

CONSENT TO ADOPTION OF MINOR CHILD

NOTICE TO PARENT OR LEGAL GUARDIAN:

This is an important legal document and by signing it you are permanently giving up all custody and other parental rights to the child named herein, so as to permit the child's adoption. You are to receive a copy of this document.

1. I, _____, (mother, father, legal guardian) of _____, a minor child, state:
2. The child was born on (date of birth) at (place of birth) at _____ .m.
3. I reside at _____, county of _____ and state of _____.
[My social security number is _____.]
4. I am of the age of _____ years and was born on _____.
5. I do hereby consent and agree to the adoption of the child [by _____]
[and I do not require disclosure of the name or other identification of the adopting parent or parents].
6. I wish to and understand that by signing this consent I do permanently give up all custody and other parental rights I have to the child.
7. [I am of sound mind and under no undue restraint or duress.] I have read and understand the above and I am signing it as my free and voluntary act.
8. [I was married to _____ at the time of the child's
(conception)(birth) and he is the father of the child. His present address is _____
_____.]
9. [I was not married at the time the child was conceived or born. The father of the
child is _____, whose present address is _____.]
[There are no other possible putative fathers.] [_____ was
determined to be the child's father in _____ District Court, case number
_____.]
10. [Neither the child nor I am a member of an Indian tribe recognized by federal law
nor an Alaskan Native recognized by federal law.] [I am a member of the _____
_____ tribe, _____ (address) _____]. [The child is a member of the _____
tribe, _____ (address) _____.]
11. I hereby freely and voluntarily enter my appearance in any proceeding instituted
in any court of competent jurisdiction for the adoption of the child and waive notice of all
proceedings of the adoption.

Certificate of Attorney for Consenting Minor Parent

I am a licensed attorney representing _____, who is a minor. I have fully explained that by signing this consent _____ is permanently giving up all parental rights to the child and (she)(he) has stated that such is (her)(his) intention and desire. I was present at the execution of this relinquishment.

Dated _____ (signature of attorney) _____

Authority

K.S.A. 59-2114; 59-2115; 59-2116; 59-2117; 59-2129

Notes on Use

Whose Consent is Required. K.S.A. 59-2129 sets forth the list of required consents. For independent adoptions, the following persons must consent: (1) both living parents or one parent, if the other's consent is found unnecessary under K.S.A. 59-2136, or (2) if both parents are dead or their consents are found unnecessary under K.S.A. 59-2136, the legal guardian (with approval by the court in the guardianship action), or (3) the judge who terminated parental rights in a code for the care of children proceeding. In addition, consent must be given by (1) the judge having jurisdiction over the child in a code for the care of children proceeding if parental rights have not been terminated and (2) the child, if over 14 years of age and of sound intellect. If the consent is by a legal guardian, the consent shall have attached documents supporting the guardian's appointment and the authority of the guardian to execute the consent.

For agency adoptions, consent must be given by (1) the authorized representative of the agency to whom the child has been relinquished and (2) the child, if over the age of 14 and of sound intellect.

For step-parent adoptions, the consent of both parents is required, or the consent of one if the other's consent is found unnecessary under K.S.A. 59-2136.

Form and acknowledgment. Consents must be in writing and acknowledged before a judge of a court of record or an officer authorized by law to take acknowledgments. If a judge acknowledges the relinquishment, the judge has a duty to advise the relinquishing person of the consequences of the relinquishment. K.S.A. 59-2114(a).

There are special rules to cover consents executed outside of Kansas or by military members. If the consent is executed and acknowledged outside the state, it is valid as long as it was done in accord with the law of the place where executed or the law of Kansas. However, when a consent or relinquishment is signed in a foreign country, the execution must be acknowledged in accordance with the law and procedure of the foreign country. For consenting persons who are in the US military, the consent may be acknowledged before a commissioned officer and the signature of the officer must be properly verified or acknowledged by a notary public or another authorized military procedure. K.S.A. 59-2117.

It is not necessary to place a case caption at the beginning of the consent form; sometimes the consent must be obtained before the proper caption can be formulated. It is necessary, however, to file the required consents with the adoption petition. K.S.A. 59-2128(b). It is also not required that the consent authorize a specified person to adopt, although that is often done.

Time of consent. Consents are only valid if executed no more than six months prior to the filing of the adoption petition. K.S.A. 59-2114(b). In addition, the consent of the mother given within 12 hours after the birth of the child is voidable, prior to the final decree of adoption. K.S.A. 59-2116.

Consent of minor parent. In order for consent signed by a minor parent to be valid, the minor must have advice of legal counsel as to the consequences of the relinquishment and the legal counsel must be present at the execution of the relinquishment. K.S.A. 59-2115. The consent form should include a certificate for the minor's attorney to sign verifying that these conditions have been met. The cost of counsel must be provided by the adoptive parents or by the agency, unless the minor is represented by his or her own counsel.

Revocation. Consents are final when executed, unless the consenting party, prior to the entry of the final

decree of adoption, proves by clear and convincing evidence that the consent was not freely and voluntarily given. 59-2114(a).

Identity of father. Paragraph 8 or 9 should be inserted in consent forms to be signed by the child's mother, in order to identify the child's father.

Indian Child Welfare Act (ICWA). The ICWA applies to adoption placements of Indian children (25 U.S.C. § 1903(1)(iv)), requiring notice to the tribe and adoption placement preferences (25 U.S.C. § 1915(a)). Indian children are defined as unmarried persons under the age of 18 who are either (a) members of an Indian tribe or (b) eligible for membership and the biological children of a member of an Indian tribe. 25 U.S.C. § 1903(4). Paragraph 10 of the consent form is included to provide information about whether the child meets the definition of Indian child under the ICWA.

If the child is an Indian child, the court may nonetheless determine that the ICWA does not apply if the child has never been a member of an Indian home or culture, pursuant to the holding in *In re Adoption of L.*, 231 Kan. 199, 643 P.2d 168 (1982). If such facts exist, a paragraph may be added to the form establishing those facts. Also, even if the ICWA applies, the court may determine that good cause exists not to follow the otherwise required adoption placement preferences. *In re Adoption of B.G.J.*, 111 P.3d 651 (Kan. Ct. App. 2005).

Comments

Because a parent's liberty interest in the custody and control of his or her own children is at stake in an adoption, the adoption, relinquishment and termination of parental rights statutes are strictly construed. *In re A.W.*, 241 Kan. 810, 814-15, 740 P.2d 82, 86 (1987). Therefore it is critical to the validity of an adoption that required consents be validly obtained and executed in accord with all the statutory conditions.

Whose consent is required. The consent of both parents is required, unless the court makes a specific finding that the consent of one is not required, pursuant to K.S.A. 59-2129(a)(2). *In re Adoption of A.J.P.*, 24 Kan. App. 2d 891, 892, 953 P.2d 1387, 1389 (1998).

Capacity to consent. A parent retains the legal authority to consent to a step-parent adoption of her child by her spouse, even at a time when guardianship of the child has been granted to another person. *In re Adoption of J.A.B., Jr.*, 26 Kan. App. 2d 959, 967-69, 997 P.2d 98, 104-05 (2000).

Acknowledgment. Although Kansas notaries public only have authority to acknowledge documents within the State of Kansas (K.S.A. 53-101), a consent to adoption signed in Missouri before a Kansas notary was upheld as being in substantial compliance with the law. *In re Adoption of Trent*, 229 Kan. 224, 624 P.2d 433 (1981). The Court also noted that when a consent to adoption is properly acknowledged, the acknowledgment serves as prima facie proof of the validity of the consent and that it was freely and voluntarily given.

Time of birth. In 1987 the Kansas Court of Appeals held that a natural mother, who signed an adoption consent shortly after birth of the child, must have the opportunity to prove the consent was void or voidable because of her inability to fully comprehend what she was doing due to medication and/or the stress and pain associated with the birth. *In re Adoption of Baby Girl H.*, 12 Kan. App. 2d 223, 739 P.2d 1 (1987). Thereafter, in 1990 the legislature amended the adoption act to provide that any consent or relinquishment given by the mother before 12 hours after birth of the child is voidable, prior to the final decree of adoption. The *Baby Girl H.* decision suggests that the timing concern had to do with the mother's birth experience and does not relate to the father. The statute does not restrict the timing of the father's consent, other than the six month requirement explained above.

If a birth mother decides to seek to void a consent obtained prior to 12 hours after the birth, she can do so prior to the entry of the decree of adoption, simply by proving the consent was obtained within 12 hours after the birth of the child. After the decree is entered, however, a parent cannot seek to void the consent, unless appropriate under K.S.A. 60-260(b). *In re Adoption of J.H.G.*, 254 Kan. 780, 869 P.2d 640 (1994).

The constitutionality of giving more protection to birth mothers who sign consents prior to 12 hours after the birth of their child was upheld as reasonable in *In re Adoption of Baby Girl T.*, 28 Kan. App. 2d 712, 722-25, 21 P.3d 581, 590-92 (2001).

Consent of minor parent. When a birth parent is a minor, the parent must have independent representation. One lawyer cannot represent both the minor birth parent and the adoptive parents. *In re Adoption of N.A.P.*, 23 Kan. App. 2d 257, 266, 930 P.2d 609, 615 (1997). The *N.A.P.* decision held that when one lawyer begins multiple representation of both the minor birth parent and the adoptive parents, a consent later obtained with representation by independent counsel is not voided, but the trial court may consider the initial multiple

representation as a factor in determining whether the consent was freely and voluntarily given.

Counseling by attorney. A good practice for lawyers representing parents who are consenting to adoption of their child is to video or tape record the session, to provide evidence of the explanation and advice given to the parent, should the parent later claim the consent was not freely and voluntarily signed. The Court in *In re Adoption of Baby Girl T.*, 28 Kan. App. 2d 712, 21 P.3d 581 (2001), noted that a lawyer representing both the adoptive parents and a birth parent would be well advised to visit with the birth parent individually to ensure that each client has the opportunity to disclose information to the lawyer without fear of recrimination from others. The Court suggested that the lawyer explain each section of the adoption consent, perhaps asking the birth parent to initial each section as he or she reads it.

Revocation. A parent does not have standing to seek to challenge a consent to adoption given by the other parent; K.S.A. 59-2114 permits only the parent giving a consent to later question the validity of the consent. *In re Adoption of Trent*, 229 Kan. 224, 231-32, 624 P.2d 433, 439 (1981).

In order to rebut the presumption that the consent was freely and voluntarily given, a parent must prove fraud, duress, undue influence, mistake or lack of understanding. *In re Adoption of Chance*, 4 Kan. App. 2d 576, 583, 609 P.2d 232, 238 (1980). A misunderstanding between the adoptive parents and the birth mother regarding visitation with the child does not necessarily constitute fraud, misunderstanding or duress sufficient to void a consent to adoption. *In re Adoption of Baby Girl T.*, 28 Kan. App. 2d 712, 717-20, 21 P.3d 581, 587-89 (2001).

The burden of proof is shifted from the birth parent to the adopting parents when there is evidence that someone in a confidential or fiduciary relationship with the birth parent exerted undue influence and there are suspicious circumstances, such as a family relationship between the birth mother's physician and the attorney for the adopting parents. *In re Adoption of Baby Boy Irons*, 235 Kan. 540, 684 P.2d 332 (1984). Under the facts of this case, the Court found that the consent was freely and voluntarily given.

Waiver of notice of proceedings. A provision in a consent to adoption that waives "all notice of proceedings," is valid, even though the parent claims later not to have known the time frame in which the proceedings would take place. *In re Adoption of J.H.G.*, 254 Kan. 780, 800, 869 P.2d 640, 653 (1994).