

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: : Lyco. Com. Pl. Nos.
M.K. & D.K., : ~~6617 Adoption~~, **6618 Adoption**¹
minor children, :
: Pa. Super. Ct. Nos.
: **127 MDA 2019**, ~~128 MDA 2019~~²
:
: ORPHANS' COURT DIVISION
: *Motion for Reconsideration*

DECREE

On January 8, 2019, this Court issued a *Memorandum Opinion* which involuntarily terminated the parental rights of Father, N.H., mother of D.K., and T.K., mother of M.K. On January 18, 2019, N.H. filed a *Notice of Appeal and Matters Complained of on Appeal* with this Court.³ On January 23, 2019, T.K. ("Movant") filed a *Motion for Reconsideration* (the "Motion"),⁴ with this Court. On January 28, 2019, this Court scheduled the motion for a prompt hearing. Concurrently, the Court also stayed the whole appeal since N.H. had appealed under both docket numbers.⁵

On February 7, 2019, the Court heard argument on the Motion.⁶ The Movant argues that the Court erred when it denied her "verbal consent on the objection of

¹ See *infra* note 5.

² See *infra* note 5.

³ N.H. filed an appeal under both docket numbers; however, only No. 6618 Adoption involves her child, D.K.

⁴ Pa.R.C.P. No. 1930.2(b).

⁵ On February 11, 2019, the Pennsylvania Superior Court discontinued the appeal under 6617 Adoption/128 MDA 2019 after N.H. withdrew her appeal under those docket numbers. However, because this Court was forced to stay the entire action, the Pennsylvania Superior Court will remain as a recipient of this decree to prevent any confusion regarding this Court's stay order.

⁶ Also on February 11, 2019, the Pennsylvania Superior Court issued an Order under 127 MDA 2019 requesting that N.H. show cause why N.H.'s appeal is not premature based on "Appellant's" reconsideration motion. On this issue, the Court would note that N.H. did incorrectly appeal under both docket numbers; however, N.H. did not file the motion for reconsideration.

Counsel for the Agency.”⁷ She argues that her situation is distinguishable from *In re Adoption of A.M.B.*⁸ because, even though she did not verbally request to voluntarily relinquish her parental rights until the third—and final—day of the involuntary termination hearing, she previously signed and dated a voluntary consent to relinquish her rights on October 9, 2018 before the Honorable Judge McCoy.⁹

The narrow issue before this Court is whether the Court erred in denying Movant’s voluntary relinquishment request after the commencement of the involuntary termination of parental rights hearing and presentation of evidence at said hearing. *In re Adoption of A.M.B.* is dispositive. In *A.M.B.*, the issue concerned whether the orphans’ court erred when it entered an order involuntarily terminating the mother’s parental rights after holding a hearing on the Erie County Office of Children & Youth’s petition for involuntary termination and the mother’s petition for voluntary relinquishment of her parental rights.¹⁰ Similar to the Movant in this matter, the mother in *A.M.B.* did not contest the sufficiency of the evidence for the orphans’ court to involuntarily terminate her parental rights, but that the orphans’ court should have granted her voluntary relinquishment as a matter of course.¹¹

The Pennsylvania Superior Court held that the orphans’ court was not required to consider only the mother’s voluntary relinquishment request when the court was presented with sufficient evidence that involuntary termination was appropriate.¹² In

⁷ T.K.’s Motion for Reconsideration & Request to Toll Appeal Period Pending Resolution, ¶2 (Jan. 23, 2019) (hereinafter “T.K.’s Motion”).

⁸ See generally *In re Adoption of A.M.B.*, 812 A.2d 659 (Pa. Super. Ct. 2002).

⁹ T.K.’s Motion, Ex. B.

¹⁰ *In re Adoption of A.M.B.*, 812 A.2d at 662.

¹¹ *Id.*

¹² *Id.* at 664-65. The Court distinguished *In re Adoption of A.J.B.*, 797 A.2d 264 (Pa. Super. Ct. 2002) in that only a petition for voluntary relinquishment was considered—and granted—by the orphans’ court in

fact, the Superior Court noted that if the orphans' court had not involuntarily terminated the mother's rights after sufficient testimony was presented regarding the need for involuntary termination, the orphans' court would have abused its discretion.¹³ The Superior Court stated:

First, it is rare that a court would improperly exercise its discretion and deny an agency the legal right to obtain an Order terminating parental rights *after* it presented clear and convincing evidence that the health and welfare of the child required it. Such would be an abuse of discretion. To permit an Order of voluntary relinquishment after sufficient evidence for a decree of involuntary termination is presented and the reasonable effort requirements are met would be incongruous and contrary to the federal and state policy of minimizing the "foster care drift" that has doomed millions of children to interim, multiple or otherwise impermanent placement.¹⁴

The Superior Court was clear that a parent cannot use the request for voluntary termination as an "escape [of] accountability at the moment of a judicial determination of involuntary termination," thus, allowing the "unfit" parent "another bite at the apple."¹⁵

Further, this Court does not believe the procedural posture of this case distinguishes it from *A.M.B.* While Movant originally signed and dated a voluntary consent to relinquish parental rights on October 9, 2018, her request to voluntary relinquishment was denied at that time by Judge McCoy. Judge McCoy denied the request because Movant was unsure whether Movant desired to voluntarily relinquish her rights. Judge McCoy informed her that when Movant determined whether she wanted to voluntarily relinquish her rights Movant could file the appropriate petition. Movant did not file another petition, but raised the issue verbally during the third day of

that case. *Id.* at 663-64. Thus, evidence was not taken or considered regarding the filed petition for involuntary termination. *Id.* at 673-74.

¹³ *Id.* at 667.

¹⁴ *Id.*

¹⁵ *Id.* at 669-70, 672.

the involuntary termination hearing.¹⁶ Because the Court had already heard a substantial amount of evidence at the time of Movant's request for voluntary relinquishment, it was within the Court's discretion to deny Movant's request.¹⁷

For the aforementioned reasons, T.K.'s Motion is **DENIED**. The Stay entered on January 28, 2019 by order of this Court is hereby **LIFTED**.¹⁸

IT IS SO DECREED this 12th day of February 2019.

BY THE COURT,

Eric R. Linhardt, Judge

ERL/zs

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¹⁶ See *In re: C.M.C.*, No. 1432 WDA 2015, Unpublished Opinion at 20-21 (Pa. Super Ct. May 26, 2016) (remanding the case to the orphans' court after finding that it improperly allowed the mother to voluntarily relinquish her parental rights during an involuntary termination hearing when the court's allowance prevented the implementation of proper procedures for both the mother's voluntary relinquishment and the involuntary termination hearing). The Court believes this memorandum opinion falls under an exception to the Operating Procedures of the Superior Court. See 210 Pa. Code § 65.37 ("when it is relevant under the doctrine of law of the case. . .").

¹⁷ *Id.* at 671 ("Discretion always remains with the court in the course of a hearing to determine whether the elements of the proceeding have been established by clear and convincing evidence.").

¹⁸ Pa.R.A.P. No. 1701(b)(3).