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DOMESTIC RELATIONS Adoption: Limit Recourse When Adoption Petition is Predicated on Exception to Requiring Surrender or Termination of Parental Rights

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DOMESTIC RELATIONS

Adoption: Limit Recourse When Adoption Petition is Predicated on Exception to Requiring Surrender or Termination of Parental Rights

CODE SECTION: O.C.G.A. § 19-8-18 (amended)
BILL NUMBER: SB 307
ACT NUMBER: 382
GEORGIA LAWS: 1995 Ga. Laws 791
SUMMARY: The Act provides a six-month time limitation on challenging adoptions. The Act also provides a six-month time limitation from the effective date of the Act for a judicial challenge of any adoption occurring prior to the Act's effective date.
EFFECTIVE DATE: July 1, 1995

History

In the past several years, the number of post-adoption challenges by biological parents has increased.¹ Generally, these cases are based on the parents' claim that the revocation of their parental rights was unconstitutional.² As a result, state legislatures have been forced to modify adoption laws.³

SB 307

The Act amends Code section 19-8-18, which provides for a hearing regarding pending adoptions and subsequent adoption decrees,⁴ by adding two subsections, (e) and (f).⁵ Subsection (e)

1. See Brooke A. Gershon, Note, *Throwing Out the Baby With the Bath Water: Adoption of Kelsey S. Raises the Rights of Unwed Fathers Above the Best Interests of the Child*, 28 LOY. L.A. L. REV. 741, 747 (1995).

2. *Id.* at 747-49.

3. See Carolyn R. Seabolt, Comment, *In re Baby Girl Clausen: Can the Baby Jessica Nightmare Happen in Georgia?*, 11 GA. ST. U. L. REV. 735, 750 (1995).

4. O.C.G.A. § 19-8-18 (Supp. 1995).

5. *Id.* § 19-8-18(e)-(f).

relates specifically to adoption decrees issued pursuant to Code section 19-8-18(b).⁶

Code section 19-8-18(b) provides guidelines regarding the surrender of parental rights.⁷ Under subsection (b), the court can either determine that the rights have been properly surrendered or recognize that a waiver of the parental surrender is proper based on Code section 19-8-10.⁸ Code section 19-8-10 provides specific circumstances allowing for a waiver of the requirement that parental rights be surrendered or terminated before an adoption can take place.⁹

In Code section 19-8-10(a), a general waiver is provided if (1) the parent has abandoned the child; (2) the parent cannot be found following a diligent search; or (3) the parent is insane or incapable of surrendering his rights.¹⁰ In Code section 19-8-10(b), a more specific waiver is provided if the adoption: (1) is by the spouse of a biological parent when the other parent is still alive; (2) is by the spouse of a biological parent when the other parent is not alive; (3) is by the spouse of a biological parent where there is a guardian for the child; or (4) is by a relative by blood or marriage who fits into a defined category.¹¹ In these circumstances, a waiver is not necessary:

[I]f that parent, for a period of one year or longer immediately prior to the filing of the petition for adoption, without justifiable cause, has significantly failed:

- (1) To communicate or to make a bona fide attempt to communicate with that child; or
- (2) To provide for the care and support of that child as required by law or judicial decree,

6. *Id.* § 19-8-18(e).

7. 1990 Ga. Laws 1572 (codified at O.C.G.A. § 19-8-18(b) (1991)).

8. *Id.* (codified at O.C.G.A. § 19-8-10 (1991)).

9. *Id.*

10. *Id.* (codified at O.C.G.A. § 19-8-10(a) (1991)). The general nature of this waiver is created in O.C.G.A. § 19-8-10(a), by referencing §§ 19-8-4 to -7, which encompass all adoptions in which parental surrender of rights is necessary under the Code. *Id.*; see also *id.* (codified at O.C.G.A. §§ 19-8-4 to -7 (1991)).

11. *Id.* (codified at O.C.G.A. § 19-8-10(b) (1991)). Unlike subsection (a), the waiver in subsection (b) is more specific since the restriction only applies when the surrender of rights is predicated on O.C.G.A. § 19-8-6 or -7. *Id.*

and the court is of the opinion that the adoption is for the best interests of that child.¹²

Under subsection (e) of the Act, any decree of adoption issued pursuant to Code section 19-8-18(b) "shall not be subject to any judicial challenge filed more than six months after the date of entry of such decree."¹³ The language creating the limitation was not changed in any versions of the bill.¹⁴ According to Senator Sonny Perdue, the addition of this language was a preemptive move to limit the period during which biological parents can challenge an adoption.¹⁵

In a substitute bill proffered by the House Judiciary Committee, subsection (f) was added and incorporated into the Act without change.¹⁶ Subsection (f) provides that "[a]ny decree of adoption issued prior to the effective date of this action shall not be subject to any judicial challenge more than six months after the effective date of this Act."¹⁷ According to both Senator Perdue and Representative Cathy Cox, this language was intended to bring any adoption occurring prior to enactment within the scope of the Act and to limit the period to challenge the adoption to six months from the effective date of the Act.¹⁸

Cecil G. McLendon, Jr.

12. *Id.* § 5, at 1589-90 (codified at O.C.G.A. § 19-8-10(b) (1991)).

13. O.C.G.A. § 19-8-18(e) (Supp. 1995).

14. Compare SB 307, as introduced, 1995 Ga. Gen. Assem. with O.C.G.A. § 19-8-18(e) (Supp. 1995).

15. Telephone Interview with Senate Majority Leader Sonny Perdue, Senate District No. 18 (May 22, 1995) [hereinafter Perdue Interview]. Sen. Perdue co-sponsored the Act. *Id.* Rep. Cathy Cox further pointed out that this bill was an effort to protect adoptive parents when biological parents challenge adoptions. Telephone Interview with Rep. Cathy Cox, House District No. 160 (May 22, 1995) [hereinafter Cox Interview].

16. Compare SB 307 (HCS), 1995 Ga. Gen. Assem. with O.C.G.A. § 19-8-18(f) (Supp. 1995).

17. O.C.G.A. § 19-8-18(f) (Supp. 1995).

18. Cox Interview, *supra* note 15; Perdue Interview, *supra* note 15.