

IN RE: ADOPTION BY G.D.R. OF B.S.P.  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Fulton County Branch  
Orphans' Court Division, No. 5-2004

*Adoption; Parental consent to non-spouse adoption;*

*Ability of consenting parent to retain rights to child*

1. Absent a qualifying provision in the Adoption Act, a legal parent must relinquish his or her parental rights in order to consent to the adoption of his or her child by a non-spouse.
2. Petitioners for adoption are entitled to an opportunity to demonstrate cause as to whether the purpose of the relinquishment of parental rights requirement would otherwise be fulfilled or was unnecessary.
3. It is within the discretion of the trial court to determine whether cause has been shown to demonstrate why a particular statutory requirement has not been met under the circumstances of a particular case.
4. A "best interest of the child" analysis can be conducted before the statutory requirements have been satisfied in determining whether cause was established to demonstrate why a particular statutory requirement has not been met.

OPINION

Walsh, J., May 24, 2005

Background

G.D.R. and C.A.P. filed a Petition for Adoption, seeking to adopt B.S.P., a sixteen-year-old female, born October 25, 1988. C.A.P. is the biological mother of B.S.P. G.D.R. is not related, by blood or marriage, to C.A.P. or B.S.P.

B.S.P. consented to the adoption, as evidenced by her signature on a consent form attached to the Petition. Further, B.S.P.'s guardian ad litem, Anne M. Shepard, fully supported the adoption. In addition, C.A.P. consented to the adoption by signing a consent form, which was also attached to the Petition. Relying on a decision by the Pennsylvania Supreme Court in In re Adoption of R.B.F., 803 A.2d 1195 (Pa. 2002) and this Court's decision in In re Adoption by W.A.T. of A.T.T., 22 Fr. Co. L.J. 1 (2004), C.A.P. signed a consent form that noted her intention "**not** to give up any rights" to B.S.P. by joining in this Petition.

The Court set a hearing for March 15, 2005 to confirm the consent of K.G., the biological father of B.S.P., to the Petition and to take testimony and hear argument on this Petition. The hearing was held on March 15, 2005 and at the close of that hearing the Court allowed counsel to submit briefs on the issue of C.A.P.'s ability to consent to the adoption by G.D.R., who is not her spouse, without relinquishing her parental rights to B.S.P. The matter is now ready for decision. Based upon the evidence collected at the hearing, we make the following findings of fact.

Findings of Fact

1. C.A.P. is the biological mother of B.S.P., who was born on October 25, 1988.

2. K.G. is the biological father of B.S.P. and he presently resides in Ashleyville, Ohio. He is listed as the father on B.S.P.'s birth certificate and he has been ordered to pay support for the care and maintenance of B.S.P. in the past. March 15, 2005 R. at 4-6.
3. C.A.P. and K.G. were not married at the time of B.S.P.'s birth. March 15, 2005 R. at 5.
4. K.G. has not attempted to play the role of father, or any role, in B.S.P.'s life. March 15, 2005 R. at 45.
5. By signing an Affidavit of Consent, K.G. consented to the adoption of B.S.P. by G.D.R. and relinquished his parental rights to B.S.P.
6. C.A.P. consented to the adoption of B.S.P. by G.D.R. by signing an Affidavit of Consent. She believes this adoption to be in the best interest of B.S.P. March 15, 2005 R. at 10-11.
7. C.A.P. signed a consent form that noted her intention "**not** to give up any rights" to B.S.P. by joining in this Petition, which does not conform to the statutorily required consent form to be used by a biological parent consenting to the adoption of his or her child by a non-spouse.
8. C.A.P. and G.D.R. have both been previously married and those marriages have ended in divorce. March 15, 2005 R. at 15, 19.
9. C.A.P. and G.D.R. have been in a romantic relationship for more than two (2) years. They describe themselves as "romantically" and "domestically" involved with each other. March 15, 2005 R. at 8-9.
10. C.A.P. and G.D.R. are not married to each other. They are not engaged and they are not planning a wedding. They do not own real estate together, though they plan to build a home together on land owned by G.D.R. and they have purchased furniture together for that home. March 15, 2005 R. at 9, 13-14.
11. C.A.P. and G.D.R. are in a committed relationship akin to a marriage. Although there is no legal barrier to marriage in this case, the parties choose not to marry, at least at this point.
12. C.A.P. and B.S.P. spend approximately half of their time with G.D.R. at his home. March 15, 2005 R. at 16.
13. G.D.R. and B.S.P. have a close and loving relationship that is, for all intents and purposes, that between a father and a daughter.
14. G.D.R. supports both C.A.P. and B.S.P. March 15, 2005 R. at 20.
15. G.D.R. fully understands and willingly accepts the responsibilities, financial, emotional and otherwise, inherent in adopting a child. March 15, 2005 R. at 20-21, 25-26.
16. G.D.R. seeks this adoption in part legally to obligate himself to provide for and support B.S.P. Through an adoption, G.D.R. would be able to provide health insurance to B.S.P., as well as other dependent benefits. March 15, 2005 R. at 20-21.

### Discussion

Adoption is a purely statutory right; it was unrecognized at common law. In re Adoption of E.M.A., 409 A.2d 10, 11 (Pa. 1979); In re Adoption of R.B.F. and R.C.F., 803 A.2d 1195, 1199 (Pa. 2002). Thus, to effect an adoption, petitioners for adoption must strictly comply with the legislative provisions of the Adoption Act. E.M.A., 409 A.2d at 10; R.B.F., 803 A.2d at 1199. Our analysis in this case, as in any adoption case, must focus entirely on the relevant statutory provisions.

Generally, any individual may be an adoptive parent, 23 Pa.C.S §2112, and any individual may be adopted, 23 Pa.C.S. §2111. However, absent a qualifying provision in the Adoption Act, a legal parent must relinquish his or her parental rights in order to consent to the adoption of his or her child by a non-spouse. 23 Pa.C.S. §§ 2711(a)(3), <sup>[1]</sup> (d)(1), <sup>[2]</sup> 2903, <sup>[3]</sup> R.B.F., 803 A.2d at 1199-1200. The legislature, in amending the Adoption Act after the Pennsylvania Supreme Court's decision in E.M.A., contemplated limited circumstances where the required consents may not be necessary. R.B.F., 803 A.2d at 1202. Therefore, petitioners for adoption are entitled to an opportunity to demonstrate cause as to whether the purpose of the relinquishment of parental rights requirement would otherwise be fulfilled or was unnecessary. R.B.F.,

803 A.2d at 1195. It is within the discretion of the trial court to determine whether cause has been shown to demonstrate why a particular statutory requirement has not been met under the circumstances of a particular case. Id. A "best interest of the child" analysis can be conducted before the statutory requirements have been satisfied in determining whether cause was established to demonstrate why a particular statutory requirement has not been met. Id. Here, before we can grant this adoption, we must determine if this adoption is in the best interests of B.S.P. and if the petitioners, G.D.R. and C.A.P., have shown cause as to why C.A.P., the legal parent, need not relinquish her parental rights in order to consent to the adoption of B.S.P. by G.D.R., a non-spouse.

Like the court in R.B.F., we deliberated intently on the case before us and we struggled to reach the proper decision. We considered the policy and practical implications of any decision we might make. We especially focused on the real concern that allowing an adoption such as the one before us would open floodgates, allowing any adult to come to court to adopt any other adult's child. Although this argument gave us pause, we believe our exercise of discretion in the instant matter does not open floodgates because a court must always consider and be confined by the best interests of the child in each adoption case. R.B.F., 803 A.2d at 1202.

### **Best Interest of the Child Analysis**

The evidence presented at the hearing overwhelmingly supports our determination that this adoption is in the best interests of B.S.P. C.A.P., G.D.R., both of C.A.P.'s parents, and B.S.P.'s school counselor all testified unequivocally and without reservation that this adoption is in the best interests of B.S.P. They each based their judgment on interactions with and observations of B.S.P. and, with the exception of her school counselor, of B.S.P. and G.D.R. together. G.D.R. testified to his belief that, regardless of the outcome of this Petition, he will fill the role of father in B.S.P.'s life and C.A.P.'s father, who formerly filled that role, informed the Court that he believes G.D.R. takes on that role willingly and responsibly and that he is willing to relinquish it to G.D.R. Further, G.D.R. seeks this adoption to legally bind himself to that which he already voluntarily assumed and to increase his responsibility to B.S.P. He asks this Court to legally obligate him to provide for B.S.P. until she has reached majority and he informed the Court that it is his desire to be her father until his death. We have no reservation in holding that this adoption is in the best interest of B.S.P. By granting this adoption, we provide B.S.P. all of its benefits: the legal protection of already existing familial bonds, the right to financial support from two parents, the right to inherit from two parents, and the right to obtain other available dependent benefits, such as health care insurance and Social Security benefits, from two parents. See R.B.F. at 1198.

### **Cause Shown**

The Court finds that G.D.R. and C.A.P., though not legally married, have a relationship akin to marriage. Although the parties are not legally barred from marrying each other, like a same sex couple would be, we find they are no less committed to each other and, most importantly, to B.S.P. C.A.P. hinted that her reservations about marriage come from having been on her own, raising B.S.P., for twelve years. Her failure to obtain a marriage license is not correlated to her commitment to and love for G.D.R. It struck the Court that C.A.P. seems to seek this adoption more in her role as B.S.P.'s mother than as G.D.R.'s girlfriend. We do not suggest that C.A.P. would seek this adoption if she were less than fully committed to G.D.R. However, C.A.P. seeks this adoption because it benefits her child, not because it furthers her relationship to G.D.R.

Further, both parties are recovering from divorces. The Court must be cognizant of how such past failed relationships affect the mental willingness of one to enter into another marriage. Petitioners have been forthright and open with the Court about their commitment to each other and their plans for their relationship, which at present including building a home together and living in it with B.S.P. Although neither G.D.R. nor C.A.P. ruled out the possibility of marrying in the future, neither formulated plans in hopes of currying favor with this Court.

In addition, the Pennsylvania Supreme Court's opinion in R.B.F. reminds us that the proper inquiry in this proceeding is not the relationship between Petitioners, but it is the parent-child relationship between G.D.R. and B.S.P. Id. at 1198. As we stated in our Findings, as well as in the section above, we find the relationship between G.D.R. and B.S.P. to be that of a father and a child with its inherent support, care, and love.

Further, as stated by the court in R.B.F.,

"There is no language in the Adoption Act precluding two unmarried same-sex partners (or unmarried heterosexual partners) from adopting a child who had no legal parents. It is therefore absurd to prohibit their adoptions merely because their children were either the biological or adopted children of one of the partners prior to

the filing of the adoption petition."

R.B.F., 803 A.2d at 1202-1203.

Therefore, we find that Petitioners demonstrated, by clear and convincing evidence, cause why C.A.P., the legal parent, need not relinquish her parental rights in order to consent to the adoption of B.S.P. by G.D.R., a non-spouse. Thus, we find C.A.P.'s consent, which lacks the requisite language relinquishing her rights to B.S.P., sufficient under the statute.

### Conclusion

Approving an adoption by the boyfriend of the biological mother without requiring the biological mother to relinquish her rights to the child raised concerns with this Court. We do not want a situation where any person dating a biological parent can come into court and adopt their boyfriend or girlfriend's child. However, we find sufficient protections in the law to prevent such an occurrence. A floodgates argument fails here because the law requires such a petitioner to prove good cause for failing to comply with the statutory requirement of relinquishment of a biological parent's rights to the child when a non-spouse adopts and, further, the adoption must be in the best interest of the child.

We find that Petitioners proved, with clear and convincing evidence, good cause for C.A.P. not relinquishing her rights to B.S.P. Further, we find this adoption to be in the best interest of B.S.P.

### ORDER OF COURT

May 24, 2005, this matter having come before the Court on Petitioner's Petition for Adoption and upon consideration of the evidence presented at the hearing, the arguments of counsel, and the law, it is hereby ordered that the Petition is granted and the Adoption Decree shall be filed.

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[1] 23 Pa.C.S. § 2771 provides, in part:

(a) General rule.--Except as otherwise provided in this part, consent to an adoption shall be required of the following:

(3) The parents or surviving parent of an adoptee who has not reached the age of 18 years.

[2] 23 Pa.C.S. §2771 provides, in part:

#### **(d) Contents of consent.--**

(1) The consent of a parent of an adoptee under 18 years of age shall set forth the name, age and marital status of the parent, the relationship of the consenter to the child, the name of the other parent or parents of the child and the following:

I hereby voluntarily and unconditionally consent to the adoption of the above named child.

*I understand that by signing this consent I indicate my intent to permanently give up all rights to this child.*

I understand such child will be placed for adoption.

I understand I may revoke this consent to permanently give up all rights to this child by placing the revocation in writing and serving it upon the agency or adult to whom the child was relinquished.

If I am the birth father or putative father of the child, I understand that this consent to an adoption is irrevocable unless I revoke it within 30 days after either the birth of the child or my execution of the consent, whichever occurs later, by delivering a written revocation to (insert the name and address of the

agency coordinating the adoption) or (insert the name and address of an attorney who represents the individual relinquishing parental rights or prospective adoptive parent of the child) or (insert the court of the county in which the voluntary relinquishment form was or will be filed).

If I am the birth mother of the child, I understand that this consent to an adoption is irrevocable unless I revoke it within 30 days after revocation to (insert the name and address of the agency coordinating the adoption) or (insert the name and address of an attorney who represents the individual relinquishing parental rights or prospective adoptive parent of the child) or (insert the court of the county in which the voluntary relinquishment form was or will be filed).

I have read and understand the above and I am signing it as a free and voluntary act. (emphasis provided)

[3] 23 Pa.C.S. § 2903 provides:

Retention of parental status

Whenever a parent consents to the adoption of his child *by his spouse*, the parent-child relationship between him and his child shall remain whether or not he is one of the petitioners in the adoption proceeding. (emphasis provided)