

# Adoption: Agony and Ecstasy

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One of the most satisfying and enjoyable services I render as a lawyer relate to adoptions. Helping birthmothers with unwanted pregnancies to place their children in the hands of loving infertile couples assists in the virtual creation of families. However, some of the most heart-wrenching and distasteful experiences I have had as a lawyer relate to this same area of practice, where placement situations have gone wry, adoptions have been mishandled, and contested soul destructive battles have been pursued. While most lawyers deal every day with matters of money, adoption lawyers deal on a daily basis with matters of the heart...and there is agony and ecstasy associated with every single adoption, successful or interrupted.

In addition to touching upon recent statutory and case law on this subject, I will be attempting to share the light and the dark side of adoption practice as I have experienced it. During the course of my career I have seen a deceased mother's forged paternity confirmation reduce the only living parent of the child to a non-biological father with arguably no legal rights... and a birthmother's promise of a child to three separate non-resident couples who all showed up in Jackson to pick up the child. I have been involved in litigation where foster parents were pitted against grandparents, adoptive parents against birthparents, and birthfathers against birthmothers. I have been privy to the overwhelming joy of an adoptive mother's first holding of an infant and the anguish in a birthmother's good-byes to the newborn she could not care for herself. I have been honored with the witnessing of

the full scale of human emotions relative to parent/child relations and never cease to be amazed at the breadth of experience associated with this area of practice.

In an ever changing world where we now have adoption advertisement, adoption facilitators, single parent adoption (allowed in MS), same sex couple adoption (prohibited in MS), open adoption (where birthmother knows identity of adoptive parents), interstate adoption and international adoption (both becoming more and more frequent in MS), and inter-jurisdictional issues, even the non-emotional side of the practice of adoption law gives true meaning to the phrase "agony and ecstasy".

It use to be that adoption was the simplest of legal procedures. Only one lawyer was involved with each adoption. Now more often than not, there are two or three. With Interstate Compact Rules and Regulations, some state-to-state adoptions require more documentation than the most complicated of multi-million dollar loan closings. Where there use to be a consent, a doctor's certificate and a statement of property, there are now multi-state consents, home studies, social and medical background forms, risk placement affidavits, ICPC placement forms, release authorizations and more. But not only has separate representation and paperwork become more complicated, the issues involved in an adoption have multiplied.

Hot adoption issues today include: the pros and cons of revocation periods for birthparents, within which they can change

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their minds; the pros and cons of adoption advertisement and the use of facilitators; legally permissible birthparent expenses to be paid by adoptive parents; reactive attachment disorder (experienced by previously placed children); adoptive parent attorney obligations relative to investigation of birthmothers (medical and social background); minor birthmother rights and need for representation; diligent searches for birthfathers and their rights; and many more.

Mississippi law with reference to birthfathers and the termination of their rights has been particularly troublesome over the past years. The statutes have recently changed several times and there have been lapses in the effective periods of those statutes. The key Mississippi statute now states that a birthfather has no right to object to an adoption unless he demonstrates within 30 days of birth, a full commitment to the responsibilities of parenthood. (Miss Code Ann. § 93-17-5) However, that statute does not do away with notice and termination of the rights by a court. The complexity of litigation

surrounding birthfather's rights, and other issues, has not only resulted in lawsuits by birthparents against adoptive parents, but by birthparents and adoptive parents against attorneys, social workers, and agencies.

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Unusual results arising out of contested cases have left the outside boundaries of Mississippi adoptions as of yet undetermined. We have a case granting adoption petitions to both Grandmother and non-biological father, resulting in the Grandmother becoming the legal mother

of the child and the unrelated non-biological father, the legal father. (Adoption of P.B.H., L.T. and D.T. v. J.H., 787 So. 2d 1268, Miss. 2001). We have a case where a biological father retained visitation rights after the granting of an adoption. (Humphrey v. Pannell, 710 So.2d 392, Miss. 1998). We have split opinions surrounding a minor birthmother's ability to sign a surrender of her child without the appointment of a Guardian Ad Litem for the birthmother herself. (Adoption of J.M.M v. New Beginnings of Tupelo, Inc., 796 So.2d 975, Miss. 2001). And kinship has been reduced to only a factor in a contest of a grandmother against foster parents. (Beggiani v. Prante, 519 So.2d 1208, Miss. 1988).

To further complicate the practice of law in this area, Mississippi has little statutory guidance on permissible and legitimate pregnancy related expenses. In intrastate adoptions legal and medical expenses and other "lawful services" are allowed. (Miss. Code Ann. § 43-15-117) Usual restrictions do not necessarily apply to Intrastate placements. (Miss. Code Ann.

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§ 43-18-15). If the adoption is to be finalized in another state where pregnancy related expenses are allowed (i.e. rent, food, clothing), most courts will apply the law of that state. We have no statutory period of revocation (case law indicates that consents are irrevocable as of the moment they are signed if signed more than 72 hours post birth). The roles of private attorney verses licensed agencies are not well defined. And as a result we only have a handful of attorneys in Mississippi handling interstate and/or international adoptions. Add to all of the above, the increase in wrongful adoption lawsuits with allegations against lawyers for negligence and breach of duty and you get a bigger picture associated with the practice of adoption law.

Today, it has become imperative to identify the client as the birthmother, birthfather or adoptive parents from the onset. Adequate representation contracts governing duties and scope are becoming more and more important. Knowledge of Interstate Compact procedures and forms is a minimum for anything other than a

Mississippi to Mississippi (Intrastate) Adoption. And when in doubt, find out. Don't proceed with anything related to a placement if you don't know the answers. An interrupted or set aside adoption has forever-lasting and immeasurable emotional and moral consequences for which no attorney wants responsibility, not to mention the potential monetary liability of an attorney mishandling an adoption. There is a national organization, the American Academy of Adoption Attorneys, which may prove useful as a resource if you are faced with adoption-related problems.

So now, trusting that I haven't frightened the bulk of the reading attorneys away from this area of practice, I still maintain that the successful completion of an adoption can be the most satisfying experiences an attorney can have in his or her career. It is one of the rare occasions where everyone is grateful and where your services bestow blessings upon lives with an impact upon future generations to come. ■

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