



## **TERMINATION OF PARENTAL RIGHTS AND ADOPTIONS**

Parental rights are fundamental rights that can only be terminated in Arizona in one of two ways. The first method common is severance of parental rights pursuant to Arizona Revised Statutes §8-533. The other method is consent to adoption under A.R.S. §8-106 and §8-107. A minor parent can consent to adoption. Although the common law rules that generally have the capacity to contract A.R.S. §8-106(C) provides:

- C. The minority of the child or parent does not affect the child's or parent's competency to give consent in the instances set forth in this section.

The statute that tolls certain civil actions until a minor reaches adulthood, A.R.S. §12-502, is inapplicable for several reasons. The tolling statute does not mention adoption and it is based on the minor's incapacity, which is contrary to the express adoption statute.

There is a screening process for determining whether potential adoptive parents are suitable, but the process does not apply to adoptions by certain relatives of a child, including grandparents or step-grandparents. A.R.S. §8-107 sets forth the requirements of consent.

However, once consent to adoption is signed, it can be revoked only under specific situations pursuant to A.R.S. §8-106(D), which provides:

- D. A consent to adopt is irrevocable unless obtained by fraud, duress or undue influence.

Undue influence is the unfair persuasion of a party who is under the domination of the person exercising the persuasion or who, by virtue of the association between them, is justified in assuming that the person will not act in a manner inconsistent with his welfare. Restatement (Second) of Contracts, §177(1) (1981).

### **The distinction between setting aside and adoption and revoking consent**

Revoking consent before the adoption is finalized is technically a different issue than setting aside an order of final adoption. Juvenile Rule 85 governs motions to set aside adoptions and provides in pertinent part:

- A. Motion to Set Aside Adoption. A person seeking to set aside a final order of adoption shall file a motion to set aside the adoption with the clerk of the court. The motion shall allege grounds only as permitted by Rule 60 (c), Ariz. R. Civ. P. or by the Indian Child Welfare Act. Upon receipt of the



motion, the court shall set an initial hearing within ten (10) days and shall advise the parties as to the date, time, and location of the initial hearing.

Civil Rules of Procedure 60(C), Arizona Rules of Civil Procedure, requires some grounds to be raised within 6 months, but also provides for a catch-all provision allowing “any other reason justifying relief from the operation of the judgment.”

Grandparents’ rights to visitation are set forth in A.R.S. §25-409. A key case on parents’ rights conflicting with grandparents’ rights is *McGovern v. McGovern*, 201 Ariz. 172, 33P. 3d 506 (App. 2001). *McGovern* involved a dispute between the maternal grandparents and their own daughter, the mother of the child. The *McGovern* Court stated that there is a rebuttable presumption that the mother’s decision to not allow grandparents visitation was in the child’s best interest. The factors that must be considered in determining the child’s best interest are found in A.R.S. §25-409(c). There are constitutional issues involved in parents’ control of their own child, and this is further discussed in the case of *Egan v. Firdlund-Horne*, 221 Ariz. 229, 211P. 3d 213 (App. 2009).