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IN THE
COURT OF APPEALS OF INDIANA

JERRY HICKS,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 80A02-0603-CV-206
	)	
RONALD and JENNIFER SHUCK,	)	
	)	
Appellees-Petitioners	)	

APPEAL FROM THE TIPTON CIRCUIT COURT
The Honorable Thomas R. Lett, Judge
Cause No. 80C01-0504-AD-11

October 30, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Jerry Hicks appeals the dismissal of his petition to establish paternity of H.M.B. We affirm.

FACTS AND PROCEDURAL HISTORY

Rebekah Bradfield gave birth to a girl, H.M.B., on August 4, 1999. Apparently everyone close to the situation presumed Hicks was the father, because H.M.B. received gifts from and spent time with Hicks' mother and stepfather. However, Hicks' paternity was never established and he did not file with the putative father's registry. Bradfield died on March 12, 2005.

On April 5, 2005, Bradfield's sister, Jennifer Ray Shuck, and Jennifer's husband, Ronald Patrick Shuck, filed a petition to adopt H.M.B. The Shucks had notice served on Hicks. On April 14, 2005, Hicks, by counsel, filed an appearance in the adoption cause. On June 28, 2005, an adoption home study on the Shucks was filed.

On August 25, 2005, the cause was scheduled for oral argument. The Shucks appeared by counsel, but neither Hicks nor his counsel appeared. The Shucks' counsel argued Hicks did not have standing to contest the Shucks' petition to adopt H.M.B. The court took the matter under advisement and provided Hicks' counsel five days to file written argument.

On August 30, 2005, Hicks filed his argument in response to the Shucks' oral argument. In addition he filed, as next friend of H.M.B., a petition to establish his paternity. The next day the Shucks filed a motion to dismiss the petition to establish paternity. On November 21, 2005, the court again held a hearing at which the parties argued whether Hicks could contest the adoption or could file a petition to establish

paternity as next friend of H.M.B. At the end of the hearing the court granted the Shucks' motion to dismiss the petition to establish paternity and found Hicks could not contest the petition to adopt.

DISCUSSION AND DECISION

Hicks claims the trial court erred in dismissing his petition:

> While the father my [sic] have been technically barred by I.C. 31-19-9-12 because of his untimely filing with the Putative Father Registry and failure to contest the adoption proceeding in a formal matter, nothing in Indiana Case Law or Statute takes from the Minor Child her right to file a paternity action under I.C. 31-6-6.1-6.

(Appellant's Br. at 3.) Case law confirms Ind. Code § 31-6-6.1-6 permitted a putative father to file a paternity action as the child's next friend in circumstances similar to those before us. *See In re P.L.M.*, 661 N.E.2d 898 (Ind. Ct. App. 1996), *trans. denied*. Accordingly, Hicks' argument would have merit, but for the fact Ind. Code § 31-6-6.1-6 was repealed more than five years ago. *See* Public Law 1-1997, Sec. 157.

Hicks has provided no other authority supporting his argument that as H.M.B.'s next friend he could petition to establish paternity. Nor has he provided any authority or argument suggesting establishment of his paternity would negate the effect of his admitted "failure to contest the adoption proceeding" (Appellant's Br. at 3) within thirty days of receiving notice thereof, as required by Ind. Code § 31-19-9-15.

To support their belief the trial court properly dismissed the petition Hicks filed as next friend of H.M.B., the Shucks cite numerous statutes in Title 31 of the Indiana Code. Our review of these statutes and related case law convinces us the trial court did not err.

At the time the Shucks filed their petition to adopt H.M.B., Hicks was a "putative father" because he was not presumed to be her father under Ind. Code § 31-14-7-1(1) or (2),[1] and because he had not established his paternity in a court proceeding or by executing a paternity affidavit. Ind. Code § 31-9-2-100 (defining "Putative father"). To be entitled to notice of an adoption proceeding, putative fathers

> must register with the state department of health under section 5 of this chapter not later than:
> (1) thirty (30) days after the child's birth; or
> (2) the date of the filing of a petition for the child's adoption;
> whichever occurs later.

Ind. Code § 31-19-5-12(a). "A putative father who fails to register within the period specified by section 12 of [Ind. Code ch. 31-19-5] waives notice of an adoption proceeding. The putative father's waiver under this section constitutes an irrevocably implied consent to the child's adoption." Ind. Code § 31-19-5-18. When a putative father's consent is implied under Section 31-19-5-18, he "is not entitled to challenge: (1) the adoption; or (2) the validity of the putative father's implied consent to the adoption." Ind. Code § 31-19-9-13. Neither is he "entitled to establish paternity under IC 31-14." Ind. Code § 31-19-9-14.

Hicks asserts he may avoid his personal inability to file a paternity action by filing the paternity action as a best friend of H.M.B. However, if we permitted Hicks to file that action and see it through to its completion, we would have engaged the trial court and the parties in a pointless exercise because the fact remains Hicks' consent to an

[1] Ind. Code § 31-14-7-1(1) establishes a presumption that a man is a child's biological father if the child was born while the man was married to the mother. Ind. Code § 31-14-7-1(2) establishes the same presumption if the man and woman attempted to marry, but the marriage was later determined to be void or voidable.

adoption of H.M.B. has been "irrevocably implied," Ind. Code § 31-19-5-18, and he may not challenge the adoption or his implied consent. Ind. Code § 31-19-9-13.[2] We will not require the court to engage in a meaningless activity. *See Stropes by Taylor v. Heritage House Children's Center of Shelbyville, Inc.*, 547 N.E.2d 244, 247 (Ind. 1989) ("The law does not require the doing of a useless thing, and to remand this case to perform a charade of filing motions and entering orders on issues which have long since been determined would be a truly useless exercise . . . ."), *reh'g denied*. Accordingly, the court did not err when it dismissed the petition to establish paternity that Hicks filed a next friend of H.M.B.

Hicks has not shown how the current statutory scheme permits him to proceed. The statutes cited by the Shucks demonstrate the trial court did not err in dismissing Hicks' petition. Therefore, we affirm.

Affirmed.

RILEY, J., and BAILEY, J., concur.

[2] We further explained in *In re Adoption of J.D.C.*, 751 N.E.2d 747, 752 (Ind. Ct. App. 2001):

> Having failed to take the steps necessary to receive notice and an opportunity to object as a putative father by filing with the putative father's registry, he cannot resurrect that right by claiming status under another category. Despite knowing that he and [mother] had sexual relations during the time she became pregnant, and that she actually became pregnant, he failed to preserve his rights by registering as a putative father. . . . In the interest of providing stability and permanence for children, Indiana provides a statutory scheme with a specified time by which a putative father must register. Not only did [father] fail to register within the specified time, he failed to register at all. Such stringent requirements are not punitive but are instead necessary to advance the State's policy interest of establishing early and permanent placement of children into loving and stable homes.