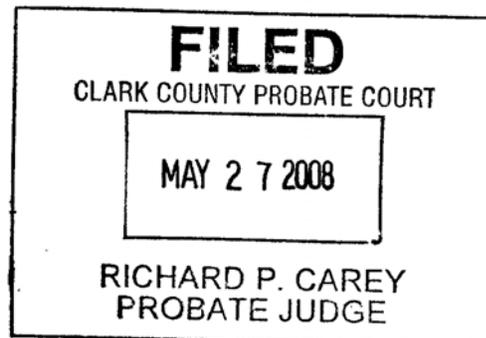


IN THE COURT OF COMMON PLEAS  
PROBATE DIVISION  
CLARK COUNTY, OHIO

In The Matter Of:

The Adoption of  
E.M.D.  
and  
Z.L.D.



**E N T R Y**

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This matter came before this Court on May 19, 2008 to consider whether or not the consent of the biological mother of the two children herein is a necessary prerequisite to the Court's consideration of the petitions for adoption of the children. The Court finds that on March 14, 2008 the petitioners, J. and E. B., filed their petitions for adoption of the above named children. Filed with this petition was the consent of the biological father of both children, A. M. D. Said petition further alleged that the consent of the biological mother, Mother D., was not a necessary prerequisite to the Court's consideration of the petitions for two reasons, to-wit: first, that Mother D. had failed without justifiable cause to communicate with the minors for a period of at least one year immediately preceding the filing of the adoption petition or the placement of the minors in the home of the petitioners; and/or second, that Mother D. had failed without justifiable cause to provide for the maintenance and support of the minors as required by law or judicial decree for the same applicable time period. The Court received the testimony of both petitioners and Mother D. as well as four exhibits, and after due

consideration of the same the Court makes the following findings of applicable facts, to-wit:

Z. L. D. and E. M. D. were born to Mother D. on September 10, 1999 and March 26, 1997 respectively. As a result of circumstances not shared with this Court, the Juvenile Court of Clark County, Ohio awarded custody of these two children on March 21, 2003 to J. and E. B., the children's biological aunt and uncle. As a result of a conviction for burglary and forgery, felony offenses, Mother D. was incarcerated in the Ohio State Reformatory for Women from 2004 until her release date of March 1, 2008. During this period of incarceration, the children remained in the custody and care of the B's.

As well, during this period of incarceration, there was no physical contact between the children and Mother D. However, the Court does find that Mother D. communicated with the children by way of a number of letters which she mailed to them during the applicable one year period of time.

During her period of incarceration, Mother D. received what amounted to a monthly allowance from the State of Ohio. This monthly allowance ranged from \$18.00 per month to \$25.00 per month depending on the health of Mother D. This allowance could be used to purchase supplemental items from the commissary such as food and items for personal hygiene. It could also be used to pay monies for the support of minor children. Indeed, in May and July of 2006, Mother D. made arrangements to pay \$7.50 and \$5.00 respectively from this allowance toward the support of her two children. However, during the applicable one year period of time, Mother D. failed to direct any of this money toward the maintenance and support of her two children. Moreover, when she

was released on March 1, 2008, Mother D. left the penitentiary with \$75.00 "gate pay" in her pocket. This notwithstanding, she paid none of this toward the support of her children. The Court notes here that as of May 6, 2008, Mother D. owed \$5,992.46 in arrears with respect to her legal support obligation for the children. The Court also notes that it received some testimony that Mother D. may have attempted to send a blanket, purse, cards, and some Christmas presents during the applicable one year period of time. However, the Court finds the same to be of little consequence.

After considering the above, the Court finds that during the applicable one year period of time, Mother D. did communicate with her children- -albeit solely by mail. Accordingly, the petitioners have not met their burden with respect to this consideration. However, the petitioners have shown that Mother D. did fail to provide for the maintenance and support of the children.

The sole question remaining is whether or not this failure was "justifiable." Obviously, during her period of incarceration, Mother D. was not in a position to seek and secure employment for purposes of providing maintenance and support for her children. At first glance, one might be tempted to conclude, therefore, that Mother D. justifiably could not have provided for the same. This Court does not adhere to this view. First, Mother D. failed to direct any of her monthly allowance toward the support of her children during the applicable time period. This would include the \$75.00 with which she was in possession upon her release. Nor did Mother D. make arrangements for any of her family or friends to make or attempt to make, provision for the children. This Court does not find this failure to be justifiable. The Court also considers the broader question of who is responsible for producing the circumstances which would make such provision

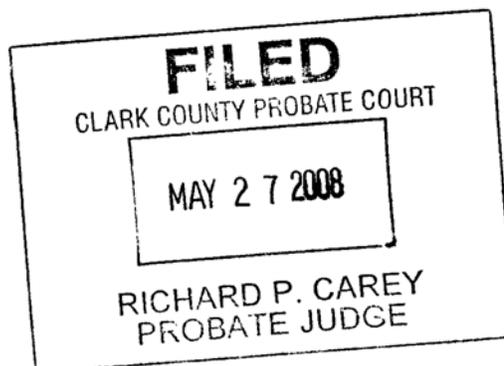
difficult or, perhaps, insignificant. That is to say, who was responsible for the incarceration of Mother D., which, of course, led to her inability to seek employment. It is fairly clear that the responsibility falls on the shoulders of Mother D. Instead of choosing to care for her children, Mother D. made the decision to commit felony offenses which then led to her incarceration. In the broader context, this criminal conduct was not justifiable and cannot now be used as the excuse why she did not make arrangements to provide for the support and maintenance of her children.<sup>1</sup>

Thus, while the Court finds that Mother D. did communicate with her children, the Court finds that she failed to provide for the maintenance and support of her children for the applicable one year period of time; and that this failure was not justifiable. Therefore, and pursuant to Ohio Revised Code Section 3107.07(A), the consent of Mother D. is not a necessary prerequisite to the Court's consideration of the petitions for the adoptions of the above named children herein<sup>2</sup>.

IT IS SO ORDERED

  
 RICHARD P. CAREY, JUDGE

cc: T. Brecount  
 G. Lind



<sup>1</sup> To this extent, it is not much different than a situation wherein a parent makes a conscious decision not to seek gainful employment. Such a decision cannot later be used to excuse the parent's lack of support for his or her children.

<sup>2</sup> See In Re Adoption of A.M.W. and R.A.W., Court of Appeals, Ohio 9<sup>th</sup> District CA #07 CA 0062 & 63-M.