

**NOTICE**  
Decision filed 06/10/14. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2014 IL App (5th) 130380-U

NO. 5-13-0380

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

**NOTICE**  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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<i>In re</i> D.C., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	St. Clair County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 07-JA-155
	)	
Elizabeth B.,	)	Honorable
	)	Walter C. Brandon, Jr.,
Respondent-Appellant).	)	Judge, presiding.

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JUSTICE STEWART delivered the judgment of the court.  
Justices Spomer and Schwarm concurred in the judgment.

**ORDER**

¶ 1 *Held:* Under facts of the present case and the terms of the Illinois Adoption Act in effect at the relevant time, the respondent's motion to void and revoke a final and irrevocable consent to adoption by a specified person or persons in a DCFS case was voidable, not void. The circuit court's finding that the respondent's motion was untimely was not against the manifest weight of the evidence where the motion was filed one hour after the petition for adoption.

¶ 2 The respondent, Elizabeth B., appeals the order of the circuit court of St. Clair County denying her motion to void and revoke a final and irrevocable consent to adoption (motion to revoke consent) and the circuit court's finding that she failed to

timely file said motion. On appeal, the respondent argues that the circuit court erred as a matter of law in its interpretation of the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2010)) in failing to find that her consent to adoption was void under the language of the statute as it then existed. The respondent also argues that the circuit court's finding that her motion to revoke consent was not timely filed was against the manifest weight of the evidence. For the reasons that follow, we affirm.

¶ 3

### BACKGROUND

¶ 4 As an initial matter, we note that pursuant to Illinois Supreme Court Rule 311(a) (eff. Feb. 26, 2010) this case is designated as "accelerated" because it involves a matter affecting the best interests of a child. Illinois Supreme Court Rule 311(a)(5) (eff. Feb. 26, 2010) provides, in relevant part, with respect to such cases that "[e]xcept for good cause shown, the appellate court shall issue its decision within 150 days after the filing of the notice of appeal." In this case, the respondent filed her notice of appeal on August 19, 2013. Thus, the 150-day period to issue our decision expired on January 2, 2014. After multiple extensions of time were granted to the respondent by this court, the respondent's appellate brief was filed on January 27, 2014. In her brief, the respondent asserted that the circuit court's ruling denying her motion to revoke consent "flies in the face of the facts" because the foster mother's petition for adoption was filed on May 7, 2013, one day after the respondent filed her motion to revoke consent. The petition for adoption was not part of the juvenile court record and, therefore, not contained in the record on appeal. On February 4, 2014, the State filed a motion requesting this court to order the production of the sealed adoption record at issue in this appeal for the limited

purpose of conducting an *in camera* review to determine the date on which the petition for adoption was filed. This court granted the State's motion and on April 30, 2014, took judicial notice that the petition for adoption was file-marked on May 6, 2013. The case was placed on the May 2014 oral argument setting, and we now issue this Rule 23 order.

¶ 5 On November 13, 2007, the State through the Department of Children and Family Services (DCFS) filed a petition for adjudication of wardship under the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2006)) with respect to D.C., a minor. In the petition, DCFS alleged that D.C. was abused in that while in the care and custody of his putative father, Lemuel Houston, D.C. suffered second degree "scald burns" on his buttocks and lower extremities. D.C., who was five months old at the time, had burns to approximately 12% of his total body surface. At the hospital, Houston reported that he was bathing D.C. in the bathroom sink with the water running when a faulty knob faucet turned to hot. The director of the burn center where D.C. was treated provided a medical affidavit indicating that D.C.'s injuries were not consistent with the events as described by Houston. DCFS next alleged that D.C. was neglected in that the respondent mother had not cared for D.C. since his birth and that she was not providing the proper or necessary support for D.C.'s well-being. DCFS further alleged that D.C. could not be placed with the respondent at the time because there was no heat at her residence.

¶ 6 At the shelter care hearing the circuit court granted temporary custody of the minor to DCFS. The circuit court in its written order required the respondent to comply with DCFS and other services or risk termination of her parental rights. A guardian *ad litem* was appointed for D.C.

¶ 7 On December 4, 2007, the respondent was appointed counsel. Houston did not attend the hearing. The circuit court found that Houston had received actual notice of the hearing, held him in contempt, and set the matter for a status conference.

¶ 8 Upon discharge from the hospital, D.C. was placed in a specialized foster home due to the care needed for the burns. A treating physician from the burn center discharged D.C. after his three-month checkup. The record reveals that the burns have healed, but there is permanent disfigurement.

¶ 9 On April 28, 2008, at the adjudicatory portion of the hearing, the circuit court found that the allegations in the petition filed by DCFS had been proven by a preponderance of the evidence and granted the petition. The circuit court entered a finding that D.C. was abused. At the dispositional portion of the hearing, the circuit court adjudged D.C. a ward of the court and placed guardianship in DCFS.

¶ 10 On June 6, 2008, D.C. was placed in foster care with Houston's great-aunt.

¶ 11 At the October 21, 2008, permanency hearing, a permanency goal of return to home within five months was set. Although there is no transcript from the permanency hearing contained in the record on appeal, in its written order the circuit court noted that DCFS was to provide paternity tests for Demarco C., the alleged father of D.C., and Houston, the putative father. The record reveals that after testing Houston was found not to be D.C.'s father; DNA testing verified that Demarco C. was the biological father of the minor child.

¶ 12 On March 17, 2009, the circuit court gave DCFS discretion to allow the respondent unsupervised overnight visits with D.C. On January 19, 2010, the circuit

court rescinded the respondent's visitation due to allegations that she reported marijuana use. Although the permanency goal remained return to home within five months, on January 19, 2010, the circuit court noted the respondent's lack of progress.

¶ 13 On June 28, 2010, D.C. was removed from Houston's great-aunt's home and placed with Cathy D. who has a licensed foster home.

¶ 14 On September 9, 2011, the State filed a motion for termination of parental rights with regard to the respondent and D.C.'s biological father. The petition alleged that the respondent was an unfit person as defined by the Adoption Act (750 ILCS 50/1(D) (West 2010)), in that she (a) failed to make reasonable efforts to correct the conditions that were the basis of the removal of the minor (750 ILCS 50/1(D)(m)(i) (West 2010)); (b) failed to make reasonable progress toward the return of the minor to her during any nine-month period after the end of the initial nine-month period following the adjudication of neglected or abused minor (750 ILCS 50/1(D)(m)(iii) (West 2010)); and (c) was unable to discharge her parental responsibilities due to mental impairment, mental illness, or mental retardation and there was sufficient justification to believe that the inability to discharge parental responsibilities would extend beyond a reasonable period of time (750 ILCS 50/1(D)(p) (West 2010)). The matter was set for a November 22, 2011, hearing.

¶ 15 Rather than proceed to trial, on November 18, 2011, four days before the hearing on the State's motion to terminate the respondent's parental rights, the respondent executed a "Final and Irrevocable Consent to Adoption by Specified Person or Persons: DCFS Case," seeking to have D.C. placed with Cathy D. The form of the consent complied with the requirements of section 10(O)(2) of the Adoption Act in effect at that

time, and the respondent acknowledged her consent before the court. The consent, in pertinent part, provided:

"I understand that if Cathy [D.], for any reason, cannot or does not file a petition to adopt my child within one year, or if their adoption petition is denied, then this consent will be voidable after one year upon the timely filing of my motion. If a year has gone by since the date of my signing this, and if I file this motion before the filing of the petition for adoption, I understand that the court shall revoke this specific consent."

¶ 16 The respondent also executed a "Checklist of Understanding" and an "Affidavit of Identification." D.C.'s biological father executed a similar consent to adoption which is not at issue in this appeal.

¶ 17 On May 6, 2013, approximately 18 months after the respondent signed the consent to adoption, Cathy D. filed a petition to adopt D.C. on the same day that the respondent filed a motion to revoke consent. A hearing was set on the respondent's motion.

¶ 18 At the hearing on June 25, 2013, the respondent testified that she wished to revoke the consent to adoption that she signed on November 18, 2011. She stated that she signed the consent because she was led to believe by a caseworker that her parental rights would be terminated at the hearing, resulting in her being unable to see her son again. She stated that she was close with Cathy D., who allowed the respondent to frequently visit D.C. She testified that Cathy D. told her that if D.C. was her son, Cathy D. would fight for him and that if the respondent wanted to revoke her consent to adoption, Cathy D. would not continue with the adoption proceedings.

¶ 19 Cathy D. confirmed the respondent's testimony. She added, however, that she also told the respondent that she wanted to find a way to keep D.C. in both of their lives and that if the respondent lost her parental rights, she did not know if she also would lose a chance to adopt him. She testified that her goal was to continue with the adoption so that both she and the respondent could continue to have a relationship with D.C.

¶ 20 An issue arose as to whether the respondent's motion to revoke consent had been filed before Cathy D.'s petition for adoption. Sandra Cunningham, the St. Clair County Juvenile Clerk, was called to testify at the hearing. She testified that she recalled that the attorney for Cathy D. filed the petition to adopt D.C. "[p]rior to nine o'clock" in the morning. Although the clerk did not testify as to the date the petition for adoption was filed, after an *in camera* review of the adoption file, this court took judicial notice that the petition was file-marked on May 6, 2013. At the conclusion of the hearing, the circuit court took the matter under advisement and directed the parties to submit memorandums of law and proposed orders within seven days.

¶ 21 In his written memorandum of law, the respondent's attorney represented to the circuit court that he recalled personally filing the respondent's motion to revoke consent at approximately 10 a.m. on May 6, 2013. On July 9, 2013, the circuit court issued a written order denying the respondent's motion to revoke consent. The circuit court found that the petition for adoption and the motion to revoke consent were filed "almost 18 (eighteen) months after the Consent was signed and on the same day." The circuit court further found that the respondent failed to timely file her motion since the testimony established that the petition to adopt was filed prior to 9 a.m., and the respondent's

motion to revoke consent was filed at approximately 10 a.m. The respondent filed this timely appeal.

¶ 22

## ANALYSIS

¶ 23 On appeal, the respondent argues that the circuit court erred as a matter of law in its interpretation of the Adoption Act in failing to find that her consent to adoption was void under the language of the statute existing at the time. The respondent contends that "[t]he one-year time limit on the consent form had expired."

¶ 24 "The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature." *In re N.C.*, 2013 IL App (3d) 120438, ¶ 15. "The most reliable indicator of that intent is the language of the statute itself." *Id.* "Rules of strict or liberal construction have no application where the language of a statute is clear." *In re Petition of K.M.*, 274 Ill. App. 3d 189, 195 (1995). "Where the language of the statute is clear and unambiguous, the only legitimate function of the courts is to enforce the law as enacted by the legislature." *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 320 (2003). "Issues pertaining to the interpretation and application of the Illinois Adoption Act (Act) (750 ILCS 50/1 *et seq.* (West 2010)) are reviewed *de novo*." *In re Adoption of H.B.*, 2012 IL App (4th) 120459, ¶ 18.

¶ 25 When a petition for the termination of parental rights is pending, section 10(O) of the Adoption Act provides the method by which parents may consent to relinquish their parental rights to allow a specific person or persons to adopt their child before a fitness determination is made. 750 ILCS 50/10(O) (West 2010). Additionally, the statute in effect at the time that the respondent executed the consent for adoption provided that a

parent could file a motion to revoke consent to that adoption under certain circumstances. 750 ILCS 50/10(O)(5) (West 2010).

¶ 26 The respondent maintains that under the statute in effect at the time, her consent to adoption was void when Cathy D. failed to file a petition for adoption of D.C. within the one-year period. Conversely, the State maintains that the respondent's reading of the statute substantially ignores key language, namely, that the consent to adoption was not automatically void after one year, but rather was voidable. The question before this court is whether the consent to adopt was void or voidable when the respondent sought to revoke it.

¶ 27 By way of legislative history, we note that Public Act 89-704 added subsection (O) to section 10 of the Adoption Act. Pub. Act 89-704 (eff. Jan. 1, 1998). In its original language, section 10(O)(5) established that a consent to adoption would be void if, among other things, the specified person or persons did not file a petition to adopt the child within one year after the consent was signed. Effective January 1, 2002, the Illinois General Assembly amended section 10(O)(5) of the Adoption Act. Pub. Act 92-320 (eff. Jan. 1, 2002). Section 10(O)(5), as amended, established that a consent to adoption "shall be voidable after one year" if, among other things, the specified person or persons did not file a petition to adopt the child within one year after the consent was signed *and* the parent files a timely motion to revoke this consent. The amended language also provided that "[i]f this motion is filed before the filing of the petition for adoption the court shall revoke this consent." Pub. Act 92-320 (eff. Jan. 1, 2002). This was the version of the statute existing when the respondent executed the consent for adoption in November

2011.<sup>1</sup> A reviewing court will presume that every amendment is made for some purpose, and we must give effect to the amendment in a manner consistent with that purpose. *In re Marriage of Freeman*, 106 Ill. 2d 290, 298 (1985).

¶ 28 The respondent contends that because Cathy D. failed to file a petition for adoption of D.C. within one year after the consent to adopt was signed by the respondent, the consent was void. She, in essence, suggests that the circuit court should have interpreted section 10(O)(5), which applied to her case, as it existed prior to the 2002 amendment made by Public Act 92-320. Looking to the language of the statute existing at the relevant time, it is clear that the consent to adoption was not automatically void one year after the respondent signed it. Section 10(O)(5) set out two prerequisites that were required to be met before a consent to adoption could be voidable. First, the specified person or persons must have failed to file a petition to adopt the child within one year after the consent was signed; and second, the parent must have filed a timely motion to revoke their consent. 750 ILCS 50/10(O)(5) (West 2010). The statute defines "timely" in the next sentence. The motion to revoke consent was "timely" if it was "filed before the filing of the petition for adoption." 750 ILCS 50/10(O)(5) (West 2010). Because the interpretation of section 10(O)(5) of the Adoption Act advocated by the respondent

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<sup>1</sup>Effective January 1, 2013, the General Assembly amended section 10(O)(5) to remove reference to the consent for adoption being voidable and replaced it with language finding the consent for adoption void upon the occurrence of certain events. See Pub. Act 97-1063 (eff. Jan. 1, 2013) (amending 750 ILCS 50/10(O)(5) (West 2010)).

would contravene the clear terms of the statute in effect at the relevant time, we reject her interpretation and find that her consent to adopt was not void, but rather voidable.

¶ 29 The respondent next argues that the circuit court's finding that her motion to revoke consent was not timely filed was against the manifest weight of the evidence. A trial court's factual findings are reviewed under the manifest weight of the evidence standard and will be disturbed only where an opposite conclusion is clearly apparent. *In re Guardianship of K.R.J.*, 405 Ill. App. 3d 527, 536 (2010).

¶ 30 Testimony established that the petition to adopt was filed one hour before the respondent's motion to revoke consent. The St. Clair County Juvenile Clerk testified that Cathy D.'s petition to adopt was filed prior to 9 a.m. After an *in camera* review, this court determined that the petition to adopt was filed on May 6, 2013. The respondent's attorney stated that he had filed the respondent's motion to revoke consent at approximately 10 a.m. on May 6, 2013.

¶ 31 The respondent does not concede that her motion to revoke was untimely. Nevertheless, she asserts that even if the circuit court was correct in finding that both pleadings were filed on the same day, the circuit court erred in denying her motion to revoke consent simply because it was filed one hour after Cathy D. filed her petition for adoption. The respondent maintains that "vital issues of parental rights should never be determined based on which attorney wins the photo finish in a 'race to the courthouse.' " Although she notes that there are no Illinois cases directly on point regarding whether same-day filings in adoption cases are to be considered simultaneous or whether a "rigid

'race to the courthouse' " should be imposed, the respondent cites as instructive *In re Marriage of Nettleton*, 348 Ill. App. 3d 961 (2004).

¶ 32 In *In re Marriage of Nettleton*, an order and a notice of appeal were presented to the circuit clerk for filing on the same day. *In re Marriage of Nettleton*, 348 Ill. App. 3d at 965. The petitioner argued that the notice of appeal was untimely because the time stamp established that it was filed 20 minutes before the order. *Id.* at 965. Applying the same principles used to construe a statute, the *In re Marriage of Nettleton* court sought to determine the intent of the drafters of Supreme Court Rule 303(a) which requires that a notice of appeal be filed within 30 days from the entry of final judgment. *Id.* at 967. The court rejected the petitioner's argument that the notice of appeal was untimely simply because the circuit clerk's office had stamped the documents out of sequence. *Id.* The court concluded:

"Based on our review of the proceedings, and given the burdens that the circuit clerk's office faces in processing various documents presented at the same time or within seconds or minutes of each other, we do not believe that the drafters intended such a narrow interpretation of Rule 303. To conclude otherwise would have courts determine when a document was filed by the time on the filing stamp rather than by when it was actually entered and given to the clerk for filing." *Id.*

¶ 33 We find the authority cited by the respondent unpersuasive. In *In re Marriage of Nettleton*, the court was required to determine the intent of the drafters of the rule by applying the principles of statutory construction. Here, we find it unnecessary to resort to rules of statutory construction to determine the intent of the legislature as we are guided

by the language of the statute itself. *In re N.C.*, 2013 IL App (3d) 120438, ¶ 15 (the most reliable indicator of legislative intent is the language of the statute itself). Accordingly, we need only to enforce the law as enacted by the legislature. *Midstate Siding & Window Co.*, 204 Ill. 2d at 320.

¶ 34 The statute in effect at the relevant time provided that the respondent's motion to revoke consent would have been timely if it had been "filed before the filing of the petition for adoption." 750 ILCS 50/10(O)(5) (West 2010). Review of the record indicates that the petition for adoption was filed one hour before the motion to revoke consent was filed. Thus, the circuit court's finding that the motion to revoke consent was untimely was not against the manifest weight of the evidence.

¶ 35 CONCLUSION

¶ 36 For the reasons stated, we affirm the order of the circuit court that denied the respondent's motion to void and revoke a final and irrevocable consent to adoption.

¶ 37 Affirmed.