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Recent Developments: In re Adoption No. 93321055: Parents Who Fail to File a Timely Objection to Adoption of Their Children Cannot Later Attempt to Revoke This Deemed Consent

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In re Adoption No. 93321055

In *In re Adoption No. 93321055*, 344 Md. 458, 687 A.2d 681 (1997) the Court of Appeals of Maryland held that when the adoption of children occurs after the natural parents fail to file timely objection, the court may consider the lack of objection as irrevocable consent to the petition, and conclude that the due process and equal protection rights of the natural parents have not been violated. The state has a compelling interest in making adoptions final and the timely objection requirement protects the best interests of the adoptive parents and children. The court's ruling will ensure that decisions concerning parental consent to adoption in Maryland are irrevocable if not objected to in a timely fashion.

This matter consisted of five cases in which the State sought guardianship of children pursuant to section 5-313 of the Family Law Article of the Annotated Code of Maryland. This section terminates the parental rights of the child's natural parents and allows the state to consent to the subsequent adoption or other long-term placement of the child, without the need for any further consent from the natural parents.

In all five cases the children were found to be a child in need of assistance and were committed to the Department of Social Services ("DSS") for placement. The natural parents were informed of the adoption petitions, and were

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advised as to their right to file an objection. Enclosed with the orders was a warning that failure to file a notice of objection would terminate parental rights.

In each instance, the natural parents failed to file a timely notice of objection and their children were subsequently either adopted or committed to the custody of the DSS which had authority to consent to their adoption. The court of appeals granted certiorari to consider whether parents who fail to object timely to the adoption of their natural children are deemed to have irrevocably consented to the DSS petition.

The court began its analysis by stating that "[a] child may not be adopted without the consent of his natural parents unless the parental rights of those parents have been terminated by a judicial proceeding." *In re Adoption No. 93321055*, 344 Md. at 477, 687 A.2d at 690 (citing MD. CODE ANN., FAM. LAW § 5-311(a) (1996 Supp.)). The state may seek to

terminate parental rights when the welfare of the child is threatened by his natural parents. *Id.* This state right in effect eliminates the need for parental consent to a petition for adoption. *Id.*

Under section 5-322(d) of the Family Law article, "[consent] may not be revoked, for it is not a volitional consent but one arising by operation of law. Thus, if the parent fails to file a timely objection, no further notices need be given to the parent, prior to or upon the entry of a judgment of guardianship." *Id.* at 481, 687 A.2d at 692 (citing MD. CODE ANN., FAM. LAW § 5-322(d) (1996 Supp.)).

Next, the court next turned to the legislative history of the statutory scheme regarding consent. *Id.* at 482, 687 A.2d at 693. The DSS observed that although many parents recognized that adoption was in their children's best interests, they were unable to sign a consent to terminate their parental rights. *Id.* at 483, 687 A.2d at 693. DSS found it common for parents to simply take no action when served with the show cause order and to allow a child to be taken from them without giving consent. Treating these types of cases as contested would require the court to engage in full evidentiary hearings and hold up the adoption petition. *Id.* Such delays would not be in the best interests of the children, who are kept in foster care while hearings are being conducted. *Id.*

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There is no right to revoke a consent arising under section 5-322(d). Accordingly, consent is effective once the time for filing an objection expires. *Id.* at 486, 687 A.2d at 694. Moreover, because there is no right to revoke such a statutory consent, it is not incumbent on DSS, or anyone else, to inform the parent that he or she has such a right. Thus, the court held that “[t]he advice and warnings contained in the show cause order adequately explain the effect of a failure to file a timely objection . . . [n]o other advice is required.” *Id.*

The court continued its review by considering the moot issue of whether a court may extend the filing deadline for objection to a guardianship petition that terminates parental rights or accept late-filed objections. The court held that the time period for filing an objection is defined and mandated by statute, not by rules or by order of court, and therefore

cannot be extended. *Id.* at 488, 687 A.2d at 695.

The court addressed the due process argument by noting that all of the natural parents who petitioned for review of the denial of an order revoking consent, had several weeks after service of the order to file an objection. *Id.* at 493, 687 A.2d at 698. The statute requires that the objection be filed within thirty days after service of the show cause order. *Id.* (citing Maryland Rule 9-107(b)). An absolute deadline for filing a notice of objection gives the birth parents fair and adequate notice of the filing requirements and a fair and adequate opportunity to file a timely notice of objection. *Id.* Therefore, the Court of Appeals of Maryland will neither extend filing deadlines for objections to guardianship petitions that terminate parental rights nor accept late-filed objections. *Id.* at 496, 687 A.2d at 699.

Lastly, the court emphasized

that the governmental interest in securing permanent homes for children placed into its custody is a strong one. *Id.* at 495, 687 A.2d 699. Obtaining permanent placements that will best serve the needs of children is compelling and necessary when their natural parents are unable or unwilling to do so. *Id.*

In re Adoption No. 93321055 supports the policy choice of the legislature to protect the best interests of children in adoption proceedings, rather than stressing the procedural rights of parents to appeal adverse rulings in guardianship matters. This case provides adoptive parents with certainty that late-filed objections by natural parents will not be entertained after expiration of the revocation period. As a result, this decision could have the effect of providing foster parents with the incentive to petition for the adoption of children in their care.

