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OFFICIAL OPINION 2001-8

The Honorable Donald G. Hendrickson
Warrick Circuit Court
Judicial Center – Suite 360
One County Square
Boonville, IN 47601

RE: Interpretation of Indiana Code Section 31-19-28-1.

Dear Judge Hendrickson:

This letter responds to your request for an advisory on the following question:

What is the correct interpretation of Indiana Code section 31-19-28-1, from the chapter that governs adoption decrees from foreign jurisdictions?

We conclude that Article IV, Section I of the Indiana Constitution, Indiana precedent, and the rules of statutory construction, require Indiana courts to give full faith and credit to any adoption decree finalized outside the jurisdiction of Indiana, provided the adoption was done under the laws of the state in question, and provided the decree is filed with the clerk of the court of a county in Indiana, and entered upon the order book of the court in open session.

We further conclude that there is no statutory requirement that a foreign adoption decree be made in accordance with Indiana law in order to be afforded full faith and credit, and thus have the full force and effect as if made in accordance with Indiana's requirements.

ANALYSIS

The Supreme Court of Indiana provides that "a decree of adoption is final." *Risner v. Risner*, 243 Ind. 581 (Ind. 1963). In *Risner, supra*, 243 Ind. At 582, Judge Achor stated in footnote 1: "*Finality of an adoption decree is necessary so that the established rules of intestate secession and succession may apply with certainty to adopted children. Furthermore, finality of such decrees is desirable in order to prevent the emotional strain which would otherwise be imposed upon both the adoptive child and parents, making it difficult for a normal parent-child relationship to develop*." The High Court in *Risner* additionally went on to concur with *In re Perry* 83 Ind. App. 456 (Ind.App.1925) to state that "*the court's power over a decree of adoption*

is governed by the same rules of law as are all other judgments and decrees and is final." *Id* at 582.

Applying the knowledge that a court's power over an adoption decree is governed by the same rules of law as are all other judgments, as well as the fact that adoption decrees are to be deemed "final," it is necessary to examine how these laws apply to decrees of adoption from other states, often referred to as "foreign judgments," or "foreign adoption decrees." Article 4 Section 1 of the United States Constitution provides that: "Full faith and credit should be given in each state to the public acts, records, and judicial proceedings of every other state…" 28 U.S.C.A. § 1738 in pertinent part also provides that:

> …"The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form."
>
> "…Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken…."

The Indiana courts have consistently upheld the policy of full faith and credit as it applies to final judgments and decrees of a sister state court. See *Cox v. First Nat. Bank of Woodlawn*, 426 N.E.2d 426 (Ind.Ct.App. 1981). See also *Ventura County, State of Cal. v. Neice*, 434 N.E.2d 907 (Ind. Ct. App. 1982). And See *Matter of L.C.*, 659 N.E.2d 593 (Ind. Ct. App. 1995) *trans den, Newman v. Worcester County Dept. of Social Services*, 683 N.E.2d 582 (Ind. 1997) and *Cert. Den. By Newman v. Worcester County Dept. of Social Services,* 521 U.S. 1122(U.S. Ind. 1997) citing *Underwriters National Assurance Co. v. North Carolina Life and Accident*, 455 U.S. 691(1982) addressing Article 4 § 1 of the United States Constitution: *"This clause imposes an obligation on each state to enforce the rights and duties validly created under the laws of other states. There is a presumption that the judgment of a state court should be afforded the same credit, validity and effect in every other court of the United States which the judgment had in the state where it was pronounced*." *Id* at 597.

Additionally, it is well settled that final judgments and decrees of sister states are only subject to collateral attack if they are subject to collateral attack in the jurisdiction in which they have been entered either for lack of jurisdiction, or fraud. See *Podgorny v. Great Central Insurance Co*., 160 Ind.App. 244 (Ind.App. 1974). See also *Bank of Waukegan v. Freshley*, 421 F.Supp. 1033 (N.D.Ind. 1976). And *See Omni Micro, Inc. v. Hyundai Electronics America*, 571 N.E.2d 598 (Ind. Ct. App.1991), "*A judgment from a sister state which is regular and complete on its face is presumed valid, and one who attacks the jurisdiction of a court from a sister state which issued the judgment must rebut that presumption*."

The Indiana statute regarding adoption decrees from foreign jurisdictions appears to reflect these principles. Indiana Code section 31-19-28-1 provides in pertinent part: "Whenever

a person is adopted outside Indiana, **under the laws of the state, territory, or county where the adoption took place:**

(1) the adoption decree:
  (A) when filed with the clerk of the court of any county in Indiana; and
  (B) when entered upon the order book of the court in open session;
  has the same force and effect **as if** the adoption decree were made in accordance with this article; and
(2) the adopted person:
  (A) has the same rights; and
  (B) is capable of taking by inheritance, upon the death of the adopted parent, property located in Indiana; **as though** the person had been adopted according to the laws of Indiana.

Emphasis added.

Although, the statute appears to clearly state that once the requirements of (A) and (B) of Indiana Code section 31-19-28-1 are met, the adoption decree has the same force and effect **as if** the adoption decree were made in accordance with this article, and the adopted party possesses the same rights as an individual whose adoption were finalized in Indiana, there appears to be a divergence of opinion regarding the correct interpretation of this statute. Therefore, this office will attempt to use the rules of statutory construction to ascertain legislative intent.

When a statute's interpretation is susceptible to more than one meaning, its' interpretation is controlled by the rules of statutory construction. See *Indiana State Teachers Ass'' v. Board of Sch. Comm's,* 693 N.E.2d 972,974 (Ind. Ct. App. 1998). See also *W.H. Dreves, Inc. v. Osolo School Township of Elkhart County*, 217 Ind. 388,395 (Ind. 1940). "*The construction of all statutes of this state shall be by the following rules, unless such a construction is plainly repugnant to the intent of the legislature or of the context of the same statute*." Id.

"*It is axiomatic in Indiana that the plain, ordinary, and usual meaning of non-technical words in a statute is defined by their ordinary and accepted dictionary meaning*." *Hatcher v. Indiana State Bd. of Tax Comm'rs,* 561 N.E.2d 852,854 (Ind. Tax 1990). Courts are given the authority to use the dictionary to determine the meaning of a word. "*Courts may consult English language dictionaries to ascertain the plain and ordinary meaning of a statutory term." State Bd. of Accounts v. Indiana University Found*.,647 N.E.2d 342,347 (Ind. Ct. App. 1995). Another maxim of the rules of statutory construction is that "*courts may consider the consequences of a particular interpretation in ascertaining legislative intent when a statute is susceptible to more than one meaning.*" *Flynn v. Klineman*, 403 N.E.2d 1117,1121(Ind. Ct. App. 1980) citing *Economy Oil Corp. v. Indiana Dep't of State Revenue*, 162 Ind. App. 658,661 (Ind. App. 1974).

There is a presumption that the legislature in enacting any statute intends its language to be applied in a logical manner consistent with the statute's underlying policy and goals. *Detterline v. Bonaventura*, 465 N.E.2d 215,218(Ind. Ct. App. 1984) reh'g denied, transfer denied. See also *State v. Windy City Fireworks, Inc*., 600 N.E.2d 555,558 (Ind. Ct. App. 1992), adopted on transfer, 608 N.E.2d 699 (Ind. 1993). "*A statute should be construed so as to ascertain and give effect to the intention of the legislature as expressed in the statute. In so doing, the objects and purposes of the statute in question must be considered as well as the effect*

and consequences of such interpretation." and See *In re Visitation of J.P.H.*, 709 N.E.2d 44,46 (Ind. Ct. App. 1999). "*The meaning and intention of the legislature are to be ascertained not only from the phraseology of the statute but also by considering its nature, design, and the consequences which flow from the reasonable alternative interpretations of the statute*."

Applying these rules, initially, legislative intent can be ascertained by reviewing the plain meaning of the language used in the statute. The first sentence of the pertinent section provides that "[w]henever a person is adopted outside Indiana, **under the laws of the state, territory, or country where the adoption took place** …" It is clear that the legislature intended to address foreign adoption decrees made under the laws *of the state in which they were created*, not the laws of Indiana. To hold that these decrees would not have the same force and effect of an adoption decree created in Indiana unless created under laws similar or the same as the laws of Indiana would make the first line of text of the statute meaningless. This reading violates the plain meaning and expressed intention rules of statutory construction.

Reviewing further, Indiana Code section 31-19-28-1(1)(A) and (B) again provides:

(1) the adoption decree:

(A) when filed with the clerk of the court of any county in Indiana; and
(B)when entered upon the order book of the court in open session;
has the same force and effect **as if** the adoption decree were made in accordance with this article; and

(2) the adopted person:
(C) has the same rights; and
(D) is capable of taking by inheritance, upon the death of the adopted parent, property located in Indiana; **as though** the person had been adopted according to the laws of Indiana.
Emphasis added.

Merriam-Webster's Third New International Dictionary, unabridged, 1993, defines "as if" to mean "as it would be if," or "as one would do if." Therefore under the rules of statutory construction, regarding the commonly accepted meaning of a word or phrase rule as evidenced by dictionary definition would warrant the interpretation that *regardless* of whether an adoption decree from a foreign jurisdiction were made in accordance with the laws of the state of Indiana or not, courts are required to give the adoption decree the same force and effect "as it would [have] be," had it been made in accordance with the laws of the state of Indiana. To hold otherwise would be to ignore the rule of statutory construction regarding commonly accepted dictionary meanings.

Further reviewing, as mentioned above, the foreign decree adoption statute appears to be reflexive of effectuating the policy of full faith and credit. To hold that the adoption decrees of a foreign jurisdictions will only have the force and effect of other Indiana adoption decrees if created according to laws similar or the same as Indiana's adoption law after a review, would not only be contrary to the full faith and credit clause, it would produce a result that did not favor

public convenience. "*The court is compelled to ascertain and execute legislative intent and to interpret a statute in such a manner as to prevent absurdity and difficulty and prefer public convenience*." *In re E.I.*, 653 N.E.2d 503, 507 (Ind. Ct. App. 1995). In so doing, [the courts] are required to keep in mind the objects and purposes of the law as well as the effect and repercussions of such a construction. *In re Visitation of J.P.H.*, 709 N.E.2d 44,46 (Ind. Ct. App. 1999). The repercussions of an interpretation requiring foreign adoption decrees to be made in accordance with Indiana law before they would be given full force and effect would produce a result that violates Indiana precedent as well as public policy favoring convenience and comity to the judgments of other jurisdictions.

CONCLUSION

Based on constitutional principles, precedent, and a correct analysis of the rules of statutory construction, we conclude that Indiana Code section 31-19-28-1 requires an interpretation that gives an adoption decree, valid on its face, from a foreign jurisdiction, the same force and effect as if it were made in accordance with the laws of the State of Indiana, once it is filed with the clerk of the court of a county in Indiana, and entered upon the order book of the court in open session.

We further conclude that there is no statutory requirement that a foreign adoption decree be reviewed on the issue of whether it is made in accordance with Indiana law in order to be afforded full faith and credit, and thus have the full force and effect as if made in accordance with Indiana's requirements.

Sincerely,

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