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Sarah M. Grago

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## **RECENT DEVELOPMENT**

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### ***IN RE ADOPTION OF SEAN M.: FAILURE TO FILE A TIMELY OBJECTION AFTER BEING SERVED A SHOW CAUSE ORDER, CONSTITUTES IRREVOCABLE CONSENT TO AN INDEPENDENT ADOPTION; MARYLAND'S STATUTORY SCHEME DOES NOT VIOLATE PARENTAL DUE PROCESS RIGHTS.***

**By: Sarah M. Grago**

The Court of Appeals of Maryland held that the failure to file a timely objection to a petition for an independent adoption constitutes irrevocable consent. *In re Adoption of Sean M.*, 430 Md. 695, 63 A.3d at 28 (2013). The court further held that such statutorily-deemed consent did not offend a natural father's due process rights. *Id.* at 714, 63 A.3d at 40.

Moira K. ("Mother") gave birth to Sean M. ("Sean") on June 16, 2009, and thereafter achieved sole legal and physical custody. At that time, Mother alleged William H. ("Father") to be the natural father, but he denied the allegations. Mother later married Jeffrey K. ("Stepfather"), who filed a Petition for Stepparent Adoption of a Minor. On April 15, 2011, the court issued a show cause order and notice of objection to Father, which was served on April 29, 2011.

Father filed his objection on June 1, 2011, one day beyond the thirty-day deadline. In response, Stepfather filed a Motion to Strike Late Notice of Objection, which the Circuit Court for Queen Anne's County granted. Father then filed a Motion to Alter and Amend Judgment, followed by an Emergency Motion to Stay Adoption Proceedings, both of which the lower court denied. On appeal, the Court of Special Appeals of Maryland affirmed the trial court's decision that Father's failure to timely file a notice of objection constituted an irrevocable consent to the adoption. Father filed a petition for a writ of certiorari, which the Court of Appeals of Maryland granted.

The court began its analysis by addressing whether a natural parent's failure to file a timely objection to an independent adoption petition operated as irrevocable consent. *In re Sean M.*, 430 Md. at 703, 63 A.3d at 33. The court noted that it had never before addressed the issue of statutorily-deemed consent within the context of independent adoptions. *Id.* However, it found existing Maryland statutes and case law sufficiently instructive.

The court first looked to the procedural rules guiding adoptions under the Family Law Article to inform its analysis. *In re Sean M.*, 430 Md. at 703-04, 63 A.3d at 33-34. Specifically, the court cited Section 5-3B-20 of the Maryland Family Law Code, which states that the court may only enter an independent adoption order if each prospective adoptee's parent consents, either in writing or by failing to file a timely objection after service of the

show cause order. *Id.* at 705, 63 A.3d at 34 (citing MD. CODE ANN., FAM. LAW § 5-320 (2006)) (“FL § 5-320”).

Next, the court considered Maryland Rules governing independent adoptions and guardianships to demonstrate that both actions share many of the same procedural rules. In *re Sean M.*, 430 Md. at 705-06, 63 A.3d at 34-35. The court cited Maryland Rule 9-105(a), which requires the issuance of a show cause order in both proceedings. *Id.* at 704, 63 A.3d at 34 (citing Md. Rule 9-105(a) (2007)). The court also cited Maryland Rule 9-107, which requires both actions to follow a thirty-day filing deadline that begins to toll upon service of the show cause order. *In re Sean M.*, 430 Md. at 704-05, 63 A.3d at 34 (citing Md. Rule 9-107). Given that the two actions shared similar procedures, the court found no basis for imposing different consequences for a failure to timely file. *In re Sean M.*, 430 Md. at 708, 63 A.3d at 36.

The court found additional support in the legislative intent of the statutes governing adoptions. *In re Sean M.*, 430 Md. at 706-07, 63 A.3d at 35-36. The court considered a Committee Note to FL § 5-3B-19 in support. *Id.* at 706, 63 A.3d at 35 (citing Committee Note, 2005 Md. Laws, ch. 464 § 3, p. 2718). The note demonstrated that the legislature intended that a failure to timely file would operate as consent to an adoption. *In re Sean M.*, 430 Md. at 706, 63 A.3d at 35. It also indicated that the adoption provision, FL § 5-3B-19, mirrored FL § 5-317(c) (2), a provision governing guardianship actions. *Id.* The court found that the identical language of the two statutes, in conjunction with the express intent of the legislature, supported the holding that a failure to file a timely objection constituted consent in both guardianship and adoption proceedings. *Id.* at 708, 63 A.3d at 36.

The court then examined the actual effect of a failure to timely file in a guardianship action. *In re Sean M.*, 430 Md. at 708, 63 A.3d at 36. The court reaffirmed that a failure to timely file an objection served as an irrevocable consent. *Id.* at 708, 63 A.3d at 36 (citing *In re Adoption/Guardianship No. 93321055*, 344 Md. 458, 479, 687 A.2d 681, 691 (1997)). Because a failure to timely file equates to consent that is non-volitional, it arises by operation of law and is thus irrevocable. *In re Sean M.*, 430 Md. at 708, 63 A.3d at 36.

Next, the court considered whether Maryland’s statutory scheme violated parental due process rights. *In re Sean M.*, 430 Md. at 714, 63 A.3d at 39-40. The court noted that there is a fundamental right to care for one’s children. *Id.* at 710, 63 A.3d at 37. Additionally, the court recognized that in order to constrain a fundamental right, the process must be fundamentally fair. *Id.* In other words, fundamental rights are not absolute. *Id.* at 710, 63 A.3d at 37 (citing *In re Yve S.*, 373 Md. 551, 569-70, 819 A.2d 1030, 1041(2003)). Thus, if the State can prove its interest justifies a procedure that constrains fundamental rights, the court will uphold the procedure. *In re Sean M.*, 430 Md. at 710-11, 63 A.3d at 37-38.

To discern whether the State’s adoption procedures were fundamentally fair, the court evaluated the statutory scheme in accordance with three factors. *In re Sean M.*, 430 Md. at 711, 63 A.3d at 38-39 (citing *Mathews v.*

*Eldridge*, 424 U.S. 319 (1976)). The factors included: the private interest affected, the risk of error created by the State's procedure, and the countervailing governmental interest. *In re Sean M.*, 430 Md. at 711, 63 A.3d at 38-39.

The court found the State's interest in promoting the best interest of the child sufficiently compelling to outweigh Father's fundamental right. *In re Sean M.*, 430 Md. at 711, 63 A.3d at 38-39. The court stated that the scheme furthered the State's interest in providing a more orderly adoption procedure and also afforded fair due process to Father through notice that provided ample time to object. *Id.* at 712-13, 63 A.3d at 39-40. Finally, the court reasoned that the risk of error created by the statutory scheme was limited. *Id.* at 713, 63 A.3d at 39.

In *In re Adoption of Sean M.*, the Court of Appeals of Maryland held that the failure to file a timely objection to an independent adoption constituted an irrevocable consent to the adoption, demonstrating the court's intent to promote a more organized and stable custody process for children in adoptions. Ultimately, this decision places the best interest of the child above that of biological parents, or any other party, who wishes to object to an adoption but files beyond the applicable deadline. In short, the ruling provides an incentive for practitioners to file objections timely, or risk consenting to a potentially undesirable adoption.