents' guardianship of Child until May 24, 2019, Adoptive Parents continued to have consistent contact and visitation with Child. In fact, since 2016, while Child resided with Grandparents during the week he spent weekends, holidays, and summer vacations with Adoptive Parents. On May 24, 2019, Child began residing with Adoptive Parents on a full-time basis with Grandparent visitations that would occur from Friday evenings until Saturday evenings. From that date, Child resided continuously with Adoptive Parents until June 26, 2020, when Grandparents filed an emergency petition for the return of custody of Child, which the trial court granted. On June 26, 2020, Child was removed from Adoptive Parents' care and placed back with Grandparents. At no time during these proceedings did Father ever have custody of Child.

[5] On June 19, 2020, Adoptive Parents filed a petition for adoption under a new cause number along with a motion for custody of Child and a motion to consolidate the guardianship case with the adoption case. Adoptive Parents did not serve Father with the petition for adoption or the corresponding motions. On June 26, 2020, the adoption court consolidated the adoption case with the guardianship case.

[6] On July 8, 2020, the adoption court held a hearing on Adoptive Parents' motion for custody of Child, at which Adoptive Parents and Grandparents were present. Following the hearing, the adoption court issued an order granting Adoptive Parents temporary custody of Child, finding that Adoptive Parents

are de facto custodians of Child and concluding that it was in Child’s best interests that he be returned to the care and custody of Adoptive Parents.

[7] On August 2, 2021, Father filed a [Trial Rule 60\(B\)\(6\)](#) motion to set aside the custody order and a brief in support, in which he argued, among other things, that the adoption court’s order granting temporary custody of Child to Adoptive Parents was void because the court lacked personal jurisdiction over Father. The adoption court held a hearing on Father’s motion, but the court limited the hearing to legal argument only. The adoption court denied Father’s motion to set aside the temporary custody order.

[8] In its order, the adoption court found in relevant part that Father “had not been properly served in the adoption matter,” but the court also found that the temporary custody order was “not void *ab initio* for want of jurisdiction[.]”³ Appellant’s App. Vol. 2, p. 39. On November 19, 2021, Father filed his motion to correct error and supporting brief, which the adoption court denied. This appeal ensued.

³ To the extent the adoption court suggested in its order that Father’s waiver of notice and consent to guardianship in the guardianship proceeding was applicable in the adoption proceeding, the court is mistaken. [Indiana Code Section 31-19-2.5-4](#) provides for exceptions to the notice requirements in an adoption proceeding. Father can only be deemed to have waived notice if he specifically waived notice of the adoption proceeding, which he did not do. *See I.C. §§ 31-19-4-8, 31-19-4.5-4*. In any event, in their brief on appeal, Adoptive Parents do not contend that Father waived notice of the adoption proceeding.

Discussion and Decision

[9] Father contends that the adoption court erred when it denied his [Trial Rule 60\(B\)\(6\)](#) motion to set aside the temporary custody order. In particular, Father asserts that the adoption court's order awarding temporary custody of Child to Adoptive Parents is void because the adoption court lacks personal jurisdiction over Father.

Typically, we review a trial court's ruling on a motion to set aside a judgment for an abuse of discretion, meaning that we must determine whether the trial court's ruling is clearly against the logic and effect of the facts and inferences supporting the ruling. [Yoder v. Colonial Nat'l Mortg.](#), 920 N.E.2d 798, 800–01 (Ind. Ct. App. 2010). However, whether personal jurisdiction exists over a defendant is a question of law that we review de novo. *Id.* at 801. *A judgment entered where there has been insufficient service of process is void for want of personal jurisdiction.* [Front Row Motors, LLC v. Jones](#), 5 N.E.3d 753, 759 (Ind. 2014).

Void judgments may be attacked through [Indiana Trial Rule 60\(B\)\(6\)](#). By the plain terms of the rule, motions to set aside under [subsection \(6\) of Rule 60\(B\)](#) do not require proof of a meritorious defense to the judgment being challenged. Also, although motions under [Rule 60\(B\)\(6\)](#) should be filed within a “reasonable time,” “a judgment that is void for lack of personal jurisdiction may be collaterally attacked at any time and . . . the ‘reasonable time’ limitation under [Rule 60\(B\)\(6\)](#) means no time limit.” [Stidham v. Welchel](#), 698 N.E.2d 1152, 1156 (Ind. 1998).

[Hair v. Deutsche Bank Nat. Tr. Co.](#), 18 N.E.3d 1019, 1022 (Ind. Ct. App. 2014)
(emphasis added).

[10] The Fourteenth Amendment to the United States Constitution provides that no person shall be deprived of “life, liberty, or property without due process of law.” [U.S. Const. amend. XIV](#). That liberty includes the “fundamental liberty interest of natural parents in the care, custody, and management of their child,” which “does not evaporate simply because they have not been model parents or have lost temporary custody of their child” [Santosky v. Kramer, 455 U.S. 745, 753 \(1982\)](#).

[11] Here, as the adoption court found, Adoptive Parents did not serve Father notice of their adoption petition. It is undisputed that Adoptive Parents were required to serve Father with notice of the petition under [Indiana Code Section 31-19-2.5-3](#). Likewise, Adoptive Parents do not dispute that the adoption court does not have personal jurisdiction over Father. *See* [Hair, 18 N.E.3d at 1022](#). But Adoptive Parents contend that “[t]here is no part of the [temporary custody] statute that requires that the biological father be served for a temporary custody order and/or hearing. The statute explicitly states that the Motion may be filed ‘ex parte.’” Appellees’ Br. at 5. Adoptive Parents’ argument is misplaced.⁴

[12] [Indiana Code Section 31-19-2-13\(a\)](#) provides in relevant part that “a petitioner for adoption may file a separate, ex parte, verified petition requesting temporary custody of a child sought to be adopted at the time of or any time after the filing of a petition for adoption.” Even assuming that Father was not entitled to

⁴ Adoptive Parents do not allege any excuse for the failure to notify Father of their adoption petition.

notice of the ex parte petition for temporary custody, an issue we need not decide in this appeal, the fact that Father did not receive notice of the adoption proceeding renders the temporary custody order, and any other orders issued by the trial court, void. *See, e.g., H.R. v. R.C. (In re D.C.)*, 887 N.E.2d 950, 958 (Ind. Ct. App. 2008) (holding adoption proceedings void where trial court did not have personal jurisdiction over mother).

[13] Still, Adoptive Parents point out that, under [Indiana Code Section 31-19-2-13\(e\) and \(f\)](#), Father was entitled to file a petition to suspend, modify, or revoke the temporary custody order and that the adoption court would have been required to hold a hearing on that petition. They assert that Father’s failure to file such a petition was “his own error” and that he cannot now complain that the adoption court did not hold a hearing on the temporary custody order. Appellees’ Br. at 6. But Adoptive Parents ignore the adoption court’s lack of personal jurisdiction over Father. If Adoptive Parents had timely served Father with notice of their adoption petition, they might have an argument.⁵ But given the lack of personal jurisdiction here, Adoptive Parents’ argument is without merit.

[14] The trial court erred when it denied Father’s [Trial Rule 60\(B\)\(6\)](#) motion to set aside the temporary custody order.

⁵ Father contends that this provision of the statute is unconstitutional as applied to him. But given our holding, we need not address that issue.

[15] Reversed.

Brown, J., and Altice, J., concur.