

Comment,  
CHALLENGING POST-ADOPTION  
DECREES AND THE CONVOLUTED  
APPLICATIONS OF STATE COURTS

## I. Introduction

Final decrees of adoption are not always as final as the decree would seem to indicate. There are instances in which the adoption process was not proper. There are occurrences where the mother has been given false information and not informed that she was even consenting to an adoption. Similarly, there are instances where a child is placed for adoption by the natural mother and conceals this fact from the natural father. While challenging a final adopt decree can be difficult and daunting, it is possible. Relief can be found through statutes modeled on Federal Rule of Civil Procedure Rule 60.<sup>1</sup>

A significant number of states, mirroring the federal rule, have adopted their own versions of Rule 60 through either statute or court rules.<sup>2</sup> However, understanding the workings of the federal rule alone likely will not lead an attorney to be successful in challenging a final adoption decree. While the majority of states have adopted a form of Rule 60, their applications and standards for granting relief can differ dramatically. Some states allow a claim to go forward as an independent action, while others may treat an independent action under their catch-all provision. The procedural rules of state relief statutes vary greatly. For example, in Wisconsin adoptive parents are barred from using relief statutes as an avenue for remedy to reverse their adoption of a child.<sup>3</sup> It is imperative that attorneys know and understand the case law applications for the specific forum in which they are seeking to challenge an adoption decree. The risks associated with being incorrect on these issues can result in

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<sup>1</sup> FED. R. CIV. P. 60 (Relief from a Judgment or Order).

<sup>2</sup> See generally FLA. R. CIV. P. 1.540 (2017); IND. R. TRIAL P. 60 (2017); KAN. STAT. ANN. § 60-260 (2017); MISS. R. CIV. P. 60 (2017); MO. SUP. CT. R. 74.06 (2018); OHIO CIV. R. 60 (2017) (hereinafter referred to as relief statutes).

<sup>3</sup> WIS. STAT. § 806.07 (3) (2018) (however, other remedies do exist under § 48.42).

post decree lawsuits.<sup>4</sup> Failure to be adequately educated with the complexities of these issues can also result in ethics claims under Rules 1.1, 1.3, and 1.4.<sup>5</sup> While this comment hopefully will inform attorneys about some of the various approaches and mechanics of relief statutes, it is in no way intended to be an exhaustive guide.

## II. The Rights and Plights of Putative Fathers

One of the most common (yet complex) problems stems from a situation in which the father is not aware of the child's birth, the mother's pregnancy, or the fact that the child was placed for adoption (either by the father's own ignorance or through concealment of the issue by the mother). Historically, under American legal doctrines, unwed fathers were not granted equal legal recognition in the process of adoption regarding their illegitimate children.<sup>6</sup> The father had virtually no parental rights, and was afforded neither notice nor termination of the parental relationship for adoptions to proceed.<sup>7</sup> In 1972, rights of unwed fathers were established in the landmark U.S. Supreme Court case *Stanley v. Illinois*, which struck down the presumption that an unwed father was unfit to have custody of his children.<sup>8</sup> In evaluating the rights of an unwed father the Supreme Court in *Lehr v. Robertson* shifted the analysis to whether an unwed father has taken up a substantial parental role in his child's life versus an uninvolved father.<sup>9</sup> Today, an unwed father is generally entitled to: (1) notice of a potential adoption, (2) the opportunity to object to the proceeding, and (3) the ability to seek custody of his child.<sup>10</sup>

Courts are divided on whether only a biological connection is sufficient for a father to object to his natural child's adoption.<sup>11</sup>

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<sup>4</sup> Martin W. Bauer & Teresa L. Adams, *Ethics for Adoption Lawyers in Complying with Rule 60 Statutes at AAAA Conference* (Apr. 29-May 2, 2018).

<sup>5</sup> *Id.*

<sup>6</sup> ANN M. HARALAMBIE, 2 HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES § 14:6 1 (West's A.L.R. Digest 2017).

<sup>7</sup> *Id.*

<sup>8</sup> *Stanley v. Illinois*, 405 U.S. 645 (1972).

<sup>9</sup> *Lehr v. Robertson*, 463 U.S. 248 (1983).

<sup>10</sup> HARALAMBIE, *supra* note 6, at 2.

<sup>11</sup> *Id.*

The courts that have rejected the sufficiency of the biological connection have laid out a factor analysis to determine if the father has standing to challenge the adoption. For example, the Kansas Supreme Court developed a factor analysis to determine if a father abandoned his liberty interest in his child.<sup>12</sup> The court measured the putative father's efforts by analyzing: (1) the financial commitments to the raising of the child, (2) his actions in legally substantiating his relationship with the child, and (3) his pursuits in providing "emotional, financial, and other support to the mother during the pregnancy."<sup>13</sup> Furthermore, a putative father may have an obligation to stay informed about the outcome of a pregnancy, even if the mother falsely claims to have miscarried or aborted the child.<sup>14</sup> The Kansas Supreme Court has supported this proposition. In the case of *In re Adoption of A.A.T.*, the court held that the father should have reasonably known that the mother was still pregnant despite her assertion that she had an abortion and that since the father failed to protect his parental rights, he abandoned his liberty interest in his child.<sup>15</sup>

Similarly, although with a less elaborate analysis, the North Carolina Supreme Court found that a putative father did not have a liberty interest in his child because he demonstrated only "incuriosity and disinterest."<sup>16</sup> In *In re Adoption of S.D.W.*, the putative father was unaware of the mother's pregnancy.<sup>17</sup> However, he knew where and how to contact her.<sup>18</sup> The father, even though he was not aware of the birth of this particular child, had a casual sexual relationship with the mother and had known she was fertile by virtue of having previously impregnated her.<sup>19</sup> Furthermore, the court reasoned that the previous conception put the father on notice that the mother's contraceptive methods were inadequate.<sup>20</sup> In contrast, the Wyoming Supreme Court reversed the termination of a father's parental rights when the evidence suggested the he had indeed taken an interest in his

<sup>12</sup> *In re Adoption of A.A.T.*, 196 P.3d 1180, 1194 (Kan. 2008).

<sup>13</sup> *Id.*

<sup>14</sup> HARALAMBIE, *supra* note 6, at 2.

<sup>15</sup> *Adoption of A.A.T.*, 196 P.3d at 1205.

<sup>16</sup> *In re Adoption of S.D.W.*, 758 S.E. 2d 374, 380-81 (N.C. 2014).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

child.<sup>21</sup> In *Matter of Adoption of BBC*, the father had taken reasonable efforts to be a father to his child. The father had moved the mother into a joint residence.<sup>22</sup> He gave her a set sum of money every month.<sup>23</sup> The parents had discussions about future parenting.<sup>24</sup> When the mother suggested adoption, the father objected.<sup>25</sup> The father informed the mother that he would seek custody and was prepared to raise the child alone if need be.<sup>26</sup>

The concern over involvement in granting parenting rights is a logical one. First, courts are preventing people from being unreasonable. By allowing a father who has had no parental involvement with his child to assert a right, courts are disrupting the opportunity for a child to be placed in a stable environment. Second, fathers who have been involved have taken steps and made long-term life decisions in preparation for being a parent.

### **III. Setting Aside Decrees of Adoption and Timeliness Requirements**

A party seeking relief under a Rule 60 statute generally has two options available: (1) filing a motion to set aside a decree of adoption because the decree is a final judgment, or (2) collaterally attacking the decree by means of a separate action on the basis that the decree is invalid.<sup>27</sup> Generally, the basis for setting aside a final decree of adoption is due to an alleged defect in the petition or the adoption process. Some examples of defects can include new discovery of evidence, problems with consent thereby making the judgment void, and in some instances fraud or misrepresentation.

#### *A. Party Was Not Afforded Adequate Due Process Rights*

Courts are generally concerned with the application of appropriate due process safeguards in regards to parental rights termination. If due process is not afforded to concerned parties in

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<sup>21</sup> *Matter of Adoption of BBC*, 831 P.2d 197 (Wyo. 1992).

<sup>22</sup> *Id.* at 199.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Bauer & Adams, supra* note 4.

an adoption proceeding, a court has the power to render the final decree void. In the Missouri case *D. v. D.*, the Missouri appellate court voided a final decree of adoption since there was a due process error regarding the rights of the natural father.<sup>28</sup> In *D. v. D.*, the natural father attempted to set aside the final adoption decree of his two daughters by his ex-wife, and her new husband.<sup>29</sup> Specifically, the natural father alleged that he not been properly served with notice of the adoption since he was served by publication (even though the prospective adoptive parents knew his address and where he could be located), and he was required to be served personally or by mail.<sup>30</sup> In Missouri, for service by publication to be adequate the plaintiff must show that “the defendant is a nonresident, absconded or absented himself from his usual place or abode, or concealed himself.”<sup>31</sup> The court stated that the statute and due process afforded the natural father the right to be aware of the hearing, and defend against the termination of his parental rights.<sup>32</sup> Furthermore, absent the requirements of consent or a statutory exception, the court did not have the jurisdiction to issue the final decree of adoption.<sup>33</sup>

Similarly, in *I. D. v. B. C. D.*, the Missouri appellate court set aside an adoption decree where the mother was not served (by any means) of an adoption petition by the child’s grandparents.<sup>34</sup> A situation arose in which the child’s grandparents were granted temporary legal custody and the child went to live with them.<sup>35</sup> Three months after being granted temporary legal custody, the grandparents filed an “amended petition” to outright adopt the child.<sup>36</sup> No copy of this amended petition was ever served to the mother.<sup>37</sup> The mother, as a matter of due process, was entitled to a copy of the petition under Missouri Supreme Court Rule 43.01 (which requires a “party affected” by the

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<sup>28</sup> *D. v. D.*, 610 S.W.2d 305, 307 (Mo. Ct. App. 1980).

<sup>29</sup> *Id.* at 306-07.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 307; MO. REV. STAT. § 506.160 (3).

<sup>32</sup> *D. v. D.*, 610 S.W.2d at 307; *See also* In the Matter of R. A. B., 562 S.W.3d 356 (Mo. 1978).

<sup>33</sup> *D. v. D.*, 610 S.W.2d at 307.

<sup>34</sup> *I. D. v. B. C. D.*, 941 S.W.2d 658, 663 (Mo. Ct. App. 1997).

<sup>35</sup> *Id.* at 659.

<sup>36</sup> *Id.* at 660.

<sup>37</sup> *Id.*

pleading to be served).<sup>38</sup> There was no dispute whether she would be a “party affected” since the petition could affect the mother’s legal rights as a parent.<sup>39</sup> Therefore, the grandparents were compelled to serve a copy of the amended petition to the mother.<sup>40</sup>

### B. *Fraud*

In many jurisdictions evidence of fraud can be a viable means to attack an adoption decree. However, (as explained in the Independent Actions Section of this Comment) the various states have different interpretations whether fraud should proceed as a direct attack to a final adoption decree or as an independent action. For example, Florida courts allow a final decree to be set aside based upon fraud.<sup>41</sup> In *Goodman*, Goodman attempted to adopt his 42 year old paramour as a child so she would benefit under the terms of a trust established in a prior marriage for the benefit of the marital children.<sup>42</sup> Goodman deliberately waited two years, in reliance on the limitation for the period of appeal of the final decree, before informing his ex-wife or the guardian ad litem for his children.<sup>43</sup> The court found that Goodman had committed fraud on the court when he failed to give notice of the adoption until after the appeals period had precluded.<sup>44</sup> Therefore, the court set aside the judgment and granted relief.<sup>45</sup>

Florida courts also have created specific rules regarding fraud premised on a promise. Florida courts have held that in bringing a claim of fraud, specifically fraud based upon a promise to either act or not act, it must be established that the promising party “either *had no intention to act or to not act.*”<sup>46</sup> For instance in *Jeffris v. May*, a husband and wife adopted the wife’s granddaughter as a marital child on the promise that the husband

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<sup>38</sup> *Id.* at 661; Mo. Sup. Ct. R. 43.01 (2018).

<sup>39</sup> *I. D.*, 941 S.W.2d at 661.

<sup>40</sup> *Id.*

<sup>41</sup> *Goodman v. Goodman*, 126 So. 3d 310, 315 (Fla. Dist. Ct. App. 2013).

<sup>42</sup> *Id.* at 312-13.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 315.

<sup>45</sup> *Id.*

<sup>46</sup> *Jeffris v. May*, 603 So. 2d 84, 85-86 (Fla. Dist. Ct. App. 1992) (emphasis added).

would not be liable for her financial support.<sup>47</sup> Eventually the marriage resulted in divorce, and the husband was ordered to pay child support.<sup>48</sup> The husband responded by moving to set aside the adoption.<sup>49</sup> The court found that no fraud, extrinsic or intrinsic, existed because the wife never promised not to seek child support in the event of divorce.<sup>50</sup>

### C. Misrepresentation

Florida courts have also acknowledged that, “the pleading of misrepresentation is a separate and distinct basis for relief under Rule 1.540(b)(3).”<sup>51</sup> In *F.R. v. Baby Boy*, the natural mother sought to set aside the final adoption decree of her natural child based upon alleged claims of duress, coercion, fraud, and misrepresentation.<sup>52</sup> The natural mother was an immigrant from Africa who arrived to America while pregnant with her child.<sup>53</sup> The pregnancy was the result of a rape that the mother suffered during her stay in a refugee camp.<sup>54</sup> The mother was unable to communicate, in any intelligible form or degree, in English.<sup>55</sup> The mother only spoke Swahili.<sup>56</sup> The mother denied giving consent for the adoption more than three times before unknowingly signing a document terminating her parental rights.<sup>57</sup> When the mother sought relief, the trial court abused its discretion in several ways: (1) the trial court failed to provide an interpreter, (2) it appointed the mother’s sister as an interpreter, and (3) it failed to have the minimum protections of an evidentiary hearing based upon the mother’s English fluency.<sup>58</sup> The Florida Court of Appeals remanded the case due to the abuse of discretion, and be-

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<sup>47</sup> *Id.* at 84.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *F.R. v. Baby Boy*, 135 So. 3d 301, 304 (Fla. Dist. Ct. App. 2012).

<sup>52</sup> *Id.* at 302.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

cause the adoption had occurred on the basis of fraud and misrepresentation.<sup>59</sup>

#### D. *Timeliness Requirements*

The crux of clearing hurdles under relief statutes is being able to identify the category in which the claim falls. A claim under fraud will generally be restricted by a timeliness requirements of one year from the decree of final adoption.<sup>60</sup> For example, Missouri's Rule 74.06 requires a motion to set aside a judgment to be made within a reasonable time, and by waiting two years before moving to set aside the judgment a father failed to bring the motion within a reasonable time.<sup>61</sup> Mississippi has an even more stringent requirement of a six-month deadline.<sup>62</sup> The State of Utah perhaps has the harshest requirement of ninety days.<sup>63</sup> However, a significant amount of state relief statutes do not limit courts in entertaining an independent action (which can be used as a means of collateral attack) or set aside a judgment based upon fraud on the court.

### IV. Clearing Hurdles Through Use of Independent Actions, Collateral Attacks, and Catch All Provisions

#### A. *Independent Actions and Catch All Provisions*

Some states, such as Indiana, have reasoned that independent action is the only potential remedy when fraud is at hand. The court in *Caley v. Lung* held that where a natural parent's action to set aside an adoption order affirmatively states that the judgment was rendered through fraud upon the court, the action

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<sup>59</sup> *Id.* at 301.

<sup>60</sup> FLA. R. CIV. P. 1.540(b) (2017); IND. R. TRIAL P. 60(b) (2017); KAN. STAT. ANN. § 60-260(c) (2017); MISS. R. CIV. P. 60(b) (2017); MO. SUP. CT. R. 74.06(c) (2018). *See also In re Adoption of Hobson*, 667 P.2d 911, 914 (Kan. Ct. App. 1983) ("A motion to set aside an adoption decree for fraud must be filed within one year after the decree was entered, Kan. Stat. Ann. § 60-260(b)(3)").

<sup>61</sup> *C.B.G. v. Mo. Dept. of Soc. Servs.*, 219 S.W.3d 244, 249 (Mo. 2007).

<sup>62</sup> MISS. R.C.P. RULE 60 (b)(6) (2017) (The motion shall be made with a reasonable time, and for reasons (1), (2), and (3) not more than six months after the judgment, order, or proceeding was entered or taken).

<sup>63</sup> *Doe v. V.H.*, 894 P.2d 1285, 1288 (Utah Ct. App. 1995).

should be considered as an independent action and may be treated as an exception to the general rule.<sup>64</sup> These independent actions have successfully been brought as habeas corpus proceedings and equitable proceedings.<sup>65</sup>

Some jurisdictions, such as Mississippi, have interpreted the power to entertain independent actions as stemming from “catch all” provisions under relief statutes. Catch all provisions operate as a double edged sword though. On the one hand, they have more relaxed timeliness requirements. For example, catch all provisions are generally not constrained by the same time requirements as motions under other provisions, and rather only require a motion to be made within a reasonable amount of time.<sup>66</sup> Determining what is a reasonable time is dependent upon the circumstances of each individual case, and the moving party bears the burden of showing why relief is necessary.<sup>67</sup> On the other hand, catch all provisions can have stricter classification standards of what kind of claims are permissible to be brought under the provisions. While the state’s particular provision is designed to act to as a “catch all,” it is a particularly difficult burden requiring the party seeking relief to “show some extraordinary circumstances rather than mistake, surprise, or excusable neglect.”<sup>68</sup> Excusable neglect has been defined in some jurisdictions as:

a failure to take the proper steps at the proper time, not in consequence of the party’s own carelessness, inattention, or willful disregard of the process of the court, but in consequence of some unexpected or unavoidable hindrance of accident, or reliance on the care and vigilance of his counsel or on promises made by the adverse party.<sup>69</sup>

In Mississippi, Rule 60(b)(6) operates as a “catch all” provision for exceptional and compelling circumstances.<sup>70</sup> When com-

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<sup>64</sup> *Caley v. Lung*, 271 N.E.2d 891, 893 (Ind. 1971).

<sup>65</sup> *Id.* at 892 (citing *Glansman v. Ledbetter*, 130 N.E. 230 (Ind. 1921); *Risner v. Risner*, 189 N.E.2d 105; *Bradshaw v. Probate Court of Marion County*, 73 N.E.2d 769 (Ind. 1947)).

<sup>66</sup> *In re Adoption of T.L.W.*, 835 N.E.2d 598, 601 (Ind. Ct. App. 2005).

<sup>67</sup> *Id.* at 601 (citing *Gipson v. Gipson*, 644 N.E.2d 876, 877 (Ind. 1994)).

<sup>68</sup> *Adoption of T.L.W.*, 835 N.E.2d at 601.

<sup>69</sup> *P.J.D. v. D.A.P. (In re Adoption of C.P.G.B.)*, 302 S.W.3d 745, 755 (Mo. Ct. App. 2010).

<sup>70</sup> *Doe v. Smith*, 200 So. 3d 1028, 1033 (Miss. 2016) (citing *In re Guardianship of McClinton*, 157 So. 3d 682, 870 (Miss. 2015)).

elling circumstances exist, Rule 60(b)(6) authorizes trial judges to set aside judgments obtained by a fraud upon the court.<sup>71</sup> Under Mississippi Rule 60(b)(6), it is permissible for a chancellor to entertain independent actions as a basis for setting aside judgments predicated on fraud.<sup>72</sup> It can be beneficial to seek relief by independent action in order to navigate around the strict time requirements under Rule 60. This notion has also been embraced by the federal system, which has stated that the time limit for independent actions is based on laches rather than the time constraints of Rule 60.<sup>73</sup> Furthermore, Rule 60(b)(6) does not require that an independent action be labeled as such.

In Mississippi, relief from a final judgment based upon fraud upon the court may be sought pursuant to Rule 60 (b)(6).<sup>74</sup> Mississippi courts have defined fraud upon the court as an intentional misdeed that vitiates a judgment because the court is shielded and not fully informed of the facts when attempting to reach a decision.<sup>75</sup> A fraud on the court is a substantial misrepresentation on which a judgment is based.<sup>76</sup> However, there is a higher standard for meeting the burden of fraud upon the court. “Relief based on fraud upon the court is ‘reserved for only the most egregious misconduct,’ and requires a showing of ‘an unconscionable plan or scheme which is designed to improperly influence the court in its decision.’”<sup>77</sup> A party moving for relief under Rule 60 (b)(1) based upon fraud, misrepresentation or other misconduct of an adverse party would have to prove these claims by clear and convincing evidence.<sup>78</sup> The Mississippi appellate court in *Doe v. Smith*, found that the chancellor was correct in finding that fraud was committed upon the court when the nat-

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<sup>71</sup> *Doe v. Smith*, 200 So. 3d at 1034.

<sup>72</sup> *Id.* at 1030; Miss. R. Civ. P. 60(b)(6) (2017) (any other reason justifying relief from the judgment).

<sup>73</sup> *Hester v. State*, 749 So. 2d 1221, 1223-24 (citing *In re Casco Chem. Co.*, 335 F.2d 645, 652 (5th Cir. 1964)).

<sup>74</sup> *In re Estate of Pearson*, 25 So. 3d 392, 395 (Miss. Ct. App. 2009).

<sup>75</sup> *Doe v. Smith*, 200 So. 3d at 1032 (citing *Trim v. Trim*, 33 So. 3d 471, 477 (Miss. 2010)).

<sup>76</sup> *Doe v. Smith*, 200 So. 3d at 1032 (citing *Roberts v. Lopez*, 148 So. 3d 393, 399 (Miss. Ct. App. 2014)).

<sup>77</sup> *In re Estate of Pearson*, 25 So. 3d at 395 (citing *Wilson v. Johns-Manville Sale Corp.*, 873 F.2d 869, 972 (5th Cir. 1989)).

<sup>78</sup> *Stringfellow v. Stringfellow*, 451 So. 2d 219, 221 (Miss. 1984).

ural mother attempted to conceal from the natural father the existence and subsequent adoption of their son.<sup>79</sup> The mother, in her consent to adoption, claimed she was unaware of the identity, name, or location of the child's father.<sup>80</sup> When the petition was brought before the court, the mother lied during the hearing.<sup>81</sup> The chancellor, relying on those misrepresentations, entered a final decree granting the adoption.<sup>82</sup> "When consent for a supposedly 'uncontested' adoption is gained by intentionally concealing the identity of a known natural parent from the chancellor, a fraud is perpetrated upon the court."<sup>83</sup>

Utah has taken a slightly different approach than other states in recognizing independent actions in conjunction with relief statutes. The catch all provisions of Utah Rule of Civil Procedure 60(b) allow a court to grant relief by an independent action when warranted by recognized equitable doctrines, even after the period of timeliness for Utah Rule 60 (b) has expired.<sup>84</sup> However, the court in *Doe v. V.H.* found that the catch all provision did not apply since the plaintiff failed to bring the claim as a "separate" independent action.<sup>85</sup> Instead, what the plaintiff did was make an impermissible motion for an independent action within her original action.<sup>86</sup> Furthermore, the Utah Supreme Court in *Shaw v. Pilcher* held that the plaintiff's attack of an adoption decree based upon fraud upon the court could only be considered timely under Rule 60 (b) if pursued by independent action, and not through a motion in the original action.<sup>87</sup>

The rules surrounding independent actions can be confusing and unique. It is difficult to give a summary explanation of the process but the Michigan appellate courts have given it a good try. A party may obtain relief from a judgment procured by fraud in one of two ways, depending upon whether the fraud was ex-

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<sup>79</sup> *Doe v. Smith*, 200 So. 3d at 1030.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 1031.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 1030.

<sup>84</sup> *Doe v. V.H.*, 894 P.2d at 1288 (citing *Maertz v. Maertz*, 827 P.2d 259, 260-61 (Utah Ct. App. 1992)).

<sup>85</sup> *Doe v. V.H.*, 894 P.2d at 1288.

<sup>86</sup> *Id.*

<sup>87</sup> *Shaw v. Pilcher*, 341 P.2d 949, 950 (Utah 1959).

trinsic or intrinsic.<sup>88</sup> Extrinsic fraud is fraud that actually prevents the losing party from having an adversarial trial on a significant issue.<sup>89</sup> Intrinsic fraud is fraud that does not prevent an adversary trial.<sup>90</sup> Relief from a judgment procured by intrinsic fraud must be made by a motion in the case in which the adverse judgment was rendered, while relief from a judgment procured by extrinsic fraud may be by independent action.<sup>91</sup>

## V. Reasons Behind the Hurdles to Relief

There can be significant hurdles to overcome in attempting to seek relief from a final adoption decree. The rationale behind why some courts have established these hurdles or appear indifferent to the rights of natural parents is primarily two-fold. First, courts are concerned with facilitating what is in the best interests of the child, especially during a child's tender developmental years. "The demand for prompt action in such a case is neither arbitrary nor punitive, but is instead a logical and necessary outgrowth of the state's legitimate interest in children's need for permanence and stability."<sup>92</sup> Concern over shifting the custody of a child who is in a stable environment and acclimated has made courts somewhat resistant to setting aside adoption decrees. Courts have historically expressed a reluctance to annul adoption decrees.<sup>93</sup> Courts have expressed that remand or relief should be utilized when it does not work against the best interests of a child. For example in *Drummond v. Drummond*, the court stated that "the best interests of the child are the most important considerations, and where it is not clear that these interests formed a basis for the court's decision, we believe remand is appropriate to allow a hearing to be held on that question."<sup>94</sup>

Second, there is the concern that relief from final judgment statutes will be used as back alley routes around timely appeal

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<sup>88</sup> *Stallworth v. Hazel*, 421 N.W.2d 685, 690-91 (Mich. Ct. App. 1988).

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Adoption of T.L.W.*, 835 N.E.2d at 602 (citing *In re Adoption of J.D.C.*, 751 N.E.2d 747, 750 (Ind. Ct. App. 2001)).

<sup>93</sup> *P.J.D.*, 302 S.W.3d at 750.

<sup>94</sup> *Drummond v. Drummond*, 945 P.2d 457, 464 (N.M. Ct. App. 1997).

requirements.<sup>95</sup> For example, the court in *In re Adoption of T.L.W.* found that not being aware of a child's adoption did not arise to the extraordinary circumstances standard necessary to utilize Indiana's Rule 60 (B)(8) catch all provision and the movant was really attempting to force a 60 (B)(2) claim that was past -due down an improper avenue.<sup>96</sup> Indeed, this might seem like an attractive filing strategy to avoid harsh timeliness requirements of 60 (B)(2) even though it is not a permissible one. "However, relief on the basis of T.R. 60 (B)(2) is expressly available only if such a motion is filed within one year from the date of the order."<sup>97</sup>

## Conclusion

There are two means by which a decree of adoption can be attacked: either directly by a motion to set the decree aside or by collateral attack. There can be multiple reasons, which will be listed in the applicable state rule, for setting aside a final decree of adoption. However, most either stem from the decree being void because an interested party was not afforded proper due process or because there was a fraud or misrepresentation in securing the adoption. One of the most common reasons for attempting set aside an adoption is due to concealment of a child from the natural father by the natural mother.

The rights of putative fathers have expanded drastically in the past forty years. Parents, whose rights as such are deemed valuable by society, are generally given statutory and due process safeguards to protect their rights as parents. Natural fathers are generally afforded the right to notice, and to challenge any proceedings that may affect their parental rights. Some jurisdictions are not willing to extend parental rights simply because of a biological connection, but rather require parental involvement. It is important, as an attorney representing clients, to understand the applicable forum's position on this issue because a parental rights interest is needed to challenge a final decree of adoption.

While attempting to challenge a final decree of adoption (specifically on the basis of fraud) is difficult, it is not impossible.

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<sup>95</sup> *P.J.D.*, 302 S.W.3d at 752.

<sup>96</sup> *Adoption of T.L.W.*, 835 N.E.2d at 601.

<sup>97</sup> *Id.*

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Relief from a judgment procured by extrinsic fraud may be by independent action.<sup>98</sup> If the claim cannot be brought as fraud upon the court, then the case will encounter the hurdle of stringent time requirements. The benefit of a claim as an independent action is that it will not be subject to the time requirements of the relief statute, and instead will be subject to the limitations of laches.<sup>99</sup>

The difference between extrinsic fraud and intrinsic fraud is that extrinsic fraud occurs when a party actually prevents the losing party from having an adversarial trial on a significant issue.<sup>100</sup> Although, courts will generally apply a higher standard to prove fraud upon the court. Some courts will entertain an independent action as part of their “catch all provision,” and allow an independent action to stem from the original motion.<sup>101</sup> Others will insist that an independent action “cannot be made by way of the original motion.”<sup>102</sup>

The reasons for appellate courts’ reluctance to set aside judgments or remand to trial courts are based on logical concerns. First, appellate courts want finality in judgments for a uniform process. Second, what is in the best interests of a child is always deeply rooted in judicial decision making. Jurisdictions have generally decided that the need for stability during a child’s developmental years outweighs parental rights.<sup>103</sup> Finally, courts have shown concerns that independent actions or catch all provisions could be wrongfully used as ways around timeliness requirements.<sup>104</sup>

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<sup>98</sup> *Stallworth*, 421 N.W.2d at 690-91.

<sup>99</sup> *Hester*, 749 So. 2d at 1223-24.

<sup>100</sup> *Stallworth*, 421 N.W.2d at 690-91.

<sup>101</sup> See *Hester*, 749 So. 2d at 1223-24 (citing *Bankers Mort. Co. v. United States*, 423 F.2d 73, 77 (5th Cir. 1970)).

<sup>102</sup> *Shaw*, 341 P.2d at 950.

<sup>103</sup> *Drummond*, 945 P.2d at 464.

<sup>104</sup> *Adoption of T.L.W.*, 835 N.E.2d at 601.