

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA  
ORPHANS' COURT DIVISION**

<b>IN THE INTEREST OF</b>	:	<b>NO. 6285</b>
	:	
<b>KR</b>	:	
<b>a minor child,</b>	:	

**ORDER**

*AND NOW*, this 25<sup>th</sup> day of **January, 2012**, this order is in regards to the Petition for Voluntary Relinquishment of Parental Rights filed by Father on September 8, 2011 and the Petition for Adoption filed on January 3, 2012 by Mother. A hearing on the matter was held on January 6, 2012. Present at the hearing were Mother; Mother's counsel Lori Rexroth, Esquire, and TJH, step-brother of Mother and prospective adoptive father to the minor child.

The minor child at issue in this case is KR, date of birth June 26, 2000. At the hearing, in which Father was not present even though properly served with notice, there was little to no testimony of Father's involvement in the child's life. Mother testified that she has always been the custodial parent of the child and that her step-brother, TJH, had stepped into the fatherly role for the child. Further testimony elicited that for the first five (5) or six (6) years of the child's life, Mother and Child resided with TJH. Mother and TJH live in close proximity to each other and TJH is active in the child's life and maintains a close relationship with her.

As Mother and TJH are step-brother and sister their relationship is familial. It is their intent for the child to remain the legal child of Mother and continue to reside in

Mother's home with TJH becoming the legal father of the minor child and continuing to reside not in the home with the child but a couple doors down. There was no testimony that TJH intended to financially provide for the child.

The question for the Court is may the step-brother of Mother legally adopt the minor child while the Mother maintains her parental rights. Mother points to *In the Matter of the Adoption of A.M.T. and C.C.T.*, 2002 PA Super 216 (2002), case law that refers to standing to adopt and argues based on this case TJH has standing and should be allowed to adopt the minor child. The case Mother points to is not analogous to the case in hand. In that case both of the parents were deceased and the parental aunt and uncle of the children sought to adopt the children over the objection of the grandmother.

Mother further argues that TJH has standing to adopt based on *in loco parentis*.

The phrase 'in loco parentis' refers to a person who puts himself [/herself] in the situation of assuming the obligation incident to the paternal relationship without going through the formality of a legal adoption. The status of 'in loco parentis' embodies two ideas: first, the assumption of a parental status, and second, the discharge of parental duties.

*Van Coutren v. Wells*, 633 A.2d 1214, 1216 (Pa. Super 1993) (quoting *Rosado v. Diaz*, 425 Pa. Super 155, 161. (1993). Based on the definition of *in loco parentis* Court finds that TJH does not have *in loco parentis* status. While there was testimony that TJH has stepped into the fatherly role and established a bond with the minor child there was no testimony that he ever discharged Mother of her parental duties. Mother at all times resided with the child and saw to the welfare of the child. The Court does not view TJH's involvement and the fact that he babysat and continues to do so enough to rise to the level of

discharging Mother of her parental duties. Even if at times TJH has allowed them to stay at his home when needed.

There is little case law that has similar facts to the one at hand. When looking for guidance the Court found *In re Involuntary Termination of Parental Rights of K.D.M.A.*, 18 Pa. D. & C.4<sup>th</sup> 297 (Bucks County 1993). As this is a Bucks County case the case does not set precedent however the Court views it as advisory. The facts in the present case are very similar to *In re: K.D.M.A.*. In *In re: K.D.M.A.* Father confirmed consent of adoption of the minor child by maternal uncle and Mother intended to maintain her parental rights; making brother and sister legal parents. *In re: K.D.M.A.* at 1-2. The issue presented was legally could Father's rights be terminated to enable the uncle to adopt with Mother retaining her rights. *Id.* at 3. The Court held that this was not what the legislature intended and additionally this differed from homosexual relationships because there was not the creation of a family unit. *Id.* at 6.

While the facts in *K.D.M.A.* were slightly different because the uncle was married and TJH is not the finding is the same. *Id.* at 6. Generally when a biological parent retains parental rights and their child is adopted it is in the form of a spousal adoption. The legislature allows for this type of adoption via 23 Pa. C.S. § 2903. Mother failed to provide legal authority to allow the Mother's brother to adopt the child with her retaining parental rights and the Court could not find that the legislature intended for a brother and sister who do not live together and have no intention of living together to become an adoptive family.

Therefore, the Petition for Voluntary Relinquishment of Parental Rights filed by Father and the Petition for Adoption filed by Mother are hereby **DENIED**.

By the Court,

Joy

Reynolds McCoy, Judge