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**IN THE
COURT OF APPEALS OF INDIANA**

In re Adoption of W.G.:)
)
D.M. and K.M,)
)
Appellants-Petitioners,)
)
vs.) No. 67A05-1001-AD-105
)
T.G.,)
)
Appellee-Respondent.)

APPEAL FROM THE PUTNAM CIRCUIT COURT
The Honorable Matthew L. Headley, Judge
Cause No. 67C01-0809-AD-23

October 4, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

D.M. (“Grandfather”) and K.M. (“Grandmother”) (collectively “Grandparents”) appeal the trial court’s order granting T.G.’s (“Father”) motion to set aside the Grandparents’ adoption of W.G. based on fraud. We reverse and remand.

Issue

Grandparents raise a single issue for review, which we restate as whether the trial court’s judgment setting aside the adoption decree based on a finding of fraud was clearly erroneous.

Father raises one issue on cross-appeal, which we restate as whether the trial court’s ruling on Father’s capacity to consent to the adoption was clearly erroneous.

Facts and Procedural History

W.G. was born on December 20, 2006, and is the biological child of Father and A.M. (“Mother”). Father and Mother were not married, but, at some point, Father established paternity. In May 2007, Father and Mother ended their relationship, and Mother and W.G. went to live with Grandparents. Around June 2007, Father and Mother went to court to resolve issues regarding child support and W.G.’s medical bills.¹

In June 2007, Father stopped working. By Summer 2008, Father was close to \$1,500 “in the hole” on W.G.’s unpaid medical bills. (Tr. at 51.) In August 2008, Father applied for disability benefits through the Veteran’s Administration (“VA”).²

¹ W.G. was insured through Mother’s employer-sponsored insurance policy.

² Father served in the Marine Corp’s combat infantry from 2001 to 2005. Upon returning to the United States in February 2005, Father was diagnosed with post-traumatic stress disorder (“PTSD”) and depression and

At the end of August 2008, Mother approached Father about having Grandparents adopt W.G. On September 3, 2008, Father and Mother met with Grandparents to discuss the possible adoption. During this meeting, which lasted for approximately one and one-half hours, Father, Mother, and Grandparents reviewed a copy of the adoption consent, and Father asked questions about the adoption and post-adoption contact. The parties agreed that Father would have some sort of visitation with W.G. after the adoption so that W.G. would continue to know his father. The parties did not put their agreement regarding post-adoption contact in writing.

The consent to adoption form discussed by the parties provided:

I, [Father], upon being duly sworn upon my oath, state:

1. That I am an adult, over the age of eighteen years.
2. That I am the biological father of the minor child named [W.G.] born . . . in the . . . State of Indiana.
3. That I have been advised that [Grandfather] and [Grandmother], have filed a petition for the adoption of my minor child.
4. That I believe the adoption of my child would be in the best interest of the child.
5. That I hereby consent to the child being given into the care, custody and

received medical and psychiatric treatment through the VA hospital. At some point prior to Father's August 2008 disability application, Father had already been approved to receive disability benefits due to his service related conditions of PTSD and depression, which were found to be 70% disabling, and tinnitus, which was found to be 10% disabling. Father's August 2008 disability claim was approved in February 2009, and he was granted entitlement to individual "unemployability" benefits as of the date of his August 2008 application. (Ex. 2.) As part of his February 2009 determination, the VA continued the 70% rating on Father's PTSD and depression and 10% on the tinnitus but determined that he was entitled to an additional disability rating of 10% for chondromalacia in his right knee.

control of the adopting parties upon their promise to give the child a proper home, that I hereby consent to the adoption of the child and **I SPECIFICALLY WAIVE ANY AND ALL FURTHER NOTICE** of any adoption proceedings involving said child.

6. That I understand that the execution of this Waiver of Notice and Consent will result in a complete termination of my parental rights upon the entry of the final decree of adoption; and that when the Court so decrees, the child shall become the child of the adoptive parents.

7. That I am not under the influence of any alcohol or drugs at time of the signing of this Waiver of Notice and Consent; that I have not received, nor have I been promised, any money from the adoptive parents or any other party on their behalf either directly or indirectly; that my legal rights have been explained to me; and that I am fully aware of the legal consequences of my signing this Waiver of Notice and Consent.

8. That this consent to adoption is made after due consideration and deliberation.

9. That I am of sound mind and body, that I am fully aware of all implications of this consent, and that my signing of this consent has been fully explained to, discussed with me.

10. THAT I UNDERSTAND THAT THIS CONSENT IS FINAL AND IRREVOCABLE UPON MY SIGNING OF IT.

(Appellants' App. at 11-12.)

Father took the adoption consent form but did not discuss it with an attorney or any family member. On September 10, 2008, Father took the consent to a bank, where he signed it and had it notarized.³ Father also signed an accompanying affidavit, in which he acknowledged that he “freely and voluntarily signed” the consent, that he had given the matter “sufficient consideration[,]” and that “no duress or undue influence” was involved with his signing of the consent. (Appellants' App. at 13.)

³ Mother signed the consent form that same day.

Upon receiving Father's consent form, Grandparents filed a petition to adopt W.G. On October 28, 2008, the trial court held a hearing on Grandparents' petition and granted their petition to adopt W.G.

Prior to signing the consent to adoption, Father had visitation with W.G., which consisted of bi-weekly visits with W.G. and Mother at an aquatic park and visiting W.G. during W.G.'s bi-weekly weekend visits with Father's mother ("Paternal Grandmother") and step-father. After the adoption, Father continued his visits with W.G. at the aquatic center and at Paternal Grandmother's house until December 2008. Father did not have visitation with W.G. during January through March 2009 due to health issues in Grandmother's family, but he did have visitation in April and May 2009.

On June 30, 2009, more than nine months after he had signed the adoption consent and eight months after the adoption decree had been entered, Father filed a Motion for Relief from Judgment, in which he attacked his adoption consent and sought to have the trial court set aside the adoption decree. In his Trial Rule 60(B) motion, Father argued that he lacked the capacity to sign the adoption consent and that Grandparents committed fraud by promising and then not allowing him to have post-adoption visitation.

The trial court held a hearing on Father's motion on November 4, 2009. During the hearing, Father attempted to prove that he either lacked the capacity to understand and sign the consent or that Grandparents had committed fraud by promising to allow him to have future visitation with W.G. following the adoption. As to the latter, Father testified that he would not have signed the adoption consent if Grandparents had not promised him that he

could have post-adoption visitation. In regard to his capacity to consent, Father introduced his VA psychiatric records into evidence to show that he was on psychiatric medication at the time he signed the consent. Father also presented testimony from his VA psychiatrist who testified that some of Father's psychiatric medications had the ability to affect his judgment. The psychiatrist further testified that she was surprised when Father told her in March 2009 that he had signed the adoption consent because he had always expressed a desire to have visitation with his son and that Father's statements to her that he would still be able to see his son led her to question whether he understood the consent.

On December 16, 2009, the trial court, pursuant to Father's request, entered findings of fact and conclusions of law and granted Father's motion to set aside the adoption decree based on Father's allegations that Grandparents had committed fraud by promising him post-adoption visitation with W.G. The trial court conclusions of law provided, in relevant part:

It appears that Father's main thrust is that he is not receiving his promised visitation with [W.G.]. Father did not make any complaints about the adoption; his request is to continue to be a part of [W.G.]'s life.

Father's petition is not grounded in the allegation that his post adoption "oral" contract was not being followed pursuant to I.C. [§] 31-19-16-2, most likely because there was never such a document reduced to writing. Moreover, if such a contract is not created, the parent who finds himself or herself in shoes similar to Father has no remedy under I.C. [§] 31-19-16-2. See *In Re Visitation of A.R.[.]*, 723 N.E.2d 476 (Ind. Ct. App. 2006).

Father places quite a bit of his case that [sic] he was unable to consent due to his drug intake, as prescribed by his Veterans Administration doctor. He was over eighteen (18) years old, not under a guardianship, had ample time to reflect on the conversation with Grandparents prior to signing the consent. While Father invites the Court to find this as a reason for invalidating the consent, the Court declines to analyze the case on this issue. To do such would open the barn door for all litigants that happen to take, whether lawfully or

unlawfully, such medications to attempt to remove themselves from liability or responsibility.

Here, Father challenges the consent pursuant to T.R. 60(B), which has a much different analysis. Under T.R. 60(B)(3), fraud, misrepresentation or misconduct of the adverse party must be analyzed. Here, the adverse party, the Grandparents, told Father that everything was going to remain the same as far as his rights to see [W.G.].

* * * * *

Fraud is defined as a knowing, intentional misrepresentation of fact relied upon by another party to that party's detriment. In Re Adoption of T.D., 622 N.E.2d 921 (Ind. 1993).

Father's position regarding [W.G.] is confirmed with the detailed notes that his psychiatrist indicated that he wanted more time with [W.G.].

The Court concludes that the consent to adoption as signed by Father was invalid due to the manner in which it was obtained. As such, the decree of adoption which was based upon said consent is hereby set aside.

Court orders the birth certificate, if changed as a result of the adoption decree, be changed back to show that [Father] is the father and [Mother] is the mother of [W.G.].

Father and Mother's rights, obligations and duties under the paternity action are restored.

(Appellee's App. at 9-10, Appellants' App. at 29-30.) Grandparents now appeal, and Father cross appeals.

Discussion and Decision⁴

I. Standard of Review

Grandparents appeal the trial court's findings and conclusions entered pursuant to Trial Rule 52 in which the trial court granted Father's Trial Rule 60(B) motion to set aside the adoption decree based on fraud.

When reviewing a trial court's decision in an adoption proceeding, we will not disturb

⁴ Before we address the issues in this appeal and cross-appeal, we pause to discuss some deficiencies in this appeal that have impeded our appellate review.

Grandparents originally did not comply with Appellate Rule 49(A) because they filed their Appellants' Brief without an Appellants' Appendix. Although Father did file an Appellee's Appendix, his appendix presented only the chronological case summary and the trial court's order on appeal. Because our review of the trial court's ruling setting aside Father's adoption consent and the adoption decree is limited to the evidence designated by the parties, it is incumbent upon the parties to present us with a complete appellate appendix.

Because we prefer to decide issues based on their merits and in an effort to conduct a meaningful appellate review, we ordered Grandparents to submit an Appendix that contained all documents necessary for resolution of the issue raised on appeal and that otherwise complied with the Appellate Rules. The Appendix Grandparents tendered in response to this order did not comply with the Appellate Rules, and we issued a second order to Grandparents. They ultimately filed a rule-compliant Appendix. We strongly caution both parties' counsel to familiarize themselves with the appellate rules governing the filing of appendices (as well as all other appellate rules).

Appellants also failed to comply with the appellate rules relating to briefs and motions. Appellants failed to include a copy of the trial court's order being appealed in their Appellants' Brief as required by Appellate Rule 46(A)(8)(10), and Appellants requested oral argument by simply typing "ORAL ARGUMENT REQUESTED" on the cover of the Appellants' Brief instead of filing a formal written motion pursuant to Appellate Rule 34.

Another deficiency in this appeal relates to the trial court's findings of fact and conclusions of law entered pursuant to Trial Rule 52. Although not raised by the parties, we find it necessary to comment on the propriety of the trial court's findings of fact. The majority of the findings merely recites witnesses' testimony and provides that a certain witness "testified that . . ." or "indicated that . . ." (See Appellee's App. at 6-9, Appellants' App. at 26-29.) Statements of this kind are "not findings of basic fact in the spirit of the requirement." Parks v. Delaware County Dep't of Child Services, 862 N.E.2d 1275, 1279 (Ind. Ct. App. 2007) (quoting Perez v. U.S. Steel Corp., 426 N.E.2d 29, 33 (Ind. 1981)). "A court . . . does not find something to be a fact by merely reciting that a witness testified to X, Y, or Z." In re Adoption of T.J.F., 798 N.E.2d 867, 874 (Ind. Ct. App. 2003) (citing Perez, 426 N.E.2d at 33). "[F]indings which indicate that the testimony or evidence was this or the other are not findings of fact." Parks, 862 N.E.2d at 1279 (citation and quotation marks omitted). Rather, "a finding of fact must indicate, not what someone said is true, but what is determined to be true, for that is the trier of fact's duty." Id. (citation and quotation marks omitted). That said, because the parties are aware of the evidentiary bases upon which the ultimate finding rests and have been able to formulate specific arguments on appeal, we will not remand and will instead review the merits of the parties' arguments.

that ruling unless the evidence at trial leads to but one conclusion and the trial court reached the opposite conclusion. In re Adoption of M.L.L., 810 N.E.2d 1088, 1091 (Ind. Ct. App. 2004). We will not reweigh the evidence or assess the credibility of witnesses. Id. However, we owe no deference to the trial court's legal conclusions. In re Adoption of M.M.G.C., 785 N.E.2d 267, 269 (Ind. Ct. App. 2003).

Similarly, a trial court's decision whether to set aside a judgment under Trial Rule 60(B) is given substantial deference on appeal and will be reviewed for an abuse of discretion. Involuntary Termination of Parent-Child Relationship of K.E. v. Marion County Office of Family and Children, 812 N.E.2d 177, 179 (Ind. Ct. App. 2004), trans. denied. Upon a motion for relief from judgment, the burden is on the movant to show sufficient grounds for relief under Indiana Trial Rule 60(B). In re Paternity of Baby Doe, 734 N.E.2d 281, 284 (Ind. Ct. App. 2000).

At Father's request, the trial court issued findings of fact and conclusions of law pursuant to Indiana Trial Rule 52. When reviewing a judgment based upon findings, we first determine whether the evidence supports the findings and then determine whether the findings support the judgment. In re Adoption of A.S., 912 N.E.2d 840, 851 (Ind. Ct. App. 2009), trans. denied. We will set aside a trial court's findings of fact and judgment only if they are clearly erroneous. Id. Findings of fact are clearly erroneous when the record lacks any reasonable inference from the evidence to support them and the judgment is clearly erroneous if it is unsupported by the findings and conclusions thereon. Id.

II. Analysis

Capacity to Consent

At the trial court level, Father attacked his adoption consent and sought to set aside the adoption decree on the alternative bases that either: (1) he did not have the capacity to consent to the adoption due to his medication use; or (2) Grandparents procured his consent to the adoption by fraud (i.e., that they promised to give him visitation with W.G. following the adoption). Although the trial court ruled in Father's favor on his motion for relief from judgment on the basis of fraud, he now cross-appeals the trial court's ruling on his capacity to consent.

Because a consent to adoption is a contract, the principles of contract law can provide guidance under the facts of this case.⁵ With regard to an individual's mental capacity to contract, we have stated that

[t]he test for determining a person's mental capacity to contract is whether the person was able to understand in a reasonable manner the nature and effect of his act. In order to avoid a contract, the party must not only have been of unsound mind, but also must have had no reasonable understanding of the contract's terms due to his instability. The acts or deeds of a person of unsound mind whose unsoundness of mind has not been judicially ascertained and who is not under guardianship are merely voidable and not absolutely void, and are subject to ratification or disaffirmance on removal of the disability.

Wilcox Mfg. Group, Inc., v. Marketing Services of Indiana, Inc., 832 N.E.2d 559, 562 (Ind. Ct. App. 2005) (internal citations omitted). Additionally, it is well settled under Indiana law

⁵ Father cites to a definition of "incapacitated person" that is part of the statutory scheme for guardianships. Because we are not reviewing an order regarding a guardianship and because this definition "is limited" to the article on guardianships, see Ind. Code § 29-3-1-1, we decline to apply this definition.

that a person is presumed to understand the documents that he signs. Robert's Hair Designers, Inc. v. Pearson, 780 N.E.2d 858, 869 (Ind. Ct. App. 2002).

Father argues that his use of medication rendered him incapacitated to understand the adoption consent because he believed he was going to still have visitation with W.G. Father argues that the trial court erred because it “refused to reach the issue of incapacity[.]” Appellants’ Br. at 10. We disagree.

A review of the trial court’s order reveals that the trial court did address Father’s incapacity issue. The trial court made findings addressing Father’s medication use and its potential effects. Additionally, the trial court addressed Father’s age, lack of guardianship, and ability to discuss and review the consent form prior to signing it. The trial court ultimately and effectively concluded that Father had not met his burden to prove that he lacked the capacity to consent to the adoption, and it did not grant relief based on this argument.

Indeed, the record supports the court’s conclusion. It reveals that Father, who was over eighteen years old and not under a guardianship, first discussed with Mother the possibility of Grandparents adopting W.G. and then later reviewed and discussed the consent form with Mother and Grandparents when they met to discuss the adoption. Furthermore, the language of the consent form was straightforward and explicit about the consequences of signing the consent. Father testified that he could have, but did not, consult an attorney regarding the adoption consent and that he remembered signing the form and having it notarized one week after receiving it. Father further testified that although Grandparents had

indicated that they would put a visitation provision in writing, he was “naïve and stupid” and chose not to wait for that memorialization to occur and went ahead and signed the consent to adoption. (Tr. at 58-59.) Father’s own testimony reveals that, despite his use of medication, he still had reasonable understanding of the consent form. Accordingly, the trial court did not err in its ruling on Father’s capacity argument.⁶

Fraud

Turning to Grandparents’ issue on appeal, they argue that the trial court erred by granting Father’s Trial Rule 60(B) motion for relief from judgment based on fraud because their statements regarding visitation with W.G. involved future conduct and not past or existing fact, and therefore, did not satisfy the elements of fraud.

Although public policy disfavors revocation of an adoption, an order of adoption is a judgment and may be set aside pursuant to Indiana Trial Rule 60(B). In re Adoption of T.B., 622 N.E.2d 921, 924 (Ind. 1993). Trial Rule 60(B)(3) creates a limited exception to the general rule of finality of judgments and enables a court to grant relief from an otherwise final judgment due to fraud, misrepresentation, or misconduct of an adverse party. Outback Steakhouse of Florida, Inc. v. Markley, 856 N.E.2d 65, 72-73 (Ind. 2006). “In order to set aside the order of adoption based on fraud, there must be a material misrepresentation of past or existing fact made with knowledge or reckless disregard for the falsity of the statement, and the misrepresentation must be relied upon to the detriment of the relying party.” In re

⁶ Interspersed with his argument regarding capacity, Father also states that his consent was not voluntary. Aside from merely asserting such to be so, Father makes no cogent argument relating thereto. According, he has waived any such argument. See Ind. Appellate Rule 46(A)(8)(a).

Adoption of T.B., 622 N.E.2d at 925 (internal quotations and citations omitted); see also Mariga v. Flint, 822 N.E.2d 620, 628 (Ind. App. Ct. 2005), trans. denied. “Actual fraud may not be based on representations of future conduct, on broken promises, or on representations of existing intent that are not executed.” Bilimoria Computer Systems, LLC v. America Online, Inc., 829 N.E.2d 150, 155 (Ind. Ct. App. 2005).

Father filed a motion for relief from judgment under Trial Rule 60(B)(3), arguing that the adoption decree should be set aside because Grandparents committed fraud during their September 3, 2008 meeting when they told him that he could have post-adoption visitation with W.G. While the trial court agreed with Father, we cannot.

The record reveals that during the September 3rd meeting, Grandparents told Father that he could have some sort of visitation with W.G. after the adoption so that W.G. would know Father. The parties did not put their agreement regarding post-adoption contact in writing. Grandparents’ statements regarding visitation with W.G. related to future conduct; they were not a misrepresentation of past or existing fact. See Bilimoria Computer Systems., 829 N.E.2d at 155. Because “[a] claim of fraud cannot be premised upon future conduct[.]” see Mariga, 822 N.E.2d at 629, Father cannot now attack Grandparents’ promise to give him future visitation with W.G. by raising a claim based on fraud. Indeed, Father cannot seek to set aside the adoption decree based on an oral promise of future or post-adoption contact.⁷

⁷ Even if Father had a written post-adoption contact agreement with Grandparents regarding post-adoption contact with W.G., who was less than two years of age at the time the adoption decree was entered, such an agreement could not include “visitation,” would not be enforceable, and would “not affect the finality of the adoption.” See Ind. Code § 31-19-16-9. Moreover, even if W.G. had been two years old at the time of the adoption decree and Father had obtained a written post-adoption contact agreement pursuant to Indiana Code Section 31-19-16-2, failure to comply with such an agreement would not result in a revocation of the adoption

The trial court's grant of Father's Trial Rule 60(B)(3) motion to set aside the adoption decree based on fraud is clearly erroneous.⁸ Accordingly, we reverse the trial court's order revoking the adoption decree.

Conclusion

For the foregoing reasons, we reverse the trial court's order setting aside the adoption decree and remand with instructions for the trial court to take the necessary steps to reinstate the adoption decree.

Reversed and remanded.

RILEY, J., concurs.

KIRSCH, J., dissents with separate opinion.

decree. See Ind. Code § 31-19-16-8 (providing that “[a] court may not revoke an adoption decree because a birth parent or an adoptive parent fails to comply with a post[-]adoption contact agreement approved by a court under this chapter”).

⁸ Father suggests that the trial court also based its determination of fraud on his allegation that Grandparents committed fraud because they “falsely promised that their sole purpose of the adoption was to obtain health insurance for the child through their employer.” Appellee’s Br. at 6-7. A review of the trial court’s order, however, makes clear that its determination of fraud was based on Grandparents’ statements to Father about post-adoption visitation. Moreover, even if Grandparents did represent to Father that they would put W.G. on their health insurance if they adopted him, the record before us does not reveal that such a statement was false, and it relates to future conduct.

Finally, Father argues that if this Court does not affirm the trial court’s determination of fraud, then we could affirm the trial court’s finding of constructive fraud. The trial court’s order, however, makes clear that it granted Father’s motion to set aside based on actual fraud, not constructive fraud. Moreover, Father’s argument regarding constructive fraud is waived because it was not raised below and is instead raised for the first time in his Appellee’s Brief. See Carr v. Pearman, 860 N.E.2d 863, 871 n. 3 (Ind. Ct. App. 2007) (explaining that an appellant who presents an issue for the first time on appeal waives the issue for purposes of appellate review), trans. denied.

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KIRSCH, Judge, *dissenting*.

I respectfully dissent.

From the time of King Solomon to the present, deciding questions of law regarding the custody of children has required the blending of wisdom, patience and fundamental notions of equity.

Trial Rule 60 motions address the equitable grounds justifying relief from the legal finality of the final judgment. *Blichert v. Brososky*, 436 N.E.2d 1165, 1167 (Ind. Ct. App. 1982). On appeal, we give substantial deference to the trial court’s judgment, and our standard of review is limited to determining whether the trial court abused its discretion. *Bonaventura v. Leach*, 670 N.E.2d 123, 125 (Ind. Ct. App. 1996). An abuse of discretion is

where the trial court's judgment is clearly against the logic and effect of the facts and inferences supporting the judgment for relief. *Id.*

Here, the trial court saw and heard the testimony of the witnesses, determined the credibility of those witnesses, and entered its order concluding that Father's consent to the adoption here at issue had been procured by fraud. My colleagues do not contest the fact that the Grandparents promised to provide post-adoption visitation to Father. They do not contest that Father relied upon those promises in executing the consent to adoption. And, they do not contest that Father has sustained a detriment as a result of that reliance.

What my colleagues contest is whether Grandparents' promises to Father constitute fraud because they related to future conduct. They conclude that because grandparents' misrepresentations "related to future conduct[,] they were not a misrepresentation of past or existing fact." *Slip Opinion* at 13. They note that "[a]ctual fraud may not be based on representations of future conduct, on broken promises, or *on representations of existing intent that are not executed.*" *Id.*, quoting *Bilmoral Computer Systems, LLC v. America Online, Inc.* 829 N.E.2d 150, 155 (Ind. Ct. App. 2005).

While actual fraud may not be based on representations of existing intent that are not executed, it may be based upon *misrepresentations of existing intent*. Thus, while the ordinary failure to perform a promise may constitute a breach of contract, but not actionable misrepresentation, when it can be proven that the promise was made without any intention to perform, the making of the promise can constitute fraud under the theory that a person's statement of intention relates to an existing state of mind, which in turn constitutes an

existing fact. *See, Restatement of Law (Second), Torts, §§530, 544.*

Applying this principle here, if the grandparents' intent in entering into the oral agreement for visitation was to provide visitation as agreed and they later changed their mind, they did not commit fraud. But, if the grandparents did not have the intent to allow post-adoption visitation when they entered into the agreement, then there was a misrepresentation of existing intent sufficient to constitute fraud.

The trial court defined fraud "as a knowing, intentional misrepresentation of fact relied upon by another party to that party's detriment" and concluded "that the consent to adoption assigned by Father was invalid due to the manner in which it was obtained." *Amended Appellants' Appendix*, p.30. We presume the trial court correctly applied the law. *See In re Adoption of M.A.S.*, 815 N.E.2d 216, 218 (Ind. Ct. App. 2004).

In addition, I think there was a second misrepresentation here that justifies relief from judgment. This is the fraud on the court that occurred when Grandparents represented to the adoption court that Father's consent to the adoption was unconditional when they knew that it was not; rather, the consent was procured and subject to the oral agreement of the parties regarding visitation. I believe that the Grandparents' failure to disclose to the court their agreement to provide post-adoption visitation to Father in itself justifies granting relief from judgment.

Finally, while I believe the trial court was correct in granting relief under its inherent equity powers and in accordance with Trial Rule 60, I would alter the relief granted. Here, full relief can be granted to Father without setting aside his consent to the adoption. If the

present order of adoption is set aside and the parties' oral agreement regarding post-adoption visitation is reduced to writing and approved by the court, the trial court may enter a new order of adoption providing for adoption by Grandparents as agreed and granting Father the post-adoption contract privileges as promised pursuant to Indiana Code § 31-19-16-2.