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Sen. Brent Steele, Chairperson
Sen. Joseph Zakas
Sen. Greg Taylor
Sen. Lonnie Randolph
Rep. Kathy Kreag Richardson
Rep. Greg Steuerwald
Rep. B. Patrick Bauer
Rep. John Bartlett
Chief Justice Brent Dickson
Judge Tom Felts
Commissioner Therese Brown
Christa Coffey
Jerome Prince

LSA Staff:

Mark Goodpaster, Fiscal Analyst for the Commission
Timothy Tyler, Attorney for the Commission

Authority: IC 33-23-10

COMMISSION ON COURTS

Legislative Services Agency
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MEETING MINUTES[1]

Meeting Date:	**October 21, 2013**
Meeting Time:	**1:00 P.M.**
Meeting Place:	**State House, 200 W. Washington St., Room 431**
Meeting City:	**Indianapolis, Indiana**
Meeting Number:	**5**

Members Present: **Sen. Brent Steele, Chairperson; Sen. Joseph Zakas; Sen. Greg Taylor; Rep. Kathy Kreag Richardson; Rep. Greg Steuerwald; Rep. B. Patrick Bauer; Rep. John Bartlett; Chief Justice Brent Dickson; Judge Tom Felts; Commissioner Therese Brown; Christa Coffey; Jerome Prince.**

Members Absent: **Sen. Lonnie Randolph.**

Chairman Steele convened the meeting at 1:08 p.m.

Adoption Proceedings

The first item on the agenda came from issues raised about adoption proceedings cited in the Indiana Supreme Court case "The Matter of the Adoption of Minor Children C.B.M. and C.R.M." (See Exhibit A.)

Mary Willis, Judge of the Henry Circuit Court, and Marilyn Moores, Judge of the Marion Superior Court Juvenile Division, discussed the difficulty for courts to permit the adoptions of children whose parents have not had their parental rights terminated prior to the adoption.

The judges proposed language that would not permit a court to hear an adoption case if any appeals of a decision concerning the termination of the parent-child relationship is still pending. (See Exhibit B.)

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[1] These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at http://www.in.gov/legislative Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of $0.15 per page and mailing costs will be charged for hard copies.

The Commission members approved this proposal by a unanimous show of hands.

Creation of a Magistrate for the Vanderburgh Circuit Court

The Commission members by a unanimous show of hands approved PD 3003, which would allow the judge of the Vanderburgh Circuit Court to appoint a second full-time magistrate. (See Exhibit C.)

Confidentiality of Juvenile Paternity Cases

The Commission members by a unanimous show of hands approved PD 3226 (Exhibit D), which would provide that:

> (1) the law making all records of a juvenile court confidential does not apply to records involving proceedings that have to do with paternity issues, custody issues, parenting time issues, child support issues, or other related issues concerning a child born to parents who are married to each other; and
>
> (2) the law that specifies which persons may have access to juvenile court records without a court order should not apply to records involving proceedings that pertain to paternity issues, custody issues, parenting time issues, child support issues, or other related issues concerning a child born to parents who are not married to each other.

Bail Bonds

The Commission members discussed PD 3346, which would provide that if a court admits a criminal defendant to bail, the court may require the defendant to choose between the following: (1) executing a bail bond with sufficient solvent securities; (2) deposit securities in an amount equal to bail; (3) execute a bond secured by real estate; and (4) execute a 15% cash bond. (Exhibit E)

Chief Justice Dickson indicated his concern about certain features of this preliminary draft and presented prepared remarks outlining his thoughts about bail and pretrial release. (Exhibit F)

After Commission discussion, PD 3346 failed for want of a motion.

Judgment Dockets

The Commission members discussed PD 3347 (Exhibit G), which would specify what the contents of circuit court judgment dockets must contain in IC 33-32-3-2. It would also permit a clerk of a circuit court to keep a judgment docket in either an electronic form, a paper form, or both an electronic and paper form.

Chief Justice Dickson requested the Commission members not consider making any changes to IC 33-32-3-2 until a committee of judges examines the language of the statute in further detail.

Senator Steele agreed to table PD 3347.

Mental Health and Insanity Hearings

Judge Felts noted the difficulty he experiences in securing psychiatrists for insanity hearings in criminal cases in his court. Senator Steele agreed to have a bill to address this issue.

The Commission recommended that legislation should be considered during the 2014 session of the General Assembly to amend IC 35-36-2-2. This section requires courts to appoint at least one psychiatrist to examine a defendant who raises the defense of insanity. The Commission recommends that courts should have the flexibility to appoint psychologists, psychiatrists, or physicians in insanity defense cases without regard to a specific ratio of qualified mental health professionals.

While the Commission members did not recommend specific language, it approved this concept by an 8 to 2 show of hands.

Certification of Court Reporters

The Commission discussed the need for minimum qualifications for court reporters when they recorded depositions between private parties. The Commission members generally agreed that courts should have the discretion to select individuals to work as court reporters.

The Commission then discussed the need for a bill that specified minimum qualifications for court reporters providing deposition work for private parties outside of a court proceeding. The Commission members did not recommend any legislation on this topic because the proposal failed to gain the minimum required seven votes for a recommendation.

Final Report

The Commission approved a draft of a final report by a unanimous show of hands.

Senator Steele adjourned the meeting at 2:45 p.m.

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In the Indiana Supreme Court

FILED
Aug 16 2013, 1:18 pm
CLERK
of the supreme court, court of appeals and tax court

No. 37S03-1303-AD-159

IN RE THE MATTER OF THE ADOPTION OF MINOR CHILDREN: C.B.M. AND C.R.M.

C.A.B.

Appellant/Natural Mother,

v.

J.D.M. AND K.L.M.

Appellees/Adoptive Parents.

Appeal from the Jasper Superior Court, No. 37D01-0805-AD-3
The Honorable James R. Ahler, Judge

On Petition to Transfer from the Indiana Court of Appeals, No. 37A03-1204-AD-149

August 16, 2013

Rush, Justice.

The foster parents of C.B.M. and C.R.M. adopted them while their natural mother's termination of parental rights (TPR) appeal was still pending. Our statutes specifically allow those

Exhibit A
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competing processes to overlap. But choosing to do so creates the devastating possibility of jeopardizing a finalized adoption if the underlying TPR judgment is later reversed on appeal.

That is exactly what happened here, and we cannot unscramble that egg.[1] Either the adoptive family prevails in violation of the natural mother's constitutional rights, or the natural mother prevails at the risk of pulling the children away from the only family they know. But the natural mother's rights, both as a parent and as a litigant with an absolute right to an appeal, are constitutionally protected. We cannot cut corners on those rights, despite our concerns for the children's undoubtedly vital interest in a speedy and permanent placement.

We therefore conclude that the trial court should have set aside the adoption, because the prior TPR "judgment upon which it is based has been reversed or otherwise vacated"—making the adoption voidable under Indiana Trial Rule 60(B)(7). And since a dilemma like this ill-serves the interests of everyone involved, we also offer guidance for mitigating the harsh result in this case, and in any future cases of this type.

Facts and Procedural History

C.A.B. is the natural mother of fraternal twins C.B.M. and C.R.M. ("Twins"), born in June 2004. Paternity has never been established, and their father's identity is not known. In January 2006, the Twins were determined to be children in need of services (CHINS) and removed from Natural Mother's home. TPR proceedings began against Natural Mother in July 2007, and TPR was granted in January 2008 over the strong objections of the Twins' guardian *ad litem*. Natural Mother promptly appealed the TPR judgment.

In early summer 2008, the Twins' foster parents J.D.M. and K.L.M. ("Adoptive Parents"[2]) petitioned to adopt them. DCS gave its consent to the adoption, which was granted about ten weeks later. None of the parties to the adoption notified Natural Mother of the proceedings, because

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[1] See generally Kate M. Heideman, Comment, Avoiding the Need to "Unscramble the Egg:" A Proposal for the Automatic Stay of Subsequent Adoption Proceedings When Parents Appeal a Judgment Terminating Their Parental Rights, 24 St. Louis U. Pub. L. Rev. 445 (2005) (discussing Illinois, Michigan, and Missouri cases involving TPRs being reversed on appeal after an adoption had already been granted, and proposing that TPR judgments should be automatically stayed pending appeal to avoid such dilemmas).

[2] In July 2012, while this case was pending before the Court of Appeals, that Court received notice that J.D.M., the adoptive father, was killed in a traffic accident in May 2011. Like the Court of Appeals, we will continue to refer to the Adoptive Parents in the plural, for the sake of consistency with prior proceedings.

notice is not required to a parent whose rights have been terminated. Ind. Code § 31-19-2.5-4(4). Nor did Mother make any effort to file a stay of the trial court's TPR judgment; and DCS made no effort to notify the Court of Appeals that the adoption was pending or that it had consented to the adoption. Mother's TPR appeal was still pending at the time the adoption was finalized.

Just two months later, in September 2008, the Court of Appeals reversed the TPR judgment against Natural Mother. The court held that in view of recent positive changes in Natural Mother's life, DCS had failed to carry its burden of establishing by clear and convincing evidence that the conditions leading to the Twins' removal would not be remedied and that continuing the parent-child relationship would threaten the Twins' well-being. Moore v. Jasper Cnty. Dep't of Child Servs., 894 N.E.2d 218, 228-29 (Ind. Ct. App. 2008). Based on that decision, Natural Mother petitioned the adoption court in January 2009 to set aside the adoption decree. The Adoptive Parents promptly objected.

Ultimately, Natural Mother's petition to set aside the adoption was not resolved until three years later. In July 2009, she moved for summary judgment, arguing that because she was never notified of the adoption, the adoption decree was void for lack of personal jurisdiction; and that the statutes allowing the adoption to proceed during her TPR appeal unconstitutionally deprived her of Due Process. The trial court heard the motion in August 2010, and denied the motion in December 2011. Its ruling agreed with the Adoptive Parents that Natural Mother's constitutional rights were not violated, and that her remedy was to seek a stay of the TPR judgment pending appeal under Indiana Trial Rule 62, which she did not do. The trial court therefore refused to declare the statutes unconstitutional, denied the petition to set aside the adoption, and denied summary judgment. Natural Mother's motion to correct error was also denied, and she appealed.

The Court of Appeals reversed, though it divided on the reasons for doing so. The majority concluded that even though Natural Mother was not entitled by statute to notice of the adoption because her rights had been terminated, DCS nevertheless acted "arbitrarily and capriciously" by failing to provide such notice, and by consenting to the adoption without having done so. In re Adoption of C.B.M. and C.R.M., 979 N.E.2d 174, 185 (Ind. Ct. App. 2012). Judge Vaidik separately concurred, believing the issue was better resolved by construing the adoption statutes to require final *appellate* resolution of TPR cases before dispensing with notice to or consent of the

natural parents. Id., 979 N.E.2d at 186. We granted transfer, 984 N.E.2d 221 (Ind. 2013) (table), thereby vacating the Court of Appeals opinion. Ind. Appellate Rule 58(A).

We now reach the same result as the Court of Appeals, but for a different reason—that because the adoption was based on the TPR judgment, Natural Mother became entitled to set aside the adoption under Trial Rule 60(B)(7) when she prevailed in her TPR appeal.

Standard of Review

Relief from judgment under Trial Rule 60 is an equitable remedy within the trial court's discretion. Outback Steakhouse of Fla., Inc. v. Markley, 856 N.E.2d 65, 72 (Ind. 2006). Accordingly, we generally review a trial court's Rule 60 ruling only for abuse of discretion. Id. But when "the trial court rules on a paper record without conducting an evidentiary hearing," as happened here, we are "in as good a position as the trial court . . . to determine the force and effect of the evidence." GKN Co. v. Magness, 744 N.E.2d 397, 401 (Ind. 2001) (quoting Farner v. Farner, 480 N.E.2d 251, 257 (Ind. Ct. App.1985)). Under those circumstances, our review is *de novo*. See id. (applying *de novo* review to a motion to dismiss, where trial court resolved disputed facts from a paper record). See also Williams v. Tharp, 934 N.E.2d 1203, 1215 (Ind. Ct. App. 2010), trans. denied (reviewing *de novo* denial of relief under T.R. 60(B)(8) when decision was made on a paper record).

Analysis

The parties' dispute centers around two basic issues. First, they disagree about whether the adoption mooted Natural Mother's TPR appeal because of her failure to seek a stay of the TPR judgment pending appeal. Second, they dispute whether letting the Twins be adopted without Natural Mother's notice or consent violated her Due Process rights—which determines whether the adoption was *void* or merely *voidable*, and therefore whether Natural Mother was required to plead and prove a "meritorious defense" to set aside the adoption under Indiana Trial Rule 60(B).

We agree with Natural Mother that her right to set aside the adoption did not depend on staying the TPR. But while the parties' Trial Rule 60(B) arguments take aim at sub-paragraphs (6) and (8), we find the bullseye in between: Under sub-paragraph (7), the adoption was only voidable, but for a reason that does not require Natural Mother to show a meritorious defense (and does not require us to address the constitutional question her "voidness" argument implicates).

I. Undue Delay in Cases Involving Children's Rights.

Before addressing the parties' issues, we pause to address an issue they have not raised—the three-year delay in resolving Natural Mother's petition to set aside the adoption at the trial level. We are gravely troubled by that lengthy delay. Time is of the essence in matters involving children, as the Twins illustrate particularly vividly. They became CHINS at age 1½, their parent-child relationship with Natural Mother was severed at age 4½, and their adoption was challenged at age 5½. They are now age 10, with this dispute still unresolved.

In our Appellate Rules, we have strictly limited the parties' ability to seek extensions of time in cases involving children's rights, and have required ourselves to give them priority consideration. Ind. Appellate Rules 21(A), 35(C)–(D). We applaud the Court of Appeals for its promptness in resolving the previous level of this appeal—and express our firm expectation that parties and courts will do likewise at the trial level, even without being expressly compelled to do so by a comparable Trial Rule.

II. Staying TPR Judgments Pending Appeal.

At the outset, the Adoptive Parents and Attorney General argue that Natural Mother's TPR appeal was rendered moot when the adoption was granted—and that if she wished to preserve her rights, she should have asked the TPR court to stay its judgment pending her appeal. Without such a request, they reason, the Twins' need for a speedy and permanent placement trumps Natural Mother's rights. In view of the two separate constitutional rights that are implicated by this argument, we cannot agree.

Foremost, despite Natural Mother's struggles, her parental rights are precious and protected by our Federal and State constitutions. Our Supreme Court has "recognized on numerous occasions that the relationship between parent and child is constitutionally protected," Quilloin v. Walcott, 434 U.S. 246, 255 (1978), and that "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State." Santosky v. Kramer, 455 U.S. 745, 753 (1982). Accordingly, "the interest of a parent in the companionship, care, custody, and management of his or her children comes to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements." Stanley v. Illinois, 405 U.S. 645, 651 (1972) (internal quotation and substitution omitted).

Even apart from the importance of Natural Mother's substantive parental rights, Indiana is particularly solicitous of the right to appeal. Article 7, Section 6 of the Indiana Constitution guarantees "in all cases"—including TPR—"an absolute right to one appeal." But her appellate right would mean little if it could be short-circuited by an adoption judgment being issued before her appeal is complete. It would offend her rights as both a mother and an appellate litigant to let her parent-child relationship with the Twins become contingent upon a race to the courthouse, hinging on whether the adoption could be finalized before the TPR appeal was complete.[3]

The Adoptive Parents and Attorney General say it was Natural Mother's sole responsibility to avoid such a "race" by seeking a stay of the TPR judgment pending her appeal. But Court of Appeals precedent suggests otherwise. In Cunningham v. Hiles, 182 Ind. App. 811, 395 N.E.2d 851, 853 (1979), modified on reh'g, 402 N.E.2d 17 (Ind. Ct. App. 1980), the trial court had refused to enjoin construction of a music store on a residential lot, but the Court of Appeals reversed. The store owner then sought rehearing, arguing the appeal was moot because he had built the store in reliance on the trial court's judgment while the appeal was pending—the first time the Court of Appeals had been made aware of that important fact. 402 N.E.2d at 20. The Court's opinion on rehearing made clear that "*the parties* should have informed this Court of the fact that the music store had been constructed," suggesting that the "duty to place such matters before this Court by proper petitions, motions, or challenges by verified pleadings" is shared. 402 N.E.2d at 20 (emphasis added; internal citations, quotations, and substitutions omitted). In so holding, the Court rejected the store owner's claim that the fault lay entirely with the appellants for failing "to seek an appeal bond or otherwise stay enforcement of the denial of the injunction pending the outcome of their appeal," id. at 21 n.4. In sum, despite prevailing at trial, the owner "built the music store at his own peril" while the appeal was pending. Id.

We see this case in a similar light. Natural Mother certainly could have sought a stay of the TPR in hopes of avoiding the dilemma this case presents. Yet DCS was also a party to that

[3] We acknowledge the Attorney General's citation to In re Tekela, 780 N.E.2d 304, 309 (Ill. 2002), which held that a TPR appeal does become moot when the children are adopted. But we have found no other case that reaches such a conclusion. Moreover, Illinois has abrogated Tekela by a rule blocking adoptions while a TPR appeal is pending. Ill. Sup. Ct. R. 305(e). A similar statute has avoided these consequences in Michigan as well, In re JK, 661 N.W.2d 216, 224 (Mich. 2003)—and Missouri has established a common-law rule that it is always an abuse of discretion to grant an adoption while a TPR appeal is pending, State ex rel. T.W. v. Ohmer, 133 S.W.3d 41, 43 (Mo. 2004). We agree with Tekela's recognition of a compelling interest in speedy placement and permanency for the children, but we will not advance that policy goal at a natural parent's constitutional expense.

appeal—and unlike Natural Mother, DCS also participated in the adoption, through the power to consent (or not) to the Twins' adoption while the TPR appeal was pending. If anything, then, DCS was in a better position than Natural Mother to make the Court of Appeals aware of "post-judgment events which may affect the outcome of a pending appeal," id. at 20, such as its intent to consent to the adoption. DCS had every right to rely on the trial court's TPR judgment and consent to the adoption while the appeal was still pending, I.C. § 31-19-11-6—but as in Cunningham, such bold reliance came at its own (and thus, the Twins') peril. 402 N.E.2d at 21 n.4.

Accordingly, we decline to hold that Natural Mother was required to file a stay in order to preserve a meaningful appellate remedy for her parental rights, and proceed to the merits of her petition to set aside the adoption.

III. Setting Aside Adoptions When the Prior TPR Is Reversed.

Reversal of the TPR judgment is significant because consent is ordinarily a vital part of an adoption. "[A] trial court deciding an adoption petition must find that 'proper consent, if consent is necessary, to the adoption has been given.'" In re Adoption of N.W.R., 971 N.E.2d 110, 113 (Ind. Ct. App. 2012) (quoting I.C. § 31-19-11-1(a)(7)). In most cases, that entails notifying the natural parents of the adoption, I.C. § 31-19-2.5-3(a)(1), and obtaining their written consent to it, I.C. § 31-19-9-1(a)(1)–(2). When consent is required, a defect in consent will render the adoption decree invalid, and require the adoption to be reversed and remanded. See N.W.R., 971 N.E.2d at 117 (DCS's consent was required because child was ward of the State; trial court abused its discretion in granting adoption after DCS had sought to withdraw its consent).

But even though notice and consent are generally required, there are two classes of exceptions. One category permits adoption without the natural parent's consent, if the court finds that the parent has abandoned, deserted, or failed to support or communicate with the child, I.C. § 31-19-9-8(a)(1)–(2); or that the parent is legally incompetent or unfit, I.C. § 31-19-9-8(a)(9), (11). In these cases, the natural parent is still entitled to *notice*, I.C. § 31-19-4.5-2, so they can appear and defend against the allegations.

In the other category, though, the natural parent is not even entitled to *notice*. I.C. § 31-19-2.5-4. Generally, this category is based on a prior judicial finding of parental misconduct—

for example, Natural Mother's TPR judgment, I.C. § 31-19-9-8(a)(8); or conviction and incarceration for certain crimes against the child or the child's other parent or sibling. I.C. §§ 31-19-9-9, -10. In these cases, notice is deemed unnecessary because the parent had opportunity to contest the allegation in a prior proceeding—in essence, treating the prior decision as conclusive of the issue.

But what happens when that "conclusive" prior decision is reversed? Even though finality of judgments is a vital policy, it is not absolute, and sometimes yields to broader interests of justice. Trial Rule 60(B) contemplates such situations, providing in relevant part:

> On motion and upon such terms as are just the court may relieve a party . . . from a judgment . . . for the following reasons: * * *
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> (6) the judgment is void;
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> (7) the judgment has been satisfied, released, or discharged, *or a prior judgment upon which it is based has been reversed or otherwise vacated*, or it is no longer equitable that the judgment should have prospective application; or
>
> (8) any reason justifying relief from the operation of the judgment, other than those reasons set forth in sub-paragraphs (1), (2), (3), and (4).
>
> . . . . A movant filing a motion for reasons (1), (2), (3), (4), and (8) must allege a meritorious claim or defense.

(Emphasis added.) The parties dispute whether the adoption is void under sub-paragraph (6), or merely voidable under sub-paragraph (8), with the latter provision requiring Natural Mother to show a "meritorious defense" to the adoption before she could have it set aside. But we find the answer in the provision in between—that the adoption was merely voidable, but for a reason specifically contemplated by sub-paragraph (7), which requires no meritorious defense.

Under the second clause of Trial Rule 60(B)(7), a judgment may be set aside when "a prior judgment upon which it is based has been reversed or otherwise vacated." That provision "applies only to related judgments where the second judgment is based upon the first judgment, and the first has been reversed or otherwise vacated." Dempsey v. Belanger, 959 N.E.2d 861, 868 (Ind. Ct. App. 2011), trans. denied (quoting 22A Stephen E. Arthur, Indiana Practice: Civil Trial Practice § 37.14 (2d ed. 2007)). Put another way, it applies only when the first judgment "has claim or issue preclusion effects on the second," or provides "a necessary element of the [subsequent] decision." See Kaler v. Bala (In re Racing Servs., Inc.), 571 F.3d 729, 732 (8th Cir. 2009) (quoting 12 James Wm. Moore et al., Moore's Federal Practice § 60.46[1] (3d Ed. 2009) and Lubben v. Selective Serv.

Sys. Local Bd. No. 27, 453 F.2d 645, 650 (1st Cir. 1972)) (all construing Fed. R. Civ. P. 60(B)(5)'s similar provision).

Here, the adoption "is based upon" the TPR judgment in the sense Dempsey and Kaler contemplate. If not for the preclusive effect of the prior TPR judgment, the Twins' adoption would have required notice to Natural Mother, I.C. § 31-19-2.5-3(a)(1). Then, if she refused to consent, the adoption would have required proof of an additional element—abandonment, unfitness, or one of the other statutory grounds for dispensing with consent, I.C. § 31-19-9-8(a). Because the TPR let the Adoptive Parents finalize the adoption without either obtaining Natural Mother's consent or proving it was unnecessary, we conclude that the adoption was "based on" the prior TPR judgment. Accordingly, Natural Mother became entitled to relief from the adoption when the TPR was "reversed or otherwise vacated" on appeal.

And since Natural Mother's petition is within 60(B)(7)'s specific provisions, she need not show a "meritorious defense" as sub-paragraph (8) would require. Sub-paragraphs (5) through (7) of Trial Rule 60(B) are expressly exempted from that requirement—seemingly recognizing that those circumstances inherently jeopardize confidence in the integrity of the judicial *process*, even if the *outcome* was unaffected. Adoptive Parents' reliance on the 60(B)(8) "catch-all," and its meritorious defense requirement, is therefore misplaced; Trial Rule 60(B)(7)'s more specific provision is controlling. Rumfelt v. Himes, 438 N.E.2d 980, 983–84 (Ind. 1982) ("[A]s with statutes, a specific rule controls over a general one on the same subject matter.").[4]

We therefore conclude that the trial court abused its discretion by refusing to set aside the Twins' adoption. We understand the trial court's concern for a speedy, permanent placement for the Twins. But a fit parent's rights are fundamental and constitutionally protected, In re Visitation of M.L.B., 983 N.E.2d 583, 586 (Ind. 2013) (citing Troxel v. Granville, 530 U.S. 57, 64 (2000)), and even a matter as important as the Twins' best interests does not necessarily override that right. Id. Since the only judicial determination that Natural Mother is unfit to retain her parental rights has

[4] Resting our conclusion on Trial Rule 60(B)(7) also lets us avoid the constitutional question inherent in Natural Mother's 60(B)(6) argument that the adoption is void on Due Process grounds. We "traditionally foreswear deciding a constitutional question unless no non-constitutional grounds present themselves for resolving the case under consideration." Citizens Nat. Bank of Evansville v. Foster, 668 N.E.2d 1236, 1241 (Ind. 1996).

been overturned on appeal, letting the adoption stand would be an overreach of State power into family integrity. The adoption must be set aside.

IV. Avoiding a Repeat of This Situation.

We are all too aware of the harsh effects this decision may have on the Twins, and future children who may find themselves similarly situated through no fault of their own. We therefore offer guidance for mitigating those harsh effects in this case, and potentially avoiding them completely in future cases.

Foremost, this case illustrates the wisdom of doing more than "just the bare minimum." Due Process notice requirements are just that—a bare minimum that parties always may, and sometimes ought to, exceed. While the Adoptive Parents were not required to serve notice on Natural Mother, I.C. § 31-19-2.5-4(2)(F), doing so voluntarily may well have saved the adoption from reversal. If Natural Mother had been served, the Adoptive Parents could then have requested a contested adoption hearing for litigating an *alternative* basis for dispensing with consent under Indiana Code section 31-19-9-8(a). Natural Mother would then have been offered a "day in court" independent of the TPR, giving this Court an alternative basis to affirm the adoption—because either she would have appeared and been heard, or else failed to appear and been properly defaulted. We emphasize that such notice is not *required*, and adoptive parents have the statutory right to rely solely on a trial-level TPR judgment and seek adoption pending the TPR appeal. We merely caution that such reliance comes at the adoptive parents' peril. See Cunningham, 402 N.E.2d at 21 n.4.

Second, some of the uncertainty for the Twins could have been avoided if DCS had left the underlying CHINS case open until Mother's TPR appeal was complete. As this case shows, children may have a particularly great "need of services" when a TPR judgment is reversed on appeal. By then, they will have been removed from the parents' home for a substantial time, and will be bonding into a new home—especially when, as here, the foster parents plan to adopt. And the natural parent, even if not unfit, may also be in need of services before the children could appropriately return to their original home. Yet without a CHINS case, there is no ready means to provide the support all the parties here will require while reexamining the Twins' status in light of the TPR reversal. (Indiana Code section 31-9-2-13 could authorize the Adoptive Parents to seek temporary custody of the Twins while the adoption is pending—which may very well be beneficial to the Twins, but falls far short of the services a CHINS case would permit.) We strongly suggest

that in the future, DCS's best practice would be to leave underlying CHINS cases open until any related TPR appeal is complete.[5]

Finally, we reiterate that granting an adoption pending TPR appeal is a *discretionary* decision of the trial court. Our Legislature has authorized the practice, and there are surely cases in which it will be entirely appropriate to expedite the adoption. Yet it is only permitted, not required. In view of the potentially devastating consequences of having an adoption invalidated by a TPR appeal, we encourage courts to exercise that authority with an abundance of caution. Speedy permanency for children is vitally important. But balanced against the risk that materialized in this case, a few months' additional delay in granting an adoption may often be preferable.

Conclusion

There are no winners in some cases, and this is one of them. Ruling in favor of the Adoptive Parents would violate the Natural Mother's constitutional rights, while the opposite ruling would risk pulling the Twins away from the family they have lived with for most of their lives, and the only stable family they have ever known. But despite the Twins' need for permanency, natural parents' consent is a vital condition precedent to most adoptions—and we must take a narrow view of the exceptions to that principle, out of due regard for the limitations of judicial power into family life, even for very imperfect families. Thus, when the TPR judgment in this case was reversed, we must conclude that the no-consent adoption that followed on its heels became voidable under Trial Rule 60(B)(7). The trial court therefore abused its discretion in failing to set aside the adoption.

Accordingly, we reverse the trial court's judgment, and remand with instructions to vacate the adoption decree within seven days of this Court's opinion being certified, to reset the adoption petition for a contested hearing, and to promptly serve notice and summons of that hearing on Natural Mother. Pending that hearing, the trial court could exercise its authority to entertain motions regarding temporary custody of the Twins under Indiana Code section 31-19-2-13, until final judgment is entered.

Dickson, C.J., and Rucker, David, and Massa, JJ., concur.

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[5] We express no opinion about whether DCS may be entitled to reopen the CHINS case under these circumstances.

Indiana Council
of Juvenile and
Family Court
Judges

INDIANA COUNCIL OF JUVENILE AND FAMILY COURT JUDGES

PROPOSAL REGARDING I.C. 31-19-11-6

I.C. 31-19-11-6 Pendency of Appeal.

The Court may not hear and grant a petition for adoption ~~even~~ if an appeal of a decision regarding the termination of the parent-child relationship is pending.

Exhibit B
Commission on Courts
Meeting #5, 10/21/2013

Staff agency
Indiana Judicial Center
30 South Meridian Street, Suite 900
Indianapolis, Indiana 46204-3564
(317) 232-1313

PRELIMINARY DRAFT
No. 3003

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 33-33-82-3.

Synopsis: Vanderburgh circuit court magistrate. Allows the judge of the Vanderburgh circuit court to appoint a second full-time magistrate. (The introduced version of this bill was prepared by the commission on courts.)

Effective: July 1, 2014.

Exhibit C
Commission on Courts
Meeting #5, 10/21/2013

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 33-33-82-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. The judge of the
3 Vanderburgh circuit court may appoint ~~one (1)~~ **two (2)** full-time
4 ~~magistrate~~ **magistrates** under IC 33-23-5. ~~The~~ **A** magistrate continues
5 in office until removed by the judge.

PRELIMINARY DRAFT
No. 3226

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 31-39.

Synopsis: Access to juvenile court records. Provides that the law making all records of a juvenile court confidential does not apply to records involving proceedings that pertain to: (1) paternity issues; (2) custody issues; (3) parenting time issues; (4) child support issues; or (5) other related issues; concerning a child born to parents who are not married to each other. Provides that the law that specifies which persons may have access to juvenile court records without a court order does not apply to records involving proceedings that pertain to: (1) paternity issues; (2) custody issues; (3) parenting time issues; (4) child support issues; or (5) other related issues; concerning a child born to parents who are not married to each other.

Effective: July 1, 2014.

Exhibit D
Commission on Courts
Meeting #5, 10/21/2013

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 31-39-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. (a) This chapter applies to all records of the juvenile court except the following:

(1) Records involving an adult charged with a crime or criminal contempt of court.

(2) Records involving a pregnant minor or her physician seeking a waiver of the requirement under IC 35-1-58.5-2.5 (before its repeal) or IC 16-34-2-4 that a physician who performs an abortion on an unemancipated minor first obtain the written consent of the minor's parent or guardian.

(3) Records involving proceedings that pertain to:

(A) paternity issues;

(B) custody issues;

(C) parenting time issues;

(D) child support issues; or

(E) other related issues;

concerning a child born to parents who are not married to each other.

(b) The legal records subject to this chapter include the following:

(1) Chronological case summaries.

(2) Index entries.

(3) Summonses.

(4) Warrants.

(5) Petitions.

(6) Orders.

(7) Motions.

(8) Decrees.

SECTION 2. IC 31-39-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. (a) This chapter applies to all records of the juvenile court except the following:

(1) Records involving an adult charged with a crime or criminal

contempt of court.

(2) Records involving a pregnant minor or her physician seeking a waiver of the requirement under IC 35-1-58.5-2.5 (before its repeal) or IC 16-34-2-4 that a physician who performs an abortion on an unemancipated minor first obtain the written consent of the minor's parent or guardian.

(3) Records involving proceedings that pertain to:

(A) paternity issues;

(B) custody issues;

(C) parenting time issues;

(D) child support issues; or

(E) other related issues;

concerning a child born to parents who are not married to each other.

(b) The legal records subject to this chapter include the following:

(1) Chronological case summaries.

(2) Index summaries.

(3) Summonses.

(4) Warrants.

(5) Petitions.

(6) Orders.

(7) Motions.

(8) Decrees.

PRELIMINARY DRAFT
No. 3346

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 35-33-8.

Synopsis: Bail. Provides that, if a court admits a defendant to bail, the court may require the defendant to do one of the following as selected by the defendant: (1) Execute a bail bond with sufficient solvent sureties. (2) Deposit securities in an amount equal to the bail. (3) Execute a bond secured by real estate in the county, where thirty-three hundredths of the true tax value less encumbrances is at least equal to the amount of the bail. (4) Execute a bail bond by depositing cash with the clerk of the court in an amount not less than 15% of the bail. Provides that, if a defendant elects to deposit cash as bail: (1) the court shall inform the defendant, or a person making a deposit on behalf of the defendant, that the defendant or the person may enter into an agreement to allow the court to retain all or a part of the cash to pay publicly paid costs of representation and fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted; and (2) if the defendant or person making a deposit on behalf of the person chooses to enter into the agreement, the court shall require the defendant and each person who makes the deposit on behalf of the defendant execute the agreement. Provides that, if an individual deposits cash to execute a bail bond: (1) the clerk shall issue the individual a receipt for the cash; and (2) the individual must possess a copy of the receipt or a valid government issued

(Continued next page)

Effective: July 1, 2014.

Exhibit E
Commission on Courts
Meeting #5, 10/21/2013

photographic identification card to receive any remission of the cash the individual may otherwise be entitled to receive. Provides that, if a defendant: (1) was admitted to bail by depositing cash or securities; and (2) has failed to appear before the court as ordered; the court shall declare the bond forfeited 120 days after the defendant's failure to appear and issue a warrant for the defendant's arrest. Makes conforming amendments.

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 35-33-8-3.2, AS AMENDED BY P.L.35-2012, SECTION 107, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3.2. (a) A court may admit a defendant to bail and impose any of the following conditions to assure the defendant's appearance at any stage of the legal proceedings, or, upon a showing of clear and convincing evidence that the defendant poses a risk of physical danger to another person or the community, to assure the public's physical safety:

(1) Require the defendant to **do one (1) of the following as selected by the defendant:**

(A) Execute a bail bond with sufficient solvent sureties.

(B) Deposit ~~cash or~~ securities in an amount equal to the bail.

(C) Execute a bond secured by real estate in the county, where thirty-three hundredths (0.33) of the true tax value less encumbrances is at least equal to the amount of the bail.

~~(D) post a real estate bond; or~~

~~(E) perform any combination of the requirements described in clauses (A) through (D).~~

(D) Execute a bail bond by depositing cash with the clerk of the court in an amount not less than fifteen percent (15%) of the bail.

If ~~the court requires~~ the defendant **elects** to deposit cash ~~or cash and another form of security~~ as bail **under clause (D), the court shall inform the defendant, or a person making a deposit on behalf of the defendant, that the defendant or the person may enter into an agreement to allow the court to retain all or a part of the cash to pay publicly paid costs of representation and fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted. If the defendant or person making a deposit on behalf of the person chooses to enter into the agreement,** the court ~~may~~ **shall** require

system for deposit in the special death benefit fund. The fee required by subdivision (2) is in addition to the administrative fee retained under subsection ~~(a)(2).~~ **(a)(1) for bail bonds executed under subsection (a)(1)(D).**

(e) With the approval of the clerk of the court, the county sheriff may collect the bail posted under this section. The county sheriff shall remit the bail to the clerk of the court by the following business day and remit monthly the five dollar ($5) special death benefit fee to the county auditor.

(f) When a court imposes a condition of bail described in subsection ~~(a)(4).~~ **(a)(3):**

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

SECTION 2. IC 35-33-8-4.5, AS ADDED BY P.L.171-2011, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4.5. (a) **Notwithstanding section 3.2(a)(1) of this chapter,** if bail is set for a defendant who is a foreign national who is unlawfully present in the United States under federal immigration law, the defendant may be released from custody only by posting a:

(1) cash bond in an amount equal to the bail;

(2) real estate bond in which the net equity in the real estate is at least two (2) times the amount of the bail; or

(3) surety bond in the full amount of the bail that is written by a licensed and appointed agent of an insurer (as defined in IC 27-10-1-7).

(b) If the defendant for whom bail has been posted under this section does not appear before the court as ordered because the defendant has been:

(1) taken into custody or deported by a federal agency; or

(2) arrested and incarcerated for another offense;

the bond posted under this section may not be declared forfeited by the court and the insurer (as defined in IC 27-10-1-7) that issued the bond is released from any liability regarding the defendant's failure to appear.

SECTION 3. IC 35-33-8-7, AS AMENDED BY P.L.105-2010, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 7. (a) If a defendant:

(1) was admitted to bail **by depositing cash or securities** under:

(A) section ~~3.2(a)(2)~~ **3.2(a)(1)(B) of this chapter; or**

(B) section 3.2(a)(1)(D) of this chapter; and

(2) has failed to appear before the court as ordered;

the court shall, except as provided in subsection (b) or section 8(b) of this chapter, declare the bond forfeited ~~not earlier than~~ one hundred twenty (120) days after the defendant's failure to appear and issue a

warrant for the defendant's arrest.

(b) In a criminal case, if the court having jurisdiction over the criminal case receives written notice of a pending civil action or unsatisfied judgment against the criminal defendant arising out of the same transaction or occurrence forming the basis of the criminal case, ~~funds~~ **cash or securities** deposited with the clerk of the court under section ~~3.2(a)(2)~~ **3.2(a)(1)(B) or 3.2(a)(1)(D)** of this chapter may not be declared forfeited by the court, and the court shall order the deposited ~~funds~~ **cash or securities** to be held by the clerk. If there is an entry of final judgment in favor of the plaintiff in the civil action, and if the deposit and the bond are subject to forfeiture, the criminal court shall order payment of all or any part of the deposit to the plaintiff in the action, as is necessary to satisfy the judgment. The court shall then order the remainder of the deposit, if any, and the bond forfeited.

(c) Any proceedings concerning the bond, or its forfeiture, judgment, or execution of judgment, shall be held in the court that admitted the defendant to bail.

(d) After a bond has been forfeited under subsection (a) or (b), the clerk shall mail notice of forfeiture to the defendant. In addition, unless the court finds that there was justification for the defendant's failure to appear, the court shall immediately enter judgment, without pleadings and without change of judge or change of venue, against the defendant for the amount of the bail bond, and the clerk shall record the judgment.

(e) If a bond is forfeited and the court has entered a judgment under subsection (d), the clerk shall transfer to the state common school fund:

(1) any amount remaining on deposit with the court (less the fees retained by the clerk); and

(2) any amount collected in satisfaction of the judgment.

(f) The clerk shall return a deposit, less the administrative fee, made under section ~~3.2(a)(2)~~ **3.2(a)(1)** of this chapter to the defendant, if the defendant appeared at trial and the other critical stages of the legal proceedings.

SECTION 4. IC 35-33-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 8. (a) If a defendant was admitted to bail under section 3.2(a) of this chapter and the defendant has knowingly and intentionally failed to appear before the court as ordered, the court:

(1) shall issue a warrant for the defendant's arrest;

(2) may not release the defendant on personal recognizance; and

(3) may not set bail for the rearrest of the defendant on the warrant at an amount that is less than the greater of:

(A) the amount of the original bail; or

(B) two thousand five hundred dollars ($2,500);

in the form of a bond issued by an entity defined in IC 27-10-1-7 or the full amount of the bond in cash.

(b) In a criminal case, if the court having jurisdiction over the criminal case receives written notice of a pending civil action or unsatisfied judgment against the criminal defendant arising out of the same transaction or occurrence forming the basis of the criminal case, ~~funds~~ **cash or securities** deposited with the clerk of the court under section ~~3.2(a)(2)~~ **3.2(a)(1)(B) or 3.2(a)(1)(D)** of this chapter may not be declared forfeited by the court, and the court shall order the deposited ~~funds~~ **cash or securities** to be held by the clerk. If there is an entry of final judgment in favor of the plaintiff in the civil action, and if the deposit is subject to forfeiture, the criminal court shall order payment of all or any part of the deposit to the plaintiff in the action, as is necessary to satisfy the judgment. The court shall then order the remainder of the deposit, if any, forfeited.

Comments re Proposed Bail Legislation

The purposes of bail and other conditions of release from pre-trial detention are to maximize the likelihood of an accused person's presence at trial while striving for both public safety and protection of the presumption of innocence. The availability of bail should not be a special privilege for the wealthy. And our bail system should not, through the use or threat of jail confinement of people unable to pay for bail or even a cash or surety bond, unfairly coerce the poor to enter untruthful guilty pleas nor to accept onerous plea agreements. Pre-trial release decisions must be made by trial judges, often on a very individualized case-by-case basis. And of course, the purpose of bail is not to enrich surety bond insurance companies.

Once a suspect if arrested and placed in custody, it is the exclusive responsibility of the judiciary to evaluate and make all decisions regarding the basis for pre-trial release, if any. While it may be the legislature's prerogative to regulate the business of insurance, including bail surety bonds, this legislative power cannot impinge upon the judiciary's authority to implement the constitutional right to bail, including the setting of all terms and conditions of release from pre-trial detention.

There are important constitutional implications presented by the proposed legislation.

- Article 1, Sec. 16 prohibits "Excessive Bail."

- Article 1, Section 17 limits the right to bail for murder and treason, but provides that all other offenses "shall be bailable by sufficient sureties." And the nature and sufficiency of such sureties, including oral recognizance and any terms and conditions for release from pre-trial detention, fall within the exclusive responsibility and authority of the judiciary.

Exhibit F
Commission on Courts
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- Most significantly, Article 7, Section 4 Indiana Constitution, assigns to the Indiana Supreme Court the "supervision of the exercise of jurisdiction by the other courts of the State." The setting and oversight of the terms of release from pre-trial detention, including bail, fall within the jurisdiction of our trial courts.

- And Article 3 of our State Constitution, the Distribution of Powers Clause, says "no person, charged with official duties under one of these departments [Legislative, Executive, or Judicial] shall exercise any of the functions of another, except as in this Constitution expressly provided."

Thus the judiciary, particularly the trial courts (subject to any applicable Rules adopted by the Supreme Court), are exclusively responsible for determining the terms and conditions of an accused person's pre-trial detention, including (1) whether to authorize recognizance without bail and, if so, on what conditions, (2) if bail is to be used, the bail amount, (3) the nature and terms of such bail, and (4) the enforcement of the terms of release from pre-trial detention. These are exclusively judicial functions not properly limited or regulated by legislative enactment.

For these reasons, I must oppose the proposed legislation.

PRELIMINARY DRAFT
No. 3347

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 33-32-3-2; IC 34-30-2-144.1.

Synopsis: Judgment dockets. Provides that a circuit court judgment docket must contain: (1) all civil judgments in which one party owes money to another party; and (2) any entry that is required by a statute. Provides that a judgment docket may not include: (1) judgments in which money is owed by a person to a state, a county, or another governmental entity as a result of a criminal conviction or a violation of an infraction or ordinance; or (2) except for cases in which the state obtains a judgment for unpaid taxes, judgments in which a governmental entity is the sole creditor. Allows a clerk of a circuit court to keep a judgment docket in: (1) an electronic format; (2) a paper format; or (3) both an electronic and a paper format. Requires the clerk to maintain a judgment docket for all courts of record in the county, but provides that the official judgment docket and all file packets for each judgment shall be maintained by the court that renders the judgment. Requires the clerk to maintain the official judgment index of each county for all courts of record in the county. Provides that all judgment dockets and all judgment indexes shall be made available for public inspection at the office of the clerk during regular office hours. Specifies the length of time a clerk shall keep files associated with certain judgments. Allows a clerk to release a judgment lien under certain circumstances. Provides that, if the wages of a judgment debtor

(Continued next page)

Effective: July 1, 2014.

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(5) The date the judgment is entered and indexed.
(6) The date of the rendition of judgment.
(7) The amount of the judgment and the amount of costs.

~~(c)~~ **(e)** If a judgment is against several persons, the statement required to be entered under subsection ~~(b)~~ **(c)** shall be repeated under the name of each judgment debtor in alphabetical order.

~~(d)~~ **(f)** A person interested in any judgment for money or costs that has been rendered by any state court, or by any federal court of general original jurisdiction sitting in Indiana, may have the judgment entered upon the circuit court judgment docket by filing with the clerk:

(1) a **verified** statement setting forth the facts required under subsection ~~(b)~~; **(c)**; or

(2) a ~~transcript~~ **verified copy** of the judgment **certified under the seal of the court that rendered the judgment.**

(g) The clerk shall maintain a judgment docket for all courts of record in the county. However:

(1) the official judgment docket; and

(2) all file packets for each judgment;

shall be maintained by the court that renders the judgment.

(h) The clerk shall maintain the official judgment index of each county for all courts of record in the county. A court of record in a county shall send a judgment rendered by the court:

(1) to the clerk not more than fifteen (15) days after the date the judgment is rendered; and

(2) to be entered by the clerk into the official judgment index of the county.

(i) All judgment dockets and all judgment indexes shall be made available for public inspection at the office of the clerk during regular office hours. If a judgment docket is kept in an electronic format:

(1) the judgment docket must be searchable; and

(2) a member of the public must be able to:

(A) search the judgment docket for the name of a specific party; and

(B) obtain a list of all judgments in the judgment docket concerning the party.

(j) A clerk shall keep files associated with a judgment as follows:

(1) Files associated with a judgment concerning:

(A) probate matters;

(B) adoption records;

(C) quiet title actions;

(D) fence line disputes; or

(E) boundary line disputes between adjoining property owners;

shall be kept by the clerk forever.

(2) Files associated with a judgment not described in

subdivision (1) shall be destroyed by the clerk fifty (50) years after the date the judgment is rendered.

(k) If payments on a debt are being made through a court by use of a judgment lien, it appears by the record of the court that the judgment lien, including any court costs, has been satisfied, and the judgment creditor does not release the judgment lien not more than thirty (30) days after the date a release is requested by the judgment debtor, the clerk may release the judgment lien upon the request of the judgment debtor. If a judgment lien is erroneously released by a clerk under this subsection, the judgment creditor may file a verified petition:

(1) with the court that rendered the judgment lien;

(2) that states:

(A) why the judgment lien was not satisfied; and

(B) why the judgment lien was erroneously released; and

(3) that asks the court to reinstate the judgment lien.

If a court reinstates a judgment lien under this subsection, the court may reinstate the judgment effective retroactively to the date the court originally rendered the judgment. A clerk is not personally liable if the clerk erroneously releases a judgment lien under this subsection.

(l) If the wages of a judgment debtor are being garnisheed, a clerk is not required to notify the employer of the judgment debtor to suspend the garnishment after the judgment is satisfied. A request to suspend the garnishment must be submitted by the judgment debtor to the court that rendered the judgment. The clerk is not required to take any action under this subsection concerning a garnishment other than to obey the orders of the court that rendered the judgment.

(m) Article 6, Section 2 of the Constitution of the State of Indiana states that the voters of each county shall elect a clerk of the circuit court. The general assembly recognizes that the clerk of the circuit court is a constitutional office located in a separate branch of government. A provision of this section that directs the clerk of the circuit court to engage in a certain activity:

(1) shall be considered advisory in nature; and

(2) may not be considered a mandate.

SECTION 2. IC 34-30-2-144.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 144.1. IC 33-32-3-2(k) (Concerning the personal liability of circuit court clerks for erroneously releasing judgment liens).**