

*E.P. v. Hogleve*, 259 So. 3d 1007 (Fla. 5th DCA 2018)

## Adoptive parents are third party beneficiaries of adoption agency hired lawyer

This case was decided on December 21, 2018. Nevertheless, I am taking the liberty of dragging it into 2019 and this month's privity discussion. *E.P.* was cited by *Arch Creek* acknowledging the differences in outcomes which were distinguished away by stating *E.P.* was at the motion to dismiss stage while *Arch Creek* was on summary judgment.

Whether a child and his adoptive parents had privity to sue the lawyer who handled the adoption and follow on case to terminate the biological father's rights was one of the issues in *E.P.* The appellate court found that the parents had sufficiently alleged third party beneficiary status overturning a trial court's dismissal.

*E.P.* relied upon a legal services agreement between the law firm and the adoption agency which the Court found to be a direct benefit to the parents and the child.

**TAKEAWAY** This case is in line with the previous adoption malpractice case of *Rushing v. Bosse*, 652 So. 2d 869 (Fla. 4th DCA. 1995) that was brought on behalf of the child who was deemed to be a third party beneficiary of the relationship between the parents and the lawyer being sued. It is one of the many cases beyond the will drafting situation which was the genesis of the move away from requiring strict privity.

