

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

In The Matter Of:
The Adoption of
V. T. N. I.

Case No. 20225064

DECISION & ENTRY

This matter came before the Court on the 12th day of July, 2023 to consider the Amended Petition for the adoption of the minor child, V.T.N.C., filed on April 24, 2023 by the Petitioner, J. M. I. Specifically, the hearing was convened to address two issues: first, whether the consent of the child's biological father, V. C., is a necessary prerequisite to this Court's consideration of said Petition for Adoption; and second, the best interests of the child with respect to said Petition.

The record should reflect that the original Petition was filed herein November 15, 2022. However, as there was no home study provided at that time, and for the reason that the child's biological father was not listed as a person whose consent to the adoption is not required, said Petition was never served on the biological father. Rather, Mr. C. was served with the Amended Petition along with notice of hearing in May of 2023.

On May 31, 2023, Mr. C. filed a written objection to the adoption petition. The Court notes here that Mr. C. requested appointment of legal counsel at that time. However, pursuant to the information on the financial disclosure form also filed on May 31, 2023, Mr. C. did not qualify for court-appointed counsel. At the outset of the July 12th hearing, Mr. C., participating by way of Zoom technology, indicated his intention to proceed without benefit of counsel.

After receiving the testimony of four witnesses, the Court makes the following findings, to-wit:

The child, V.T.N.C., was born on June 7, 2011 of the marital relationship of Ja. C. and V. C. As a result of an allegation of abuse of the child, Mr. C. left the residence when V.T.N.C. was approximately seven months old. Though no charges were filed and no temporary protection order sought, Mr. C. had very little contact with V.T.N.C. from this time through the date of a subsequent divorce in 2017. During this period of time, V. C. was serving in the military.

Pursuant to the couples' divorce in 2017, Mr. C. was awarded visitation with V.N.T.C. As a general rule, however, Mr. C. did not exercise this right to visitation but for a couple of occasions when V.N.T.C. would visit with Mr. C.'s guardians --- who had raised Mr. C. from an early age and stood in as his de facto parents --- and the de facto grandparents of V.T.N.C. To that end, it appears that he had contact while V.T.N.C. was visiting his "adoptive" parents at the end of 2021 and at the end of 2022. There was no testimony that Mr. C. had any contact, however, in 2018 or 2019.

The Court received conflicting testimony as to whether or not V.N.T.C. had contact with Mr. C. from April 24, 2022 through April 24, 2023 --- the applicable one year period of time prior to the filing of the Amended Petition herein. Accordingly, the Court did summon V.N.T.C. to testify. V.N.T.C. advised the Court that she spoke with or texted Mr. C. somewhat sporadically before December of 2022. She testified, however, that she has been speaking to Mr. C. by way of her cell phone on a weekly basis and texting him almost every other day subsequent to December of 2022.

In his Petition, Mr. I. alleges that the consent of V. C. is not a necessary prerequisite to the Court's consideration of the adoption petition herein because he failed without justifiable cause to provide more than de minimus contact with the minor for the period of at least one year immediately preceding the filing of the adoption petition or the placement of the minor in the home of the Petitioner.

As noted above, V.N.T.C. testified, and the Court finds, that Mr. C. has indeed had regular contact with V.N.T.C. during the one year period immediately preceding the filing of the Amended Petition at bar.

However, the law directs the Court not only to consider this one year period of time prior to the filing of the adoption petition, but also the one year period of time prior to the placement of the child in the home of the Petitioner. The Court received testimony that V.N.T.C. has been in the care and custody of her mother, Ja. I., since the child's birth and specifically since the divorce in 2017. The Petitioner married J. I. on June 6, 2019. The child has been in his care ever since. Per the testimony, Mr. C. had no contact with V.N.T.C. in 2017 through the end of 2021.

The Court is aware of the Decision of the Ohio Supreme Court of *In Re Adoption of Kreyche* (1984) 15 Ohio St. 3rd 159. In that Decision, the Supreme Court noted that the marriage of a natural parent and the subsequent bringing of a minor into the home with a stepparent will not initiate *ab initio* the "placement" of a minor for the purposes of R.C. 3107.07 (A). However, the Court added that in determining whether a "placement" pursuant to R.C. 3107.07 (A) has occurred, a court should consider the facts of each particular case while remaining mindful that the paramount concern is the best interest of the child. In other words, the Supreme Court left it with the discretion of the trial court whether to deem the date of marriage to serve as the date of "placement" of a child for purposes of adoption.¹

In this case, the testimony is that J. I. has been in the child's life since 2015. He has raised her as his own. The Court believes it appropriate to accept the date of the marriage in this case as the date of the placement for purposes of 3107.07 (A). Consequently, for purposes of this hearing, there was placement of the child with the Petitioner on the date of their marriage on June 6, 2019. To that end, the

¹ The fact that "placement" is not, per se, required in stepparent adoptions (R.C. 5103.16) does not eliminate its significance with respect to a R.C.3107.07 (A) analysis.

second applicable period of time for the Court's consideration would be June 6, 2018 through June 6, 2019.

It is clear from the testimony that during the period of June 6, 2018 through June 6, 2019, V. C. failed to have any contact with V.N.T.C. He concedes as much explaining that he was dealing with issues, scheduling challenges, and frankly "could have done better." The Court also received testimony that Ja. I. took no steps to thwart Mr. C.'s ability to have visitation with V.N.T.C. Accordingly, the Court has no evidence before it giving rise to a justifiable cause for Mr. C.'s failure to have contact with V.N.T.C. during the year leading up to the marriage of J. and Ja. For these reasons, the Court does find that the consent of V. C. is not a necessary prerequisite to the Court's consideration of the adoption petition at bar as he has forfeited this right by his actions.

The Court now considers the best interests of V.N.T.C. with respect to the Petition before the Court. The evidence is uncontroverted that J. I. has raised V.N.T.C. as his own daughter for the past eight years. He has provided for her and been involved in her life with respect to her educational and athletic pursuits as well as her medical needs. The two are bonded and J. clearly loves the child. In all other respects, there is no question but that J. I. is a good man who has served his country and is willing now to serve as the legal father of V.N.T.C.

This having been said, the Court also finds that a relationship has been reestablished between V.N.T.C. and her biological father, V. C. This seems to have developed and progressed under the radar and apparently without the knowledge of J. and Ja. I. V.N.T.C., herself, testified that she has spoken almost on a weekly basis with her father on the cell phone and exchanged text messages with him almost every other day. She refers to the Petitioner as "J" but still refers to V. C. as "Dad."

It is clear that V. C. has strong feelings for his daughter V.N.T.C. While it is clear to the Court that for a significant period of time, V. C. indeed “could have done better” in communicating with his child, it is not uncommon for a parent to come in before this Court at this stage of the proceeding and promise to do better in the future. However, in this case, V. C. has “done better” for the past seven months. The Court finds that he has been regularly communicating with V.N.T.C. and has established a relationship as her father.

After due consideration, and under these circumstances, the Court cannot find the Petitioner has shown by clear and convincing evidence that it is in the best interests of V.N.T.C. to grant the Petition as filed by J. I. This is in no way a reflection of the “job” that J. I. has done with respect to raising V.N.T.C. as his own daughter; but rather is based on the observation of the parent/child relationship in place between V. C. and V.N.T.C. While V. C. has forfeited his right to withhold consent to the adoption petition, V.N.T.C. has not forfeited her right to have a relationship with her biological father --- a relationship she has admittedly pursued along with her father for the past seven months.

For the foregoing reasons, the Court must now deny the Amended Petition of J. I. to adopt V.T.N.C.

IT IS SO ORDERED.

THIS IS A FINAL APPEALABLE ORDER.

RICHARD P. CAREY, JUDGE

cc: E. E. S., Esq.
V. C.