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Consent not Required: Missouri's Adoption Laws for Incapacitated Adults. *DeBrodie v. Martin*

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NOTE

Consent Not Required: Missouri's Adoption Laws for Incapacitated Adults

DeBrodie v. Martin, 400 S.W.3d 881 (Mo. Ct. App. 2013).

KELLY COLLINS*

I. INTRODUCTION

In 2013, approximately 640,000 children spent time in foster care.¹ Mentally incapacitated children in foster care are considered “hard to place” and are often placed in an institutional setting.² When families petition for the adoption of these children, the court has to have permission from certain parties to the adoption, one of whom is the adoptee.³ The adoptee’s consent to the adoption is generally easily obtained, and courts, upon deciding the adoption is in the child’s best interests, will grant the adoption without issue.⁴

But what if the adoptee has been found to be legally incapable of giving consent? Does that mean that an incompetent adoptee cannot be adopted? That is the issue in a recent case from the Missouri Court of Appeals, Western District: *DeBrodie v. Martin*. The court held that mentally incapacitated adults are not required to give consent to their adoption.⁵ Since consent is not a necessary prerequisite, the circuit court can evaluate the fitness and propriety of the petitioning adoptive parents and determine whether the adoption is in the child’s best interests.⁶

This Note discusses Missouri’s adoption statutes, specifically adult adoptions and adoptions of mentally incapacitated adults, then explains the best interests of the child determination that courts perform when granting (or denying) a petition for adoption. Part II gives a brief background of the facts

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1. *Foster Care*, CHILDREN’S RIGHTS, <http://www.childrensrights.org/newsroom/fact-sheets/foster-care/> (last visited Feb. 17, 2015).

2. Suzanne Daley, *Disabled Foster-Care Youths Kept in New York Hospitals*, N.Y. TIMES (Apr. 11, 1989), <http://www.nytimes.com/1989/04/11/nyregion/disabled-foster-care-youths-kept-in-new-york-hospitals.html>.

3. See *DeBrodie v. Martin*, 400 S.W.3d 881, 887-88 (Mo. Ct. App. 2013).

4. See MO. REV. STAT. § 453.030.1-.2 (Supp. 2014).

5. *DeBrodie*, 400 S.W.3d at 889.

6. See *id.*

and circumstances surrounding *DeBrodie v. Martin*.⁷ Part III discusses the history of Missouri's adoption statutes, focusing on adult adoptions, and explains the best interests of the child analysis in custody proceedings.⁸ Part IV delves into the initial Missouri Court of Appeals' decision.⁹ Finally, Part V comments on the outcome upon remand and re-appeal of the case, and why both the circuit court and appellate court ultimately reached the incorrect decision and deprived DeBrodie of the chance to be a member of a loving, adopted family.¹⁰

II. FACTS AND HOLDING

In August 2011, Bryan and Mary Martin (hereinafter "the Martins") filed a petition to adopt twenty-five-year-old Carl Lee DeBrodie (hereinafter "DeBrodie").¹¹ DeBrodie was an incapacitated and disabled adult, and Mary Martin was formerly his legal guardian.¹² The Martins filed their petition in the Circuit Court of Cole County, Juvenile Division.¹³

In September 1999, Mary Martin had been appointed by the Circuit Court of Cole County to be the legal guardian of DeBrodie.¹⁴ DeBrodie was thirteen years old at the time and was considered to be a special needs child.¹⁵ In the guardianship judgment, the Cole County Circuit Court found that DeBrodie's biological mother and biological father were "unable or unfit to assume the duties of guardianship."¹⁶ The court determined that DeBrodie's biological mother was "severely, intellectually, psychologically, socially and occupationally impaired."¹⁷ In the guardianship judgment, the court found that there were sufficient grounds to terminate DeBrodie's mother's parental rights, but the court did not terminate her parental rights.¹⁸ The court determined that termination of parental rights was "not . . . in the child[]'s best interest."¹⁹

Until DeBrodie was eighteen years old,²⁰ Mary Martin continued to serve as his legal guardian.²¹ After DeBrodie turned eighteen, the Callaway

7. *See infra* Part II.

8. *See infra* Part III.

9. *See infra* Part IV.

10. *See infra* Part V.

11. *DeBrodie*, 400 S.W.3d. at 883.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* at 883 n.1.

19. *Id.*

20. Around 2004, DeBrodie would have turned eighteen years old. *See id.* at 883.

21. *See id.*

County Circuit Court adjudged him as an incapacitated and disabled adult.²² With this status, DeBrodie became a ward of the Public Administrator of Callaway County, Karen Digh Allen.²³ Ms. Allen (hereinafter the “Legal Guardian”) was appointed by the court to be DeBrodie’s legal guardian and conservator.²⁴ Beginning in 2010, and at the time of both proceedings detailed in this Note, DeBrodie lived at Second Chance, an institutionalized group home.²⁵

In the Martins’ 2011 adoption petition, they alleged that after they were no longer DeBrodie’s guardians they continued to provide DeBrodie with care and support.²⁶ The Martins’ petition also stated that “they had developed a ‘close familial relationship’ with DeBrodie that was important to his welfare and [that] they wanted to establish a legal familial relationship by adopting him.”²⁷ The Legal Guardian filed an objection to the Martins’ adoption petition.²⁸

Because DeBrodie was found to be an incapacitated and disabled adult, he was presumed to be incompetent to consent to the adoption.²⁹ Section 453.030 of the Missouri Revised Statutes requires the adoptee to consent to his or her adoption.³⁰ This section provides an exception to the consent requirement if the court determines the child does not have the mental capacity to consent.³¹ The Martins claimed that if the court were to determine that DeBrodie was competent to consent, DeBrodie would consent to the adoption of himself by the Martins.³² The Martins alleged that, if the court found DeBrodie was incompetent to consent, neither his consent nor the Legal Guardian’s consent was necessary for the court to grant the adoption.³³

The Legal Guardian requested the court appoint a guardian ad litem to represent DeBrodie’s interests in the adoption proceeding and the court granted that request.³⁴ The guardian ad litem, after performing an investigation, recommended that the court grant the Martins’ adoption petition.³⁵

22. *Id.*

23. *Id.*

24. *Id.*

25. *In re Adoption of DeBrodie*, No. WD 77236, 2014 WL 5462289, at *5 (Mo. Ct. App. Oct. 28, 2014), *reh’g and/or transfer denied* (Nov. 25, 2014), *transfer denied* (Feb. 3, 2015).

26. *DeBrodie*, 400 S.W.3d. at 883.

27. *Id.*

28. *Id.*

29. *Id.* The Martins acknowledged this presumption. *Id.*

30. MO. REV. STAT. § 453.030.2 (Supp. 2014).

31. *Id.*

32. *DeBrodie*, 400 S.W.3d at 883.

33. *Id.*

34. *Id.*

35. *Id.*

The court held an evidentiary hearing and then entered its judgment.³⁶ The court stated that it did not doubt that the Martins loved DeBrodie and wanted what was best for him, but nevertheless, the court denied the Martins' adult adoption petition.³⁷ The court found that DeBrodie's consent to adoption was required by Section 453.030.2 because DeBrodie was twenty-five at the time the adoption petition was filed and was therefore over the fourteen years of age requirement in the statute.³⁸ The exception to the consent requirement did not apply to DeBrodie because he was not a "child" within the statute's definition.³⁹ Because DeBrodie was legally incapacitated, he could not give his own consent, and the court found insufficient evidence to support a finding that DeBrodie could understand the legal significance of consenting to the adoption.⁴⁰

The Legal Guardian could not consent to DeBrodie's adoption either.⁴¹ The probate court had not authorized her to consent to the adoption and she did not try to get the authority from the probate court to do so.⁴² The court did take the guardian ad litem's recommendation of granting the adoption into account, but found that the court did not have the authority to disregard the Legal Guardian's decision.⁴³ Ultimately, the court stated that because "there was no consent from DeBrodie or [the] Legal Guardian," it could not "consider the fitness and propriety of the proposed adult adoption."⁴⁴

The Martins filed a post-trial motion and alleged that the court erred in finding that the adoption required consent from either DeBrodie or the Legal Guardian.⁴⁵ The court denied the Martins' post-trial motion,⁴⁶ and the Martins appealed.⁴⁷

III. LEGAL BACKGROUND

A. Missouri's Adoption Code

Like adoptions of minors, adult adoptions create a legally recognized familial relationship.⁴⁸ In Missouri, Section 453.030 states that written con-

36. *Id.*

37. *Id.* at 883-84.

38. *Id.* at 883 (citing MO. REV. STAT. § 453.030.2 (Supp. 2012) (stating that written consent is required if the adoptee is fourteen years of age or older)).

39. *Id.*

40. *Id.* at 883-84.

41. *Id.* at 884.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. Mandi Rae Urban, *The History of Adult Adoption in California*, 11 J. CONTEMP. LEGAL ISSUES 612, 612 (2000).

sent of the person to be adopted is required if the adoptee is fourteen years of age or older.⁴⁹ The section further states that the consent of the adoptee is not required if the court finds that such *child* does not have sufficient mental capacity to give his or her consent.⁵⁰ The statute does not clarify whether an adult who is mentally incapable of giving consent can be included in the exception to the consent requirement for an adoption.

The adoption code sets forth two definitions for the term “child.” Section 453.015(1) defines “child”⁵¹ as “any person who has not attained the age of eighteen years or any person in the custody of the division of family services who has not attained the age of twenty-one.”⁵² The definition from this section applies to Sections 453.010 to 453.400.⁵³ Section 453.015 does not state whether it includes mentally incapacitated adults in its definition of “child.”

The second definition for the term “child” appears in Section 453.090, which describes the legal inheritance rights of those adopted. In this section, “child” means “either a person under or over the age of eighteen years.”⁵⁴ Section 453.090 expressly limits its definition of “child” to this section.⁵⁵ Section 453.090 focuses on the relationship between the parents and the adoptee when defining “child,” rather than focusing on the age of the adoptee.

The exception to the consent requirement was added to Section 453.030.2 in 1947.⁵⁶ Before 1947, a general definitions statute had not yet been included in the adoption code, so Section 453.030.2’s use of “child” was not defined statutorily.⁵⁷ The only definition of “child” in the adoption code was found in Section 453.090 and was limited to just that section.⁵⁸

While there is limited case law about this subject, the cases that have opined on the matter clarify that a mentally incapacitated adult can be included in the definition of “child” within the adoption code.⁵⁹ Missouri’s case law has defined “child” by focusing on the familial relationship between parent and child, not the age of the adoptee.⁶⁰

49. MO. REV. STAT. § 453.030.2 (Supp. 2014).

50. *Id.* (emphasis added).

51. This section defines “minor” and “child” the same way. *See* MO. REV. STAT. § 453.015(1) (Supp. 2014).

52. *Id.*

53. MO. REV. STAT. § 453.015 (Supp. 2014). Note that Section 453.030 is included within the range of statutes to which this definition of “child” applies. *See id.*

54. MO. REV. STAT. § 453.090.5 (Supp. 2014).

55. *Id.*

56. *DeBrodie v. Martin*, 400 S.W.3d 881, 886 (Mo. Ct. App. 2013); *see also* MO. REV. STAT. § 453.030.2 (1947).

57. *DeBrodie*, 400 S.W.3d at 886.

58. *Id.*

59. *Id.*

60. *Id.* (citing *State ex rel. Buerk v. Calhoun*, 52 S.W.2d 742, 742 (Mo. 1932); *In re Moran’s Estate*, 52 S.W. 377, 378 (Mo. 1899)).

In 1932, *State ex rel. Buerk v. Calhoun* became the first case in Missouri to determine that the adoption code permitted an adult person to be adopted as the child of another person.⁶¹ In *Buerk*, the juvenile court dismissed the petition of a man trying to adopt an adult woman because the court held it lacked jurisdiction to hear the case.⁶² On appeal, the Supreme Court of Missouri looked to the then-current adoption statute to make its determination.⁶³ Section 14073 included the phrase “desiring to adopt another *person* as his child.”⁶⁴ This section did not mention an age limit or minority requirement.⁶⁵ Section 14074 included the phrasing “*child or person*.”⁶⁶ The court held that Sections 14073 and 14074 “manifest[ed] the general intent that any person, regardless of age, may be adopted as the child of another person.”⁶⁷

A Missouri case from 1899, *In re Moran*, served as the basis for the court’s decision in *Buerk*.⁶⁸ In *Moran*, David Moran and his then-wife Catherine adopted a twenty-two year old.⁶⁹ David remarried when Catherine died, and his new wife brought suit to invalidate the adoption of the twenty-two year old when she was dividing David’s estate.⁷⁰ The court held that the statute used the word child in the sense of its relation to the word parent and did not concern the age of the “child” being adopted.⁷¹ The court stated that “[t]he law has placed no limitation as to the age of the child to be adopted, and there is no reason why such a restriction should be placed on the choice of the adopting parent.”⁷²

B. Best Interests of the Child Standard

The “best interests of the child” standard is used in Missouri to determine whose custody a child should be in.⁷³ Section 453.005.1 provides that adoption and foster care provisions “shall be construed so as to promote the best interests and welfare of the child in recognition of the entitlement of the

61. See *State ex rel. Buerk v. Calhoun*, 52 S.W.2d 742, 743 (Mo. 1932).

62. *Id.* at 742.

63. *Id.*

64. *Id.* (citing MO. REV. STAT. § 14073 (1929)).

65. See *id.*

66. *Id.* (citing MO. REV. STAT. § 14074 (1929)).

67. *Id.* at 743.

68. *Id.* at 742 (citing *In re Moran’s Estate*, 52 S.W. 377 (Mo. 1899)).

69. *In re Moran’s Estate*, 52 S.W. at 377.

70. *Id.* at 377-78.

71. *Id.* at 378.

72. *Id.*

73. See Lisa A. Brunner, *Circumventing the “Best Interests of the Child” Standard: Child Custody Law in Missouri as Applied to Homosexual Parents*, 55 J. MO. B. 200, 201 (1999). The article mainly discusses child custody in terms of dissolutions, but the same process of determining child custody occurs during adoptions. See *id.* at 200-01. The scope of this Note is limited to adoption proceedings.

child to a permanent and stable home.”⁷⁴ During these custody determination proceedings, the adoptee becomes a “ward[] of the court and the court steps in as *parens patriae* to represent [the adoptee’s] interests.”⁷⁵

In custody cases, the court considers several factors to determine which party will best serve the adoptee’s interests.⁷⁶ When determining what would be in a child’s best interests, a court should consider a multitude of factors and no single factor is outcome-determinative.⁷⁷ One court stated:

The factors to be considered in determining what is in the best interests of the child are legion. They vary from case to case. It is impossible to catalogue all the factors that may be involved. It is virtually impossible to assign a degree of weight to specific favorable and unfavorable factors. With the exception of an extreme adverse factor, no single factor can be absolute. Each case must be considered upon its own facts.⁷⁸

Some factors courts routinely consider when making the “best interests” determination are the overall home environment, the level of care the parents could provide the child, the stability of the home, the parenting skills of the proposed adoptive parent(s), a two-parent home with one parent being home for supervision, and a “bonding” between the potential custodial parents and the child.⁷⁹ Specifically, courts have noted that attention directed toward the adoptee’s mental development and education,⁸⁰ whether a parental relationship between the adoptive parents and the child has already been established,⁸¹ and the amount of time the adoptee was in the adoptive parents’ custody⁸² are important factors in a “best interests” determination. Arguably the most significant factor in determining whether the adoption is in the best interests of the child is the degree of bonding between the custodial parents and the child.⁸³

Courts consider all relevant factors and look at the record as a whole when making these determinations.⁸⁴ The court’s best interests of the child determination is based on the “totality of the circumstances.”⁸⁵

74. MO. REV. STAT. § 453.005.1 (Supp. 2014).

75. Brunner, *supra* note 73, at 201.

76. *See* Brunner, *supra* note 73, at 200.

77. *See* M.F. v. D.A.H., 1 S.W.3d 524, 532 (Mo. Ct. App. 1999).

78. *In re* L.W.F., 818 S.W.2d 727, 734 (Mo. Ct. App. 1991) (internal citations omitted).

79. *See* Adoption of T.E.B.R v. Aylward., 664 S.W.2d 609, 613 (Mo. Ct. App. 1984); *see also* J.L.H. v. Juvenile Officer, 647 S.W.2d 852, 859 (Mo. Ct. App. 1983); M.F., 1 S.W.3d at 533; Brunner, *supra* note 73, at 201-02.

80. *See* Adoption of T.E.B.R., 664 S.W.2d at 613.

81. *Id.*

82. M.F., 1 S.W.3d at 538.

83. *See id.* at 533.

84. *See* Brunner, *supra* note 73, at 202.

IV. INSTANT DECISION

On appeal, the Martins alleged the court erred in its interpretation of Missouri's adoption statutes.⁸⁶ The Martins argued that the adoption consent statute is ambiguous.⁸⁷ Specifically, the Martins claimed the "statute is ambiguous as to the consent required to adopt mentally incapacitated adults and that, to apply the statute constitutionally, [the appellate court] must interpret the statute as not requiring [DeBrodie] or [the] Legal Guardian's consent."⁸⁸

The Martins argued that the phrase "such child" in the second part of the sentence "refers back to 'the person sought to be adopted [who] is fourteen years of age or older.'"⁸⁹ Using this interpretation, the exception waives the consent requirement if the adoptee is fourteen years of age or older and is mentally incapacitated.⁹⁰ However, the Legal Guardian contended the phrase "such child" refers to adoptees fourteen or older who also meet the adoption code's definition of a "child."⁹¹ This interpretation would mean that only a mentally incapacitated person between the ages of fourteen and seventeen years of age is considered a "child" within the meaning of the statute.

A. Defining "Child" for Adoption Purposes

Chapter 453 contains two different definitions of "child" for adoptions.⁹² The first definition of "child" is found in Section 453.015.⁹³ Section 453.015 is a definitions statute that applies to Sections 453.010 to 453.400.⁹⁴ Section 453.015(1) states that the term "minor" or "child" refers to "any person who has not attained the age of eighteen years or any person in the custody of the division of family services who has not attained the age of twenty-one."⁹⁵ This definition of child is the narrower definition of the two in Chapter 453.⁹⁶ The second definition for "child" is found in Section 453.090.⁹⁷ Section 453.090 lays out the legal ramifications on inheritance rights for the adoptee.⁹⁸ This section also uses a broader definition of the term "child," but

85. *In re H.N.S.*, 342 S.W.3d 344, 351 (Mo. Ct. App. 2011) (citing *In re D.L.W.*, 133 S.W.3d 582, 585 (Mo. Ct. App. 2004)).

86. *DeBrodie v. Martin*, 400 S.W.3d 881, 884 (Mo. Ct. App. 2013).

87. *Id.* (citing MO. REV. STAT. § 453.030 (Supp. 2012)).

88. *Id.*

89. *Id.* at 885 (quoting § 453.030.2) (alteration in original).

90. *Id.*

91. *Id.* (citing § 453.030.2).

92. *Id.* (citing MO. REV. STAT. §§ 453.010, 453.090 (Supp. 2012)).

93. MO. REV. STAT. § 453.015 (2014).

94. *Id.*

95. § 453.015(1).

96. *DeBrodie*, 400 S.W.3d at 855 (citing § 453.015(1)).

97. MO. REV. STAT. § 453.090 (Supp. 2014).

98. *Id.*

that definition is limited just to this section.⁹⁹ According to Section 453.090, “child” refers to “either a person under or over the age of eighteen years.”¹⁰⁰

The court had to determine which definition of “child” to use when interpreting the adoption consent statute.¹⁰¹ The court stated Section 453.090.5’s definition of “child” is expressly limited to that section, while Section 453.030 is within the range of statutes to which Section 453.015’s definition applies.¹⁰² The appellate court held that it would use the narrower definition of “child” in Section 453.015 when interpreting the adoption consent statute.¹⁰³

When applying Sections 453.015’s definition of “child” to Section 453.030.2’s exception to the consent requirement for adult adoptions, the court found “only those mentally incapacitated persons who are between the ages of fourteen through seventeen are exempt from the consent requirement.”¹⁰⁴ The narrower definition of “child” does not allow mentally incapacitated adults to fall within the exception to the consent requirement.¹⁰⁵ When using the plain language of Section 453.030.2, the section seems to require all adults, including those who are mentally incapacitated, to consent before they can be adopted.¹⁰⁶

The plain language interpretation of Section 453.030.2 “essentially disqualifies from adoption mentally incapacitated adults like DeBrodie, who [are] presum[ptively] incompetent under Section 475.078.3¹⁰⁷ and whom the court found to be incapable of consenting.”¹⁰⁸ The Legal Guardian claimed the court should interpret the language of Section 453.030.2’s consent requirement differently than the plain language appeared to require.¹⁰⁹ The Legal Guardian argued the section should be inferred “as requiring *either* the

99. § 453.090.5.

100. *Id.*

101. *DeBrodie*, 400 S.W.3d at 885-86 (citing MO. REV. STAT. § 453.030 (Supp. 2012)).

102. *Id.* at 886.

103. *Id.* at 885 (citing MO. REV. STAT. §§ 453.015, 453.030, 453.090 (Supp. 2012)).

104. *Id.* (citing §§ 453.015, 453.030).

105. *Id.*

106. *Id.*

107. *Id.*; *see also* MO. REV. STAT. § 453.030.2 (Supp. 2014). Section 475.078.3 states, “A person who has been adjudicated incapacitated or disabled or both shall be presumed to be incompetent.” MO. REV. STAT. § 475.078.3 (Supp. 2014). Recall that the Circuit Court of Cole County found DeBrodie was “legally incapacitated and could not give his own consent . . . [And] there was no credible evidence to support a finding that DeBrodie understood the legal significance of a decision to consent to adoption.” *DeBrodie*, 400 S.W.3d at 883-84.

108. *DeBrodie*, 400 S.W.3d at 885.

109. *Id.*

adult adoptee's consent or, if the adult adoptee is incapable of consenting, the consent of the adult adoptee's legal guardian."¹¹⁰

The appellate court was not persuaded by the Legal Guardian's argument.¹¹¹ The court stated the plain language of Section 453.030.2 did not contain a provision for substituting the legal guardian's consent for the mentally incapacitated adult adoptee's consent.¹¹² The court instead held that Section 453.030.2 was ambiguous as to the consent requirement for adult adoptees who are mentally incapacitated.¹¹³

B. Resolving the Ambiguity of "Child" in the Consent Exception

The court stated that, "When construing an ambiguous statute, we 'may review the earlier versions of the law, or examine the whole act to discern its evident purpose, or consider the problem the statute was enacted to remedy.'"¹¹⁴ The statute should be read with other similarly related statutes when those related statutes help clarify the ambiguous statute's meaning.¹¹⁵ The court presumes that "consistent statutes relating to the same subject matter are intended to be read consistently and harmoniously in their many parts."¹¹⁶

In its decision, the court considered that the exception to the consent requirement was added to Section 453.030.2 in 1947.¹¹⁷ In 1947, a general definitions statute had not yet been included in the adoption code, so Section 453.030.2's use of the word "child" was not defined statutorily.¹¹⁸ The only definition of "child" in the adoption code was found in Section 453.090, but the definition was limited to just that section.¹¹⁹

The court then looked to case law to interpret the term "child" in the adoption code.¹²⁰ Case law had interpreted the word "child" to refer to the familial relationship between parent and child, not the age of the adoptee.¹²¹ In both of the relevant cases to this issue, the court had ruled that Missouri's adoption statutes allowed adult adoptions.¹²² In *Buerk*, the court held that

110. *Id.* (emphasis in original).

111. *Id.*

112. *Id.*

113. *Id.* at 885-86.

114. *Id.* at 886 (quoting *In re M.D.R.*, 124 S.W.3d 469, 472 (Mo. 2004) (en banc)).

115. *Id.* (citing *BASF Corp. v. Dir. of Revenue*, 392 S.W.3d 438, 444 (Mo. 2012) (en banc)).

116. *Id.* (citing *BASF Corp.*, 392 S.W.3d at 444).

117. *Id.*; see also MO. REV. STAT. § 453.030.2 (Supp. 2014).

118. *DeBrodie*, 400 S.W.3d at 886.

119. *Id.* (citing MO. REV. STAT. § 453.090 (1949)).

120. *Id.*

121. *Id.* (citing *State ex rel. Buerk v. Calhoun*, 52 S.W.2d 742, 742 (Mo. 1932); *In re Moran's Estate*, 52 S.W. 377, 378 (Mo. 1899)).

122. *Id.* (citing *State ex rel. Buerk*, 52 S.W.2d at 742-43; *In re Moran's Estate*, 52 S.W. at 377-78).

“the term ‘child’ in the adoption statutes is used in the sense of its relation to the word ‘parent,’ and does not signify minority.”¹²³

In 1982, the adoption code’s general definitional statute was enacted.¹²⁴ At its enactment, the term “child” was not included in the definitions statute; only the term “minor” was defined.¹²⁵ The statute defined “minor” as a person under eighteen years of age.¹²⁶ Section 453.015(1) was amended in 1997 to say that both “minor” and “child” referred to persons under eighteen.¹²⁷

The court then looked to other statutes within the adoption code that included adult adoptees in the definition of “child.”¹²⁸ For example, Section 453.010 lays out the venues for adoptions,¹²⁹ and the court found that the term “child” in this section must include adult adoptees because it is in the only venue statute in the adoption code.¹³⁰ The court then looked at Section 453.080, which dictates what must be included in an adoption decree.¹³¹ The court stated, “[Section 453] is the only statutory provision concerning the contents of an adoption decree; therefore, it must apply to all adoptions, regardless of the age of the adoptee.”¹³² Based on the analysis of the other statutory sections, the court reasoned with regard to Section 453.090 – the section in direct question in this case – that “because Section 453.090 provides that the consequences of adoption apply to minor and adult adoptees, it is reasonable that the legislature would require the court to declare the adoptee – regardless of the adoptee’s age – the ‘child’ for the petitioners for all legal intents and purposes, as the petitioners are now the adoptee’s ‘parents.’”¹³³

The final statute the court looked at was Section 453.170, which discusses Missouri’s recognition of out-of-state adoptions of “children” and has been interpreted to include both minors and adults.¹³⁴ The court reasoned that because Missouri focuses on the parent-child relationship, and not the adoptee’s age, “it would be illogical for the state to recognize only minor adoptions and not adult adoptions from other states and foreign countries.”¹³⁵

The court ultimately held that the term “child” in Section 453.030.2’s exception to the consent requirement refers to both mentally incapacitated

123. *Id.* (quoting *State ex rel. Buerk*, 52 S.W.2d at 742) (internal quotation marks omitted).

124. *Id.*; see also MO. REV. STAT. § 453.015(1) (Supp. 1982).

125. *DeBrodie*, 400 S.W.3d at 886; see also § 453.015(1).

126. *DeBrodie*, 400 S.W.3d at 886; see also § 453.015(1).

127. *DeBrodie*, 400 S.W.3d at 886; see also MO. REV. STAT. § 453.015(1) (Supp. 1997).

128. *DeBrodie*, 400 S.W.3d at 886.

129. See MO. REV. STAT. § 453.010 (Supp. 2014).

130. *DeBrodie*, 400 S.W.3d at 886.

131. See MO. REV. STAT. § 453.080.3 (Supp. 2014).

132. *DeBrodie*, 400 S.W.3d at 887.

133. *Id.*

134. *Id.* (citing MO. REV. STAT. § 453.170 (Supp. 2012)).

135. *Id.*

minors and mentally incapacitated adults.¹³⁶ The court concluded that Missouri Revised Statutes Sections 453.010, 453.080.3, and 453.170 include adult adoptees in the definition of “child,” even though those sections are included in the range of statutes to which Section 453.015(1)’s under-eighteen definition of “child” clearly applies.¹³⁷ The court stated that this interpretation “furthers the adoption code’s purpose of allowing both minors and adults to be adopted and to receive the benefits of being adopted.”¹³⁸ The court noted that restricting the term “child” to include only mentally incapacitated minors would produce an “absurd” result:¹³⁹ it would effectively prevent mentally incapacitated adults incapable of giving consent from being adopted.¹⁴⁰

C. Legal Guardian’s Consent Is Not a Substitute for Mentally Incapacitated Adult Adoptee’s Consent

The Legal Guardian argued that the court could avoid an “absurd” result by interpreting Section 453.030.2 to require the legal guardian’s consent as a substitute for the mentally incapacitated adult’s consent.¹⁴¹ The court found no support for this interpretation, neither explicitly nor implicitly, in the adoption code.¹⁴² The court also stated that requiring the legal guardian’s consent in order for the court to proceed on an adoption petition was contrary to Section 453.060.4.¹⁴³

Section 453.060.4 provides that “so long as all of the required parties listed [in] Section 453.060.1 have been served, the court can act on [any] adoption petition without the consent of *any party* except that of a parent where the adoptee is a minor.”¹⁴⁴ According to Section 453.060.1, the legal guardian must be served with the adoption petition,¹⁴⁵ but Section 453.060.4 does not require the legal guardian’s consent before the court can proceed with the adoption petition.¹⁴⁶ The court stated that the “implication of Section 453.060.4 is that the decision as to whether an adoption should be granted does not rest upon the consent of the adoptee’s legal guardian. Rather, this decision rests upon the court’s determination that the adoption would be in the adoptee’s best interests.”¹⁴⁷

136. *Id.*

137. *Id.* (citing MO. REV. STAT. §§ 453.010, .015(1), .080.3, .170 (Supp. 2012)).

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.* (citing MO. REV. STAT. § 453.060.4 (Supp. 2012)).

144. *Id.*

145. *Id.* at 888 (citing MO. REV. STAT. § 453.060.1 (Supp. 2012)).

146. *Id.* (citing MO. REV. STAT. § 453.060.4 (Supp. 2012)).

147. *Id.*

The court stated that the Supreme Court of Missouri had recognized that in adoption statutes, the court's determination about the "best interests of the adoptee" trumped the "legal guardian's decision to give or refuse consent."¹⁴⁸ The importance of the court's "best interests of the adoptee" determination was apparent from the statutory power the legislature had expressly granted to the juvenile court in adoption proceedings.¹⁴⁹ Section 211.031.1(4) granted the juvenile court exclusive jurisdiction over adoption proceedings.¹⁵⁰ Section 453.030.1 allowed the court to give or withhold its approval for an adoption "as the welfare of the person sought to be adopted may, *in the opinion of the court*, demand."¹⁵¹

Ultimately, the court determined that "[i]n light of the adoption code as a whole, its history, and its purpose," Section 453.030.2's language¹⁵² requires written consent in all cases.¹⁵³ However, the court found that written consent is not required where the proposed adoptee is fourteen years of age or older and "where the court finds that such child has not sufficient mental capacity to give [consent]"; this interpretation excepts "from the consent requirement *all* mentally incapacitated persons age fourteen and older whom the court has found to be unable to give consent."¹⁵⁴ The court would not construe the adoption code to require the legal guardian's consent for adoption;¹⁵⁵ the legal guardian is entitled to notice and opportunity to be heard, but the legislature entrusted the court, not the legal guardian, to make the "best interests of the adoptee" determination.¹⁵⁶

The court held the circuit court erred in finding that DeBrodie's consent or the Legal Guardian's consent was required before the court could proceed with the adoption petition.¹⁵⁷ The Cole County Circuit Court erred because it

148. *Id.* (citing *Duren v. Hicks*, 200 S.W.2d 343, 344 (Mo. 1947) (en banc)). In *Duren v. Hicks*, the Supreme Court of Missouri determined that the court would be "a mere figurehead with no authority or discretion" unless the court made the decision that the adoption was in the best interests of the child. 200 S.W.2d at 347. The court in *Duren* further stated that the legal guardian is "entitled to notice, and to appear, dissent and defend in the adoption proceeding, yet he cannot control it." *Id.* The appellate court in the present case determined that "based on the 1939 statutes, *Duren's* reasoning [was] equally applicable to the current version of the adoption statutes." *DeBrodie*, 400 S.W.3d at 889.

149. *DeBrodie*, 400 S.W.3d at 888.

150. *Id.* (citing MO. REV. STAT. § 211.031.1(4) (Supp. 2012)). The statute granted family courts exclusive jurisdiction over adoption proceedings in circuits that have a family court. *Id.*

151. *Id.* at 889 (quoting MO. REV. STAT. § 453.030.1 (Supp. 2012)) (emphasis added) (internal quotation marks omitted).

152. The court was specifically referring to the language: "The written consent . . . to give the same."

153. *Id.*

154. *Id.* (emphasis in original).

155. *Id.*

156. *Id.*

157. *Id.*

did not hold that DeBrodie fell under the consent exception requirement for adoption and held that either DeBrodie or the Legal Guardian was required to give consent for DeBrodie's adoption.¹⁵⁸ The appellate court, therefore, reversed the judgment denying the Martins' adoption petition and remanded the case for further proceedings consistent with the opinion, including the determination of whether the adoption was in DeBrodie's best interests.¹⁵⁹

V. COMMENT

The appellate court correctly held that Section 453.030.2 was ambiguous as to the consent requirement for mentally incapacitated adult adoptees and that the statute's exception for the consent requirement should apply to mentally incapacitated adult adoptees. The definition of "child" applicable to Section 453.030 states that a child is someone who is not yet eighteen years of age.¹⁶⁰ When applying that definition to Section 453.030's exception to consent, only mentally incapacitated persons who are between fourteen and seventeen years of age are exempt from the consent requirement. Thus, seemingly, according to the statute, consent would be required for all mentally incapacitated persons being adopted. This interpretation would require the consent of all adults, even mentally incapacitated adults, before they could be adopted. This interpretation, if adopted by other circuits in Missouri, would effectively disqualify any mentally incapacitated adults from adoption, which is an unjust outcome.

The appellate court here correctly interpreted the term "child" to refer to minor and adult adoptees. The appellate court found the adoption code's purpose was to allow adoptees to receive the benefits of being adopted.¹⁶¹ The adoption code's purpose would not be furthered unless both minors and adults could be adopted and receive the benefits of adoption.¹⁶²

The appellate court then correctly applied its interpretation of "child" to Section 453.030.2's exception to the consent requirement when it determined the exception applies to mentally incapacitated adults as well.¹⁶³ This interpretation also furthers the adoption code's purpose. By not requiring the consent of mentally incapacitated adults, the appellate court permitted mentally incapacitated adults to become members of loving families. Mentally incapacitated adults deserve a chance to receive the benefits of adoption, just as mentally incapacitated minors do.

158. *Id.*

159. *Id.* at 889-90.

160. MO. REV. STAT. § 453.015(1) (Supp. 2013).

161. *DeBrodie*, 400 S.W.3d at 887.

162. *Id.*

163. *See id.* at 885.

A. On Remand and Re-Appeal: In re Adoption of DeBrodie

After being remanded to the circuit court, the case was re-appealed to the Missouri Court of Appeals, Western District.¹⁶⁴ In the original adoption proceeding, the circuit court denied the Martins' petition to adopt DeBrodie.¹⁶⁵ The original appellate opinion, *DeBrodie v. Martin*, remanded the case back to the circuit court "to consider the fitness and propriety of the adoption."¹⁶⁶ On remand, the circuit court once again denied the Martins' petition for adoption.¹⁶⁷ The court held that the Martins "failed to establish by clear and convincing evidence the fitness or propriety of the adoption or that the welfare of [DeBrodie] *demand*ed that the adoption be granted."¹⁶⁸

In the second appeal, the Martins argued two points. First, that the circuit court erred by requiring the standard of proof to be clear and convincing evidence.¹⁶⁹ The Martins asserted the correct standard of proof was preponderance of the evidence and that the adoption was in the best interest of the adoptee.¹⁷⁰ The Martins argued that preponderance of the evidence was the correct standard of proof because grounds for termination of parental rights are not an issue in adult adoption cases.¹⁷¹ Since termination of parental rights is not an issue, parental consent and joinder of a parent as a party are not required, meaning a lower standard of proof is appropriate.¹⁷²

Second, the Martins asserted that the circuit court erred in denying the adoption because the court "misapplied the adoption law to the evidence and its own findings."¹⁷³ The circuit court held that the Martins did not prove that DeBrodie's welfare *demand*ed that the Martins' adoption petition be granted.¹⁷⁴ The court found this even though the Martins argued that the circuit court previously "found the Martins fit to be adoptive parents, to clearly have a significant relationship with and affection for [DeBrodie], and to be more than willing to advocate for him."¹⁷⁵

164. *In re Adoption of DeBrodie*, No. WD 77236, 2014 WL 5462289 (Mo. Ct. App. Oct. 28, 2014), *reh'g and/or transfer denied* (Nov. 25, 2014), *transfer denied* (Feb. 3, 2015).

165. *Id.* at *1.

166. *Id.*

167. *Id.*

168. *Id.* (emphasis added).

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.* (emphasis added).

175. *Id.* at *5.

B. The Appellate Court Erred in Affirming a New Heightened Standard for Termination of Parental Rights in Adoption Cases Involving Mentally Incapacitated Adults

On the second appeal, the appellate court affirmed the circuit court's judgment requiring clear and convincing evidence that DeBrodie's adoption would be fit and proper.¹⁷⁶ The appellate court held the Martins were required to rebut a presumption that favors familial bonds by clear and convincing evidence. Then – if that presumption was rebutted – the Martins were required to show, by a preponderance of the evidence, that permanent severance of the legal parent-child relationship was in DeBrodie's best interest.¹⁷⁷ The effect of the court's decision was that DeBrodie was deprived of the opportunity to leave institutionalization and to be adopted by a loving family.

On remand, the circuit court was to “consider other evidence to ensure the propriety of the adoption.”¹⁷⁸ The inquiry into whether the adoption was in the best interests of DeBrodie, using a preponderance of the evidence standard of proof, should have provided sufficient evidence; instead, the circuit court decided that a heightened burden of proof was required for the fitness and/or propriety determination.¹⁷⁹ The appellate court held that justice required a heightened standard of proof for the termination of parental rights for mentally incapacitated adoptees.¹⁸⁰ By applying this heightened standard only to situations involving mentally incapacitated adult adoptees, the court may have run afoul of the Americans with Disabilities Act (“ADA”) and the Equal Protection Clause. This leads to a harsh result for all mentally incapacitated adults with prior foster parents who want to adopt them.

The appellate court relied heavily on one case, *Santosky v. Kramer*.¹⁸¹ This case concerned termination of parental rights of a minor rather than an adoption, which was the primary concern in the present case. Different standards of proof are required in each proceeding. In a termination of parental rights case involving a minor child, the burden of proof is clear and convincing evidence, which is a heightened standard. In an adoption case, the standard of proof is preponderance of the evidence that the adoption is in the “best interests” of the adoptee.

A heightened burden of proof for termination of parental rights in all adult adoption cases is inconsistent with Missouri law. Raising the burden is unnecessary and inhibitory to the adult adoption process. Missouri law requires clear and convincing evidence before terminating parental rights *for children*¹⁸² and a determination by the trial court that termination of parental

176. *Id.* at *1.

177. *Id.* at *2.

178. *Id.* at *8.

179. *Id.* at *2-3.

180. *Id.* at *2.

181. 455 U.S. 745 (1982).

182. MO. REV. STAT. § 211.447.6 (Supp. 2014) (emphasis added).

rights is in the best interest of the *minor child*.¹⁸³ While the legal relationship between the biological child and parent is severed in an adoption, the same concerns that exist in a termination of parental rights proceeding do not exist in an adult adoption proceeding.¹⁸⁴

In a termination of parental rights proceeding, the juvenile court has jurisdiction and its determination to terminate severs the legal relationship between the biological child and parent.¹⁸⁵ The juvenile court must determine that grounds exist for termination of parental rights by clear and convincing evidence.¹⁸⁶ If that standard is met, the court has to find that the termination is in the best interests of the child.¹⁸⁷ In this proceeding, the primary purpose for terminating a biological parent's parental rights is to free the child for adoption.¹⁸⁸ In termination of parental rights proceedings, there is a strong presumption that favors avoiding the severance of the parent-child relationship.¹⁸⁹

In its second consideration of *DeBrodie*, the circuit court required a clear and convincing standard of proof for terminating parental rights in adoptions of adults who cannot consent due to legal incapacity.¹⁹⁰ *DeBrodie* is neither a child¹⁹¹ nor a minor,¹⁹² so this heightened standard of proof should not apply to his adoption.¹⁹³ The appellate court expanded the definition of "child" in the adoption code to include adult adoptees, but did not expand the definition to include adult adoptees in termination of parental right cases. As an adult, the main concern for severing the biological parent-child relationship would be its effect on the adoptee's inheritance rights. *DeBrodie* would no longer be able to inherit from his biological mother, but

183. *In re J.M.T.*, 386 S.W.3d 152, 158 (Mo. Ct. App. 2012) (emphasis added).

184. Inheritance rights are a concern, but maintaining a parent-child relationship and keeping the family unit together are not concerns. *Id.*; see also MO. REV. STAT. § 453.090.2 (Cum. Supp. 2013).

185. MO. REV. STAT. § 211.447.6 (Supp. 2014).

186. *Id.*

187. *In re B.H.*, 348 S.W.3d 770, 776 (Mo. 2011) (en banc). When *DeBrodie* was a minor, his mother's parental rights could have been terminated, but the court did not terminate them at the time. *DeBrodie v. Martin*, 400 S.W.3d 881, 883 & n.1 (Mo. Ct. App. 2013). The court found termination of the mother's parental rights was not in the best interests of the children at the time. *Id.* at 883 n.1.

188. 21 Mo. Prac., Family Law § 17:12 (3d ed.).

189. *In re B.H.*, 348 S.W.3d at 776.

190. *In re Adoption of DeBrodie*, No. WD 77236, 2014 WL 5462289, at *1-2 (Mo. Ct. App. Oct. 28, 2014), *reh'g and/or transfer denied* (Nov. 25, 2014), *transfer denied* (Feb. 3, 2015).

191. A child is "an individual under eighteen years of age." MO. REV. STAT. § 211.442(1) (Cum. Supp. 2013).

192. A minor is "any person who has not attained the age of eighteen years." § 211.422(2).

193. *DeBrodie* was thirteen years-old in September 1999. *DeBrodie v. Martin*, 400 S.W.3d 881, 883 (Mo. Ct. App. 2013). *DeBrodie* was approximately twenty-eight years old at the time of the second appeal.

instead would inherit from the Martins.¹⁹⁴ Since DeBrodie is an adult, there should not be a strong presumption favoring preservation of the legal relationship between DeBrodie and his mother. The relevant inquiry should have been whether the permanent severance of the parent-child bond was in DeBrodie's best interest.¹⁹⁵ This inquiry only requires a preponderance of the evidence standard of proof.¹⁹⁶

The appellate court's decision will have a discriminatory impact on adoptions of mentally incapacitated adults. For adoptions of adults with capacity, the court does not require clear and convincing evidence supporting the termination of parental rights. This is because an adult adoptee who has capacity can consent to the adoption and the adoption can proceed to the best interests determination. A mentally incapacitated adult does not have that same luxury.

Mentally incapacitated adults are entitled to "equal rights and opportunity under the law."¹⁹⁷ These rights and opportunities include the right to be a member of a loving family through adoption. Disabled Americans have a right to not be discriminated against through overprotective rules and policies.¹⁹⁸ This decision acts as a back-door way to discriminate against mentally incapacitated adults because it obstructs their potential adoptions. While the court likely did not intend this result, the appellate court's decision now will inhibit and negatively impact adoptions of mentally incapacitated adults. Based on the appellate court's decision, a potential adoptive family of a mentally incapacitated adult has to rebut a strong presumption favoring preserving familial bonds by a heightened proof standard, clear and convincing evidence. Then the family would have to demonstrate the adoption was in the best interests of the mentally incapacitated adult adoptee. If that same potential family were to petition to adopt an adult with capacity, that family would not have to rebut any strong presumptions by clear and convincing evidence. The family would solely have to demonstrate the adoption was in the best interests by a preponderance of the evidence.

This extra "hoop" that potential adoptive families have to jump through is unnecessary. Under a lesser burden, the court would still be able to take an active role in ensuring the adoption would benefit the mentally incapacitated adult adoptee. The court would still consider all the relevant evidence sur-

194. See MO. REV. STAT. § 453.090.2 (Cum. Supp. 2013) (detailing inheritance rights of adoptees).

195. See *In re B.H.*, 348 S.W.3d 770, 776 (Mo. 2011) (en banc).

196. *Id.*

197. MO. CONST. art. I, § 2; see also 42 U.S.C. § 12101 (2012). In *Mayernik v. Ambrogio*, the court held that the parent consent sections of the adoption code did not violate the U.S. Constitution or Article One of the Missouri Constitution. 292 S.W.2d 562 (Mo. 1956). *Mayernik* is distinguishable from *DeBrodie* because *DeBrodie* deals with an adult adoption, because parental consent was not an issue in *DeBrodie*, and because *DeBrodie* does not deal with the revocation of written consent and/or the constitutionality of written consent.

198. §12101(a)(5).

rounding the adoption when making its “best interests” determination. Indeed, a potential adoptive family must prove by a preponderance of the evidence that the adoption is in the best interest of the mentally incapacitated adult adoptee. A preponderance standard for both inquiries would not impose additional burdens on adults incapable of consenting, and therefore it would not run afoul of the ADA or the Equal Protection Clause.¹⁹⁹ Such a standard would not be “overprotective” and would ensure that mentally incapacitated adults are afforded the opportunity to be adopted by stable, loving families, if a court determines that the adoption would be in their best interests.

C. The Circuit Court Erred in Determining the Martins Failed to Prove DeBrodie’s Welfare Demanded He Be Adopted by the Martins

The circuit court previously “found the Martins fit to be adoptive parents, to clearly have a significant relationship with and affection for [DeBrodie], and to be more than willing to advocate for him.”²⁰⁰ However, the circuit court, on remand, found the Martins did not prove that DeBrodie’s welfare *demanded* that the Martins’ adoption petition be granted.²⁰¹ No evidence was presented to discredit the circuit court’s earlier findings. Unfortunately, the circuit court was hyper-focused on certain issues and did not give enough weight to other issues and explanations present in this case, which colored the court’s judgment when it determined that the evidence did not *demand* the adoption be granted.

The county staff members who testified had various concerns about DeBrodie leaving institutionalized care to live with the Martin family. The staff members favored keeping DeBrodie in institutionalized care, rather than him becoming a member of the Martin family. The staff members’ opinions appear to have been based on inaccurate information. The court seemed to give their testimony great weight, while giving less weight to other important considerations.

One staff member was concerned about a particular visit that occurred at the Martins’ residence.²⁰² The staff member claimed that DeBrodie returned to institutionalized care with a lighter and cigarette in his pocket after a doctor ordered that he quit smoking for his own safety.²⁰³ The staff member also claimed that DeBrodie returned to institutionalized care with a full adult diaper that had been full for some time.²⁰⁴ The Martins stated that DeBrodie was

199. U.S. CONST. amend. XIV § 1; MO. CONST. art. I, § 2; § 12101. The ADA states that “individuals with disabilities continually encounter various forms of discrimination including . . . overprotective rules and policies.” §12101(a)(5).

200. *In re Adoption of DeBrodie*, No. WD 77236, 2014 WL 5462289, at *5 (Mo. Ct. App. Oct. 28, 2014), *reh’g and/or transfer denied* (Nov. 25, 2014), *transfer denied* (Feb. 3, 2015).

201. *Id.* at *8 (emphasis added).

202. *Id.* at *6.

203. *Id.*

204. *Id.*

under constant supervision except for one brief bathroom break.²⁰⁵ According to the Martins, when DeBrodie left the Martins' home after that visit, he did not smell of feces and showed no sign of having a lighter and/or cigarette.²⁰⁶ The record does not indicate that the car smelled of feces during the trip from the Martins back to Second Chance. That same staff member reported the smell and contraband to the Legal Guardian when DeBrodie returned to Second Chance. The staff member was unaware of an e-mail from the Martins' attorney, who had returned DeBrodie to the institution, sent to the Legal Guardian the day after the visit, which explained the circumstances of DeBrodie's return to Second Chance.²⁰⁷ The staff member had incomplete information when forming her opinion.²⁰⁸

The court's opinion also did not ease concern of potential bias that likely existed in the opinions of the Legal Guardian on DeBrodie's placement. The Legal Guardian's deputy was working at Second Chance while working as a deputy to the Callaway County public administrator, which is a noteworthy conflict of interest.²⁰⁹ The deputy was very much in favor of keeping DeBrodie institutionalized, but did not know important things about DeBrodie, which raises concerns about her opinion. For example, the deputy stated that DeBrodie had autism and that it was diagnosed at birth.²¹⁰ DeBrodie is not autistic, and even if he were, the diagnosis could not have occurred at birth.²¹¹ A mentally incapacitated person's diagnosis is an important fact to be aware of, especially when deciding if institutionalization is the most appropriate option.

The appellate court also focused on the fact that the adoption would sever ties between DeBrodie and his biological mother.²¹² In every adoption, further contact between the adoptee and biological parent(s) is at the discretion of the adoptive parents.²¹³ A court is not able to guarantee continued contact between adoptees and their biological parent(s), and the appellate court was particularly concerned in this case.²¹⁴

The appellate court stated that the Martins had not visited DeBrodie in two years.²¹⁵ The court did not include the fact that, according to the Martins, DeBrodie's Legal Guardian did not allow him to have visits with or com-

205. Appellants' Brief, *In re Adoption of DeBrodie*, No. WD 77236, 2014 WL 5462289 (Mo. Ct. App. Oct. 28, 2014), 2014 WL 4162451, at *9.

206. *Id.*

207. *Id.* at *22.

208. *See id.* at *8-9.

209. *Id.* at *8.

210. *Id.*

211. *Id.*

212. *In re Adoption of DeBrodie*, No. WD 77236, 2014 WL 5462289, at *3 (Mo. Ct. App. Oct. 28, 2014), *reh'g and/or transfer denied* (Nov. 25, 2014), *transfer denied* (Feb. 3, 2015).

213. MO. REV. STAT. § 453.080.4 (Cum. Supp. 2013).

214. *In re Adoption of DeBrodie*, 2014 WL 5462289, at *3.

215. *Id.*

municate with the Martins.²¹⁶ The court noted that the Legal Guardian allowed the Martins to have supervised visits with DeBrodie.²¹⁷ The Martins regularly visited DeBrodie after he was an adult and no longer in their care up until the first guardianship petition, when tensions between the Martins and the Legal Guardian increased.²¹⁸ The Martins were unable to visit with DeBrodie as they normally did after Mrs. Martin “hot lined” Second Chance for abuse.²¹⁹ The appellate court found that it was not improper for the circuit court to have considered that the Martins engaged in continued disputes with the Legal Guardian and that those disputes did not advance DeBrodie’s interests.²²⁰ The appellate court thought it was relevant to consider “whether adoption by the Martins was in [DeBrodie]’s best interest where the prospective adoptive parents have a strained relationship with [DeBrodie]’s legal guardian.”²²¹ The court recognized that continued disputes between the Martins and Legal Guardian did not advance DeBrodie’s interests, but then held lack of visits (and lack of increased conflict) against the Martins.²²²

The court also drew attention to one comment Mrs. Martin made about DeBrodie’s mother being difficult to deal with.²²³ According to the Martins’ brief, DeBrodie’s mother was a “severely intellectually, psychologically, socially and occupationally impaired person.”²²⁴ The biological mother’s testing scores indicated that she has mental limitations.²²⁵ Such limitations may have contributed to misunderstandings and disputes, but Mrs. Martin’s comment does not negate the other evidence demonstrating that the Martins would continue to facilitate a relationship between DeBrodie and his biological mother.

Indeed, the court did not give enough weight to other evidence that was presented. The Martins had two other foster children with family in Callaway County, the same area where DeBrodie’s mother lived.²²⁶ Although the Martins had to move away for family reasons, Mrs. Martin regularly brought the two other foster children back to Callaway County to see their biological parents.²²⁷ DeBrodie looked forward to his mother’s visits, but due to transportation issues she was unable to make many visits, which greatly upset him and caused him to act out.²²⁸ These transportation issues would have been

216. Appellants’ Brief, *supra* note 205, at *8.

217. *Id.* at *6.

218. Appellants’ Brief, *supra* note 205, at *12.

219. *In re Adoption of DeBrodie*, 2014 WL 5462289, at *7. Several hot line calls were made by the Martins and DeBrodie’s biological mother. *Id.*

220. *Id.* at *8.

221. *Id.*

222. *Id.* at *9, *16.

223. *Id.* at *3.

224. Appellants’ Brief, *supra* note 205, at *10.

225. *Id.*

226. *In re Adoption of DeBrodie*, 2014 WL 5462289, at *8.

227. *Id.*

228. *Id.* at *3.

greatly reduced, if not eliminated, if the adoption had been granted. Mrs. Martin still communicates with DeBrodie's mother regarding the adoption and concerns over DeBrodie's condition at Second Chance.²²⁹

Several witnesses testified that DeBrodie appeared to be doing better at Second Chance after leaving his biological mother's home.²³⁰ DeBrodie was living with his biological mother prior to being sent to live at an institution.²³¹ DeBrodie's biological mother was not a proper caregiver for him. She previously could have had her parental rights terminated²³² and has mental deficiencies that would impede her ability to be an appropriate caregiver for DeBrodie, a mentally incapacitated adult.²³³ It would be expected that as soon as DeBrodie was at an appropriate placement there would be a "tremendous positive change" in him.²³⁴ If DeBrodie had been placed with the Martins instead of Second Chance after leaving his mother's care, the same "tremendous positive" change would have likely occurred.

One of the most concerning issues the court did not fully address was the effect institutionalization has had on DeBrodie. County staff members testified his condition had improved after he was removed from his mentally incapacitated mother's care. Once DeBrodie was institutionalized, he received significant amounts of medication and started wearing adult diapers.²³⁵ DeBrodie did not require a single medication while with the Martins, but after institutionalization he was heavily medicated to the point he was lethargic.²³⁶ DeBrodie never needed to wear adult diapers when in the custody and care of the Martins.²³⁷

Finally, the circuit court did not consider DeBrodie's full statements when taking his wishes on placement into account. The circuit court found there was evidence that DeBrodie said he wanted to live "here" at both Second Chance and the Martins' house.²³⁸ According to the G.A.L. Investigation Report, when DeBrodie was asked where he wanted to live (while he was at the Martins) he said, "Here. Home."²³⁹ Then, when DeBrodie was asked about previously stating he wanted to live at Second Chance, DeBrodie clari-

229. Appellants' Brief, *supra* note 205, at *12.

230. *In re Adoption of DeBrodie*, 2014 WL 5462289, at *5-6.

231. *Id.* at *5.

232. *Id.*

233. *DeBrodie v. Martin*, 400 S.W.3d 881, 883 (Mo. Ct. App. 2013).

234. *In re Adoption of DeBrodie*, 2014 WL 5462289, at *5.

235. *Id.* at *6.

236. Appellants' Brief, *supra* note 205, at *16.

237. *Id.* The court was concerned that the Martins had two other children in the house, and staff members said DeBrodie needed one-on-one care. *In re Adoption of DeBrodie*, 2014 WL 5462289, at *6, *8. The court did not acknowledge the Martins' ability to supervise and aid DeBrodie so that he did not need to wear adult diapers.

238. *Id.* at *8.

239. *Id.*

fied he wanted to live “here” (at the Martins).²⁴⁰ He shook his head “no” when asked about living at Second Chance.²⁴¹

The circuit court had broad authority when determining whether to approve or deny the Martins’ adoption petition. The appellate court was limited to overturning the circuit court’s decision if the decision was “against the weight of the evidence,” which it was not.²⁴² There were many facts for and against both parties. The circuit court did not appear to consider all of the evidence available when determining the fitness and/or propriety of the adoption. The circuit court was hyper-focused on small pieces of information and did not look at the big picture. The circuit court favored keeping DeBrodie in an institutional setting in the same county instead of giving him a chance to be a legal part of his former foster parents’ family, and there was little the appellate court could do to right a wrong decision.

VI. CONCLUSION

The appellate court was wrong to impose a heightened proof standard in termination of parental rights cases for prospective adult adoptees who lack capacity. The heightened standard will interfere with adoptions of mentally incapacitated adults. Finding adoptive parents for mentally incapacitated persons is a difficult task, and the potential adoptee in this case, DeBrodie, had his loving, previous foster family who wanted to adopt him. The heightened standard requires potential adoptive families to jump through an extra “hoop,” but only for adoptions of mentally incapacitated adults; the families do not have to jump through an extra “hoop” if they are adopting an adult who has the capacity to consent to the adoption.

Additionally, the circuit court never reversed its earlier determination that the Martins were fit adoptive parents for DeBrodie. The court should not have required the Martins to present evidence that DeBrodie’s welfare *demand*ed the court approve the adoption. The circuit court was hyper-focused on minor issues and brushed aside important facts and explanations, likely affecting the outcome. Then, the appellate court was not in a position to reverse the circuit court’s decision to deny the adoption petition.

The result of this case seems unjust. The Martins were a part of DeBrodie’s life for many years. The Martins cared about DeBrodie and loved him as their own. After reading all of the facts, including the facts in the appellate briefs, it appears the circuit court had enough evidence to determine it was appropriate to grant the adoption.²⁴³ Now, DeBrodie will have to spend the rest of his life in an institution instead of having a chance to be a member of his loving, former foster family.

240. Appellants’ Brief, *supra* note 205, at *9-10.

241. *Id.*

242. *In re Adoption of DeBrodie*, 2014 WL 5462289, at *1.

243. The author believes the evidence presented easily meets the preponderance of the evidence burden of proof.