

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF
E. BENN MICHELETTI
SUPERIOR COURT JUDGE



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July 28, 2003

FMA, Esq.
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Verona, NJ 07044

NM
172 Cleveland Avenue
Staten Island, NY 10308

Re: In the Matter of the Adoption of a Child
By MG
Docket No: FA-13-97-02

Dear Counsel and Mr. M.:

Enclosed please the court's decision on the above-captioned matter. Ms. A. shall submit an order ~~under~~ the five-day rule in accordance with the court's decision.

Very truly yours,

A handwritten signature in black ink, appearing to read "E. Benn Micheletti", with a stylized flourish at the end.

E. BENN MICHELETTI, J.S.C.

EBM:pf

OPINION OF THE COURT

IN THE MATTER OF THE ADOPTION OF A CHILD BY

MG

Superior Court of New Jersey: Monmouth County

Chancery Division – Family Part

DOCKET NO. FA-13-97-02C

This matter **comes** before the court by way of a complaint for adoption of the minor child, VM date of birth _____. NM, V's biological father, filed a complaint for custody of V on or about 12/23/01 under docket # FD-13-1076-01C. Mr. M also filed a notice of motion for custody returnable on 1/4/02, and a cross-motion was filed and served upon NM by MG, the child's stepfather. Mr. G filed a complaint for adoption wherein he sought the termination of NM's parental rights of the child, V, and **granting** the adoption of the child, V, by **him** and the change of the child's surname to G. The two cases were consolidated under the FA-13-97-02C docket number and the court tried the **matter** on February 19, 20**and** 21, March 5, 6, 7 and 12,2003.

Virtually undisputed **are** the following facts:

NM was married to C on May 14, 1988. Mr. M is the biological **father** of the minor child, V, who was born on March 18,1990, and he, C and V resided together until their separation in or about early 1995. Mr. M and C divorced on March 19, 1997. **Pursuant** to the Judgment of Divorce, C was awarded physical custody of V, and, NM

was awarded visitation on alternating weekends as follows: from Friday through Sunday, and Saturdays from 10:00 a.m. until 10:00 pm. They also alternated holidays including Father's Day and the Father's birthday. The last time that Mr. M saw or visited with his daughter was on April 25, 1998, the date that V received First Holy Communion. On said date, Mr. M appeared at the church, spoke to V and then left. This visit lasted approximately 15 minutes.

Mr. M paid child support, albeit **somewhat** sporadically, in the amount of \$125 per week until the death of C. Thereafter, he stopped **making** any support payments and has not made any further payments to date.

CM married MG on March 21, 1997. Mr. G was **first** introduced to V when he and C began to date. At this time V was five years old. When V was seven years old Mr. G and C married. V has resided with Mr. G since August, 1996 to the present time. C suffered from lupus. After having been in remission for some period of time, she **had** been cleared by her physician to have a child. However, 28 weeks into her pregnancy C developed breathing problems as a result of developing pneumonia. She delivered the child, N, without incident; however, she developed complications and several **weeks** later, on November 27, 2001, she expired. After the death of C, Mr. M filed his complaint for custody and Mr. G filed his complaint for adoption.

At trial, several witnesses testified including MG; NT, CG's aunt; Dr. AA, the court-appointed psychologist; LM,

Mr. M's live-in fiancée; **BM, Esq.**, the court-appointed guardian ad litem of V; and Dr. Monte Weinstein.

Mr. G testified **as** to his relationship with the minor child, V. He testified that he has in effect been V's **father** for the last several years, that he and V have a wonderful relationship, and that they do a number of things together. Mr. G stated that he, his daughter N (V's half sister) and V are a family unit which is fully integrated and that **all** through the illness and death of C, they have acted **as such**. C's death has "hit" V hard and she continues to **adjust** to this major shock as he (G) does. The **two** of them and N have come together to support one another. Mr. G further testified that V has been completely accepted into his extended **family** and that his siblings are thought of by V as her "aunt" and "uncle", and **his** parents as "grandma and grandpa". Mr. G stated that for the last six and one-half years, he and V have lived together and have **become**, for **all** intents and purposes, father and daughter.

N T testified that she is C's **aunt** and that C and V moved in with her when C separated from Mr. **M**. C and V lived with Ms. T until August **1996**, at which time they moved in with Mr. G. Ms. T further testified that her house **was** a point of pick-up and drop-off for visitation between Mr. M and V. She described an incident between C and NM in which police intervention **was** required. She also testified **as** to the fact that Mr. M did not show up for visitation on many occasions and that V would wait for him by the front window. While V would get upset in the **beginning** because Mr. M did not show up, after a period

of time, she did not care anymore when Mr. M did not show for his scheduled visitation. Ms. T further testified that C contracted pneumonia and her kidneys failed subsequent to the birth of N **and** that is what ultimately led to her death.

Dr. A A, the court-appointed expert, was directed by the court to evaluate the impact of a termination of the natural father's parental rights on V, **as** well as to conduct a best interests analysis. Dr. A was further required to evaluate the issue of custody of V, **as** between ~~her~~ biological father, Mr. M, and her stepfather, Mr. G, with whom she currently resides.

Dr. A testified that V **knows** that Mr. M is her biological father. V has anxieties and is scared about the thought of living with Mr. M and leaving Mr. G's home the home that she knows and in which she has lived for the last several years with her mother and stepfather. This home holds for V many memories of her deceased mother and her remaining family her sister, N, and her stepfather, Mr. G. V perceives Mr. G **as** holding the group together and keeping her mother's memory alive. According to Dr. A, V spends time looking at her mother's pictures around the house. Her sister N looks exactly like the baby picture of her mother. V likes to put on her mother's makeup and remember her. V is afraid of losing **all** of this and other comforts, **all** of which is part of her concern regarding having anything to do with Mr. M in the future. Also entwined in this thought process is losing Mr. G and ~~her~~ sister N if she **has** contact with Mr. M.

Dr. A testified that it would not be in V's best interests psychologically to not work out her relationship with her biological father, Mr. M. If Mr. M's rights are terminated some of the incentive to work out her relationship with him will be lost and that would not be good for V in the long run.² Dr. A further testified that ~~the~~ specific harm to V by termination of parental rights is in terms of dealing with her feelings regarding Mr. M as a part of V. He is a part of her psychologically and to cut that out would adversely affect her.¹ Dr. A also testified that from a psychological point of view, issues that affect termination of parental rights include whether the child ever knew the biological parent, how old the child was, did the parent and child ever have a relationship, etc.⁴ Dr. A concluded that it would not be in V's best interest for her biological father, Mr. M's parental rights to be terminated.

BM, Esq., the court-appointed guardian ad litem for V, testified as to the investigation she conducted, the number of individuals she interviewed and her in-depth discussions with both V and her stepfather, Mr. G. Ms. M also discussed the nature of the relationship between Mr. G, Mr. M and V, the nature of the relationship between Mr. G's and Mr. M's family and V, as well as the nature of the relationship between Mr. M and V. Ms. M concluded that Mr. M has been absent from the child's life for an extended period of time and that Mr. G has assumed the roll of her father for all intents and purposes for ~~the~~ past five plus years. During this period of time, V has

¹ See T. page 33, lines 18-23.

² See T. page 33 & 34, lines 24-1.

³ See T. page 34 & 35, line 18.

⁴ See. T. pages 39 & 40, line 24 to L i e 7.

not heard or seen from her natural father. Additionally, V has suffered a major loss of enormous proportion with the death of her mother and now faces what she perceives as the real possibility of being removed or taken away from the family, home, friends, and school that she loves and to which she has grown accustomed. V does not want this to happen. She expresses a strong view that she wants to **stay** with Mr. G and her baby sister **and** wishes to continue to grow up **with** the friends that live close to her. That having been said, V **understands** that Mr. M is her **father** and notwithstanding his recent absence **from** her life she respects that **fact**. Ms. M also concluded in her report that V was willing to have some contact with Mr. M but only **after** she has become totally accepting of the idea Ms. M, as the guardian ad **litem**, concluded that Mr. M's parental rights should not be terminated but that consistent with V's wishes Mr. **G** should remain V's custodian. In the end analysis, Ms. M concluded that given the child's current circumstance it would **truly** be in V's best interest to **maintain** all of her **family** ties including her baby sister, MG and his family, her maternal **grandparents** and **family** and Mr. M and his **family**.

L M, Mr. M's **fiancée**, testified ~~that~~ she and her children reside with Mr. M and **further** she described their life together. She also testified to the fact that Mr. M gets along well with her children and that she and V had a great relationship. Ms. M also testified about the visitation **between** Mr. M, V and herself: She testified as to the things that they did together during the **visitation**. She stated that the visitation between V and her dad was fine and that they **all** got along well together.

Dr. Monte Weinstein testified on behalf of Mr. M. Dr. Weinstein is a **family** therapist, a nationally **certified** psychologist, and a **licensed family** therapist in three states including Georgia, Florida and North Carolina. He has been qualified to **testify as** an expert in many **cases around** the county and within New Jersey. Dr. Weinstein did not interview V or Mr. G, but did spend time **interviewing and** testing Mr. M. He **administered** and interpreted the MMPI-2 and **MCMII-III**.⁵ He **further** consulted with Mr. M's psychiatrist, Dr. TP. Dr. Weinstein testified as to his opinion concerning Mr. M's current mental state. He stated that Mr. M as not psychotic but rather neurotic. He further testified that M had narcissistic personality **traits** and obsessive-compulsive traits. He testified that M was not open about himself and had a distinct tendency toward avoiding **self-disclosure**.⁶ Dr. Weinstein also testified that Mr. M was suffering **from** what he referred to as 'parental alienation' which is the systematic and methodical removal of the parent **from** the child's **life**.⁷ Dr. Weinstein further testified that it was not in the best interest of the child and would be **harmful** to the child's development not to allow this situation to be resolved through some form of unification between the biological father and the child. Failure to do so would be detrimental and can be devastating to the child. This is **so** because the **child** now incorporates in her psyche that which is not necessarily true and even if it were true, incorporating this negativity (perceived, real or imagined) creates conflict and separation anxiety. **Breaking** down a parent role model could have a devastating **counterproductive** effect on the **child**.⁸

⁵ See T1, page 46 and 47, lines 18 through 1.

⁶ See T. page 88, lines 20-25. See also Page 89 of the **Transcript**, line 1-25.

⁷ See T. page 62, lines 20-2, and page 21 line 1.

⁸ See T. page 64, line 9-25 and page 65, line 12-23.

According to Dr. Weinstein terminating the parental rights of Mr. M would not be in the best interest of the child.

Additionally, the court interviewed V on two separate occasions. V also wrote a letter to the court expressing her views. V told the court that she did not want to have to go and live with her biological father nor did she want to have to visit with him or see him.

N.J.S.A. 9:3-46(a) provides in part:

In a contest between a person who is entitled to notice pursuant to section 9 of P.L. 1977, c. 367 (C.9:3-45) objecting to the adoption and the prospective adoptive parent, the standard shall be the best interest of the child. The best interest of a child requires that a parent **affirmatively** assume the duties encompassed by the role of **being a parent**, In determining whether a parent **has affirmatively assumed** the duties of parent, the court shall consider but is not limited to consideration of, the **fulfillment** of financial obligations for the birth and care of the child, demonstration of continued interest in the child, demonstration of a genuine effort to maintain communication with the child, and demonstration of the establishment and maintenance of a place of importance in the child's life.

The specified periods of limitation set forth in the statute at N.J.S.A. 9:3-46a(1) & (2) do not apply in this **case** since the child has lived with the birth mother since the child's birth. Hence, the periods of limitation do not apply and the proceedings in such a **case** initially turn not on the determination of the failure or inability of the objecting parent but on the best interest of the child.⁹

In considering the termination of parental rights in adoption proceedings, the court should consider whether the objecting birth parent **has** affirmatively assumed the

⁹ See In Re Adoption of Children by G.P.B., Jr., 161 N.J. 396,410 (1999).

duties of a parent. The court may also consider other factors in determining the child's **best** interest **and** in considering those **factors**, the court should avoid a comparative analysis of birth parent with adoptive **parent**.¹⁰

When a child is of a sufficient age and capacity to reason so as to form an intelligent **preference as** to the custody that child's wishes and desires **shall be** solicited by the court **and** given due **weight**.¹¹

It is the burden of the party seeking to **terminate** parental rights to demonstrate by clear and convincing evidence that the **termination** of parental rights is in the child's **best interest**.¹² **Thus**, the question **for** this court to decide is whether Mr. M's parental rights should be terminated in the **best** interests of **the** child, V.

Mr. M **was** married to C on May **14, 1988**. Their daughter, V, was born on _____. They all lived together until **1995** when **the** Ms separated and ultimately divorced in March **1997**. There **is** no evidence to indicate that Mr. **M** did not do **all** the **things** that any **father** does with the newly born V, including providing **for** the birth and care of **the** child and the mother. It is undisputed that he provided for V while the parties continued to live together and thereafter until the divorce. After this, Mr. M's involvement with V **became** sporadic **and** declining until he finally stopped **seeing** V altogether in April **1998**. He **has** not made a serious attempt to see the child since that time. There is no testimony to indicate that Mr. M did not assume and perform **all** of the duties encompassed by **his** role of **father** during the years prior to the divorce **from** the time

¹⁰ **Id.** at 413.

¹¹ See **N.J.S.A. 9:2-4**.

¹² See **Matter of Adoption of a Child by W.P. and M.P.**, 308 **N.J. Super** 376 (1998). See also **Barron v. Barron**, 184 **N.J. Super**. 297 (1982).

V was born and while she grew until she was 7 years old. It is only during the years after the divorce was **finalized** and C married Mr. G that his involvement with the child became sporadic leading to Mr. M not seeing the child or contacting her at **all** during the past 5 years. Mr. M has, however, continued to provide support to the child financially albeit sporadically over the last 5 **years**. As stated above, **both** the court-appointed psychologist and the guardian ad **litem** concluded that it would **not** be in the best **interest** of V to terminate Mr. M's parental rights since she has had sufficient contact with him to know that he is her biological **father**. V has memories of her biological father which include negative feelings towards him **for** reasons she has not explored or dealt with in a **meaningful** way. V should deal with her feelings concerning Mr. **M** and his recent rejection of her particularly in light of the premature death of her mother.¹³ It should be noted that the issue of adoption or termination of Mr. M's parental rights did not become an issue until after her mother's demise. This was triggered by Mr. M's filing of a **custody complaint** after C G's death. In response to this **filing**, Mr. G filed for adoption of V. Given that V did not have **meaningful** contact with Mr. **M** at the time of her mother's death to **terminate** her biological **father's** parental rights leaves her without any **meaningful** contact with either biological parent, **and totally** cut-off from her biological **father's** family. This creates a **circumstance** that in effect isolates the child from her natural father and make **difficult** or virtually impossible for the child to deal with issues raised regarding her natural **father** and his family.

In the court's interviews with V, it was clear that V wants to remain in the care and custody of her stepfather, M G, **and** wishes to **continue** to reside

¹³ See T. page 33, lines 18-23. See also T. pages 33 & 34, lines 24-1.

with him and her baby sister, N. The court's conclusion given both interviews with the child is that she does not want to be forced to have to live with Mr. M or even to **visit with him** and she wished to insure that she would not be forced to do either. V's views should be afforded great **deference**.¹⁴ This is particularly true in this child's case since she is a **wonderful** child who has experienced a great deal of tragedy in her young life and she is **working** hard to put the pieces of her life back together and make **sense** of it all. It is **unfortunate** that Mr. M, her biological **father**, chose not to be one who would help her accomplish this (**i.e.** to put the pieces of her life back together after her mother passed away). V cannot be **expected** to fit **all** the pieces of her past **life** over the past 13 years together **all** at once but rather must be given the opportunity to do so **at her** pace and in accordance with her developing best interests. It is clear to the court that it would be in V's best interest to maintain all of her family ties, **i.e.**, her baby sister, N; her **stepfather**, MG and his **family**; her maternal **grandparents and** family; and her biological father, Mr. M and his family.

After a complete and thorough evaluation of all the evidence, the **court** concludes that MG has not met his burden of proof that termination of NM's parental rights would be in the best interest of V(15). Together the adults in her life owe V a duty to help her through these **difficult years**. The court **further** concludes that it is in V's best interest to remain in the residential *care* and custody of her **stepfather**, Mr. G, and **that** she continue to reside with him and her sister, N, in his home.

¹⁴ See N.J.S.A. 9:2-4.

¹⁵ See Matter of Adoption of a Child by W.P. and M.P., 308 N.J. Super. 376(1998).

Mr. M's behavior during the trial of this matter can only be described as bizarre. He **refused** to **answer** most questions put to him by counsel for the **plaintiff**. He refused to explain what **medication** he was taking and for what. Likewise he refused to state his diagnosis, prognosis, and whether he **continued** to take his medication. Additionally, he refused to make clear whether he was ignoring **his** psychiatrist's directions concerning taking **the** medication. As a result of his steadfast **refusal** to provide any **meaningful** testimony concerning **his** mental condition, its possible **impact** on V could not be evaluated. Therefore, before any attempt at **reunification** between V and Mr. M takes place and before V **and/or** Mr. M and Mr. G undergo any recommended therapy, Mr. M ~~must~~ undergo a complete psychiatric/psychological evaluation and the results shall be reported to the court. The evaluator shall be court-appointed and the evaluation shall be at Mr. M's expense. Upon a satisfactory completion of such an evaluation, Mr. M shall **successfully** complete a parenting class. Upon **successful** completion of a court-approved parenting class by Mr. M ~~at~~ his expense, then both Mr. M and Mr. G shall attend co-parenting sessions aimed at allowing the two of them to come to grips with that which is in the best interest of V.

As to **the co-parenting** counseling, Ms. M and V's maternal grandmother should be included in the sessions **as** determined by the mental health expert and this counseling by **the** neutral **mental health** expert will be extended when appropriate **as** determined by **the** expert to include reunification issues between **the** child and Mr. M.

As to the issue of counsel fees and other fees associated with the trial of this matter, **Mr. M** is ordered to **pay** one-half of **the** guardian ad **litem** bill to Mr. G upon Mr. G's presentation of proof of payment to **Ms. M**. Additionally, Mr. M is to **pay** the sum of **\$12,500** to Ms. **A** as a portion of counsel fees directly attributable to Mr. M's pattern of behavior, including **refusing to go** through with depositions and **requiring** same to be done in court **as** well as his continual unfounded objections and meetings with his **"advisors"** all of which added **immeasurably to the time** of trial.

The plaintiff's attorney shall submit **an** order under the five-day rule in accordance with **the** court's decision.