

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

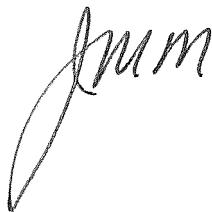
2006 CJ 0900

IN RE: M.J.S. APPLYING FOR STEP-PARENT ADOPTION OF
B.E.C, B.C.C. AND A.G.C.

JUDGMENT RENDERED: SEP 15 2006

ON APPEAL FROM THE
TWENTY-SECOND JUDICIAL DISTRICT COURT
DOCKET NUMBER 2005-40059, DIVISION J
PARISH OF ST. TAMMANY, STATE OF LOUISIANA

HONORABLE WILLIAM J. KNIGHT, JUDGE



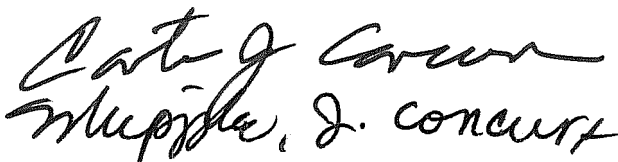
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BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.



MCDONALD, J.

This is an appeal from a judgment granting a stepparent adoption to MJS. The petition for stepparent adoption was opposed by the natural father, CDC.

KRS and CDC were married for five years and had three children, BEC, BCC and AGC. They separated in March of 1999, when KRS was pregnant with their third child. KRS filed a petition for divorce in April of 2000 and a special process server served CDC with the petition on May 31, 2000. The petition included allegations that KRS should be granted sole custody of the children, subject to reasonable visitation by CDC at the home of his mother in St. Tammany Parish or as otherwise agreed by the parties, and that he should be ordered to pay child support in accordance with the Louisiana child support guidelines.

CDC failed to answer the petition and the court entered a preliminary default judgment on July 24, 2000. On August 15, 2000, the court confirmed the default judgment after hearing testimony and considering exhibits filed into evidence. This evidence included CDC's W-2 forms, a 1999 federal income tax return and a child support worksheet. The judgment granted the divorce and awarded sole custody of the minor children to KRS, subject to visitation in favor of CDC, and ordered CDC to pay child support in the amount of \$540.00 per month. The judgment and notice were mailed to CDC by certified mail on November 20, 2000, and CDC received it and signed the certified mail receipt. In the stepparent adoption proceedings, CDC acknowledged reading the judgment granting the divorce, but, inexplicably, claimed to be unaware of the child support provision.

In August 2005, a wage assignment was instituted and CDC's wages were thereafter garnished. When the June 2005 petition for stepparent adoption by MJS was filed, CDC owed in excess of \$30,000.00 in child support payments for the previous five years. In addition to failing to pay child support for five years, CDC saw the children only sporadically during that time. CDC moved to Mississippi in September of 2000.

MJS has financially supported the three children since his marriage to the children's mother in 2002, and has acted as their father since the marriage. He wakes the children up in the morning and tucks them into bed at night. The children call him "Daddy."

Louisiana Children's Code article 1255 provides that:

A. The court, after hearing and after taking into consideration information from all sources concerning the intrafamily adoption, may enter a final decree of adoption, or it may deny the adoption. The basic consideration shall be the best interests of the child.

B. When a court has granted custody to either the child's grandparents or his parent married to the stepparent petitioner, there shall be a rebuttable presumption that this adoption is in the best interests of the child.

Louisiana Children's Code article 1037 provides in part:

B. When the court finds that the alleged grounds set out in any Paragraph of Article 1015 are proven by the evidentiary standards required by Article 1035 and that it is in the best interests of the child, it shall order the termination of the parental rights of the parent against whom the allegations are proven. The court shall enter written findings on both issues. The consideration of best interests of the child shall include consideration of the child's attachment to his current caretakers.

Louisiana Children's Code article 1015(4) provides the following pertinent grounds for terminating parental rights:

(b) As of the time the petition is filed, the parent has failed to provide significant contributions to the child's care and support for any period of six consecutive months.

(c) As of the time the petition is filed, the parent has failed to maintain significant contact with the child by visiting him or communicating with him for any period of six consecutive months.

The trial court found that CDC failed to comply with the court order of support without just cause for a period of more than six months. Further, the court found that there was at least one period of more than six months when there was no significant contact with the minor children. Finding that the grounds for termination of parental rights and granting of the adoption existed, the trial court granted the request by MJS to adopt his stepchildren and terminated the parental rights of CDC.¹

After a thorough review of the record, we find no error of law and no manifest error and we affirm the trial court judgment in accordance with the Uniform Rules—Court of Appeal, Rule 2-16.1.B. Costs are assessed against CDC.

AFFIRMED.

¹ We note that CDC apparently filed suit seeking to nullify the default judgment that granted the divorce and set child support. However, that suit is not a part of the record before us.