

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

**IN RE:** : **NO. 6362**  
:   
:   
**ECJ** :   
:   
**a minor child,** :

**OPINION AND ORDER**

**AND NOW**, this 5<sup>th</sup> day of **August, 2013**, after a hearing, held July 11<sup>th</sup>, 2013 concerning a Petition for Involuntary Termination of Parental Rights filed by Mother, MJ regarding the rights of her child, ECJ, filed on January 7, 2013. Mother seeks to terminate the parental rights of the child's biological father, PFM, as a prerequisite to having the child adopted by her mother, CPJ. Mother was present at the hearing with her attorney Rocco Rosamalia. Father though properly served, failed to appear.

The minor child was born December 16, 2011. Mother testified regarding Maternal Grandmother's relationship with the minor child. Currently, Maternal Grandmother lives within a few miles of Mother and child. Grandmother and Mother both expressed their intention to begin residing together in the future. Grandmother sees the minor child on a daily basis. Maternal Grandmother is the only other adult in the minor child's life. Grandmother believes she has a different role in the life of the minor child at issue than her role to her other grandchildren because she sees him more than her

other grandchildren. Both grandmother and mother testified to the minor child referring to Grandmother as “Da Da”. Grandmother offers some assistance to the child through providing meals. Father has had very little involvement in the child’s life.

A petition to terminate a natural parent’s parental rights, filed by one natural parent against the other under Section 25129(a)(1), is cognizable only if adoption of the child is foreseeable. *In the Matter of the Involuntary Termination of Parental Rights to E.M.I., a Minor Child; Appeal of: L.J.I.*, 57 A.3d 1278, 1285 (Pa. Super. 2012). While an averment of contemplated adoption might be sufficient to obtain a hearing on the termination petition, at the termination hearing the petitioning parent must demonstrate the planned adoption is also in the child’s best interest, before the court will terminate parental rights of the responding parent... thus the court must address and evaluate the proposed adoption that was averred at the time of termination. *Id.*, at 1287. In order for a parent seeking termination to be successful, that parent must demonstrate that [a] new parent-child relationship is foreseen. *Id.*, at 1287. The question for the Court is may the Maternal Grandmother of the minor child, in this specific instance, legally adopt while Mother maintains her parental rights.

The Superior Court considered a similar issue in *In Re: Adoption of J.M.* when determining whether a Mother could terminate Father’s parental rights in order to allow for an adoption by Maternal Grandfather. *In Re: Adoption of J.M.*, 991 A.2d 321, 321 (Pa. Super. 2010). The trial court concluded that Mother had met the termination grounds under 2511(a)(1); however it did not believe termination was in the best interest pursuant to 2511 (b). *Id.* at 327. The Superior Court cited to and relied upon *In re Adoption of*

**R.B.F.** where the Supreme Court held that the Adoption Act permits a non-spouse to adopt a child where one of the child's parents continue to retain custody "upon good cause shown". *In re Adoption of R.B.F.* 803 A.2d 1195, 1202 (Pa. 2002). The trial court in *In Re: Adoption of J.M.* was reversed because the Superior Court reasoned "Although portions of the trial court's needs and welfare analysis touch upon this issue, the trial court never directly considered whether Mother was able to show cause to proceed with the adoption..." . *In Re: Adoption of J.M.*, at 327. The case was remanded in order for Mother to show cause pursuant to section 2901 of the Adoption Act why the proposed adoption should proceed. *In Re: Adoption of J.M.*, at 327.

*In In re: K.D.M.A.* father consented to the adoption of the minor child by maternal uncle and Mother intended to maintain her parental rights; making brother and sister legal parents. *In re Involuntary Termination of Parental Rights of K.D.M.A.*, 18 Pa. D. & C. 4<sup>th</sup> 297 (Bucks County 1993). *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 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. Generally when a biological parent retains parental rights and their child is adopted it is in the form of a spousal adoption.

*In the Matter of the Involuntary Termination of Parental Rights to E.M.I., a Minor Child; Appeal of: L.J.I.*, the Superior Court ruled on an issue regarding termination and adoption in a same-sex couple. Mother sought to terminate Natural Father's rights in order for her same-sex partner to adopt the minor child who at the time

was four years old. Mother and her partner lived together with the child and maternal grandparents. The minor child was born in 2008. Mother and her partner began dating in 2009. The court found it was not clear who financially supports the child. Mother's partner performed parental duties such as bathing, feeding, and dressing the child. *Id.* at 1281. The trial court denied Mother's petition for termination, based on the finding that Mother had failed to demonstrate the strength of her partner's potential adoption. *Id.* at 1282. In assessing the proposed adoption the court borrowed from the cause shown standard of Section 2901 of the Adoption Act to determine whether the Child would be placed in a new parent-child relationship and foster creation of a family unit, and further the best interests of the child. *Id.* at 1288. The lower court did not find that a "genuine parent-child relationship" existed between the minor child and mother's partner. *Id.* at 1289. The Court noted mother and her partner had never lived on their own with the child as a defined family unit. *Id.* at 1289. The record did not reflect adoptive mother had ever contributed financially to the child's support. *Id.* at 1289. Upon review, the Superior Court held "under these specific facts and circumstances the court's decision was not an abuse of discretion". *Id.* at 1290. Quite simply, Mother did not carry her evidentiary burden. *Id.* at 1290.

This Court finds that similarly, Mother in the case at hand has failed to meet the evidentiary burden. Specifically, Mother has failed to demonstrate by clear and convincing evidence that the contemplated adoption is in the child's best interest. Mother has failed to demonstrate that the proposed adoption would place the child in a new parent-child relationship and foster the creation of a family unit. The testimony presented

did not demonstrate a parent-child relationship between grandmother and the minor child. Grandmother has played and will continue to play an essential role in the child's life; however that role has been a grandmother not a parent. Grandmother and Mother both presented testimony that Grandmother sees the minor child almost daily. Grandmother will pick the child up if Mother is unavailable and Grandmother has assisted in meals and other financial circumstances. Grandmother and mother both presented testimony that the child loves Grandmother and Grandmother loves the child. All of this does not demonstrate grandmother has stepped in the shoes of a parent. By Grandmother's own testimony, her role is different with this child than to her other grandchildren due to the amount of time she spends with him, not due to a different sort of relationship.

The Court is not convinced that the child's reference to Grandmother as "Da-Da" at less than two years of age equates to the role of Father being filled by Grandmother. It is clear that Mother and Grandmother both love and care for ECJ. They, however, are not creating a new family unit as intended by the legislature. Rather, they are raising and continue to raise ECJ as his mother and grandmother. The only purpose that termination of Father's parental rights would serve, based upon the facts in the case, is to ensure that Father will be prohibited from having any contact or relationship with his son in the future.

Therefore, the Petition for Involuntary Termination of Father's Parental Rights and Mother's Petition for Adoption are DENIED.

By the Court,

Joy Reynolds McCoy, Judge