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A Stopgap No Longer

New law gives foster families standing to adopt

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On Nov. 16, the Resource Family and Adoption Process Act (Act 68) was signed into law by Gov. Edward G. Rendell and will take effect 60 days thereafter. This act gives foster parents standing to file for adoption of children for whom they have cared. Section 3 of the act defines a "Resource Family" as "A family which provides temporary foster or kinship care for children who need out-of-home placement and which may eventually provide permanency for those children, including as an adoptive family."

Prior to Act 68, after having cared for foster children and having had them become part of their families, foster parents were denied standing to commence adoption proceedings without the consent of the child welfare agency, which had legal custody of foster children. Although the law of Pennsylvania has determined that various third parties have standing for custody or adoption of children, heretofore, foster parents did not belong to that group of persons.

The issues of the rights of foster parents, the rights of biological parents, the rights of an agency such as Children & Youth Services, and the adoption of foster children have been bouncing around the courts of this commonwealth since 1949 when the state Supreme Court was faced with the issue of whether foster parents could retain custody of their foster children even when the agency that placed the children in that home demanded that the foster parents relinquish their rights to custody. *Com. ex. rel. Children's Aid Society v. Gard*, 66 A.2d 300 (Pa. 1949). The foster parents had entered into a contract with the agency giving it all decision-making power regarding the child. The state Supreme Court determined on the facts of that case that to remove the child from the foster home would be a cruel result not in the child's best interest, and therefore the court awarded custody to the foster parents, putting the child's best interest superior to the contractual rights at issue. Also see *Com. ex. rel. Bankert v. Children's Services*, 307 A.2d 411 (Pa. Super. 1973). In that matter, the foster parents had entered into an agreement with Child Services, giving the agency all decision-making power. The trial court upheld the agreement, and the agency received custody. However, the Superior Court reversed and remanded for an evidentiary hearing on the best interest of the child.

In 1976, the Supreme Court was asked by a mother to reinstate her parental rights. The trial court terminated the mother's parental rights based on the fact that she had repeatedly and continuously neglected the child, R.I. *In re Adoption of R.I.*, 468 Pa. 287, 361 A.2d 294 (1976). The majority affirmed the trial court. Two dissenting justices stated that if a court did not have before it evidence of willful neglect or fault, such a termination would irreparably destroy the possibility for a reunion of the family. The mother filed a writ of certiorari to the U.S. Supreme Court, which was denied and the appeal was dismissed. *In re Adoption of R.I.*, 429 U.S. 1032 (1977). This

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opinion, however, did not address whether foster parents have standing to file for adoption of foster children. The issue was limited to whether the rights of the biological parent could be terminated for neglect and fault.

The process for adoption of a child is set forth in 23 Pa. C.S. Section 2101 et. seq. The first step toward adoption is the termination of parental rights of the biological parent. In 1984, in the matter of *In re Adoption of Crystal*, 480 A.2d 1146 (Pa. Super. 1984), the Superior Court addressed the issue of whether foster parents have standing to file a petition for termination of parental rights. Crystal was originally placed with Berks County CYS, which placed Crystal with foster parents almost a year later. The foster parents had custody of Crystal for a period in excess of six years. That court held that foster parents do not have standing to petition for termination of parental rights. The foster parents argued that they met the criteria of "in loco parentis," standing in the shoes of the natural parents. The Superior Court, however, found that even though foster parents may have physical custody of the child, they do not have *legal* custody of the child. On the contrary, the agency that placed the child in foster care retains the legal custody.

That court also held that the General Assembly did not intend for foster parents to have standing on the basis of the doctrine of in loco parentis. The Superior Court held that the role of the foster parents is subordinate to the role of the agency. In 1987, the Superior Court once again determined that foster parents lacked standing to adopt their foster children in the case of *In re Adoption of S.C.P.*, 527 A.2d 1052 (Pa. Super. 1987).

In 1995, the state Supreme Court undertook to resolve the issue of standing of foster parents in adoption proceedings. *Chester County Children & Youth Services v. Cunningham*, 638 A.2d 1157 (Pa. Super. 1994); affirmed, 656 A.2d 1346 (Pa. 1995). The foster parents had physical custody of the children in that case since one was 10 days old and the other was 2 and one-half years old. The rights of the natural parents were terminated and the Chester County Children & Youth Services (CYS) took custody of the children. When the Cunninghams inquired of CYS about adopting the children, CYS informed them in writing that they would not approve them as adoptive parents for a number of reasons, including the fact that Mrs. Cunningham was age 50 and Mr. Cunningham was 63 years old. The trial court ruled in favor of the Cunninghams. The Superior Court reversed the trial court's ruling and dismissed the Cunningham's report of intention to adopt. The Supreme Court granted allocatur hoping to resolve once and for all the issue of whether foster parents have standing to commence adoption proceedings without the consent of the child welfare agency.

Unfortunately, the Supreme Court was evenly divided, without a majority decision, and therefore upheld the ruling of the Superior Court. Both factions of the Supreme Court determined that the Legislature intended that agency consent be a requirement in any adoption proceedings brought by foster parents. Since the *Cunningham* decision in 1995, the Superior Court has decided many cases dealing with whether foster parents have standing to adopt. See *In re Adoption of DMH. Appeal of K.S.E.*, 682 A.2d 315 (Pa. Super. 1996); *In re Adoption of S.P.T., Appeal of H.A.M.*

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and B.T.M., 783 A.2d 779 (Pa. Super. 2001); *In The Matter of The Adoption of A.M.B., Appeal of J.B.*, A.2d 659 (Pa. Super. 2002); *Adoption of J.D.T. and J.T.D., Appeal of J.G.R. and M.R.* 796 A.2d 992 (Pa. Super. 2002); *In the Matter of the Adoption of A.M.T. and C.C.T., minors, Appeal of J.S. and J.S., Husband and Wife*, 803 A.2d 203 (Pa. Super. 2002); *In re Adoption of J. E. F. In re Adoption of C.J.U. In re Adoption of N.G.F., Appeal of S.B., Aunt and D.B., Uncle*, 864 A.2d 1207 (Pa. Super. 2004). None of these decisions recognized standing for foster parents to adopt.

Not until the passage of Act 68 last month did the Legislature take the steps to grant standing to foster parents in the Resource Family and Adoption Process Act. The stated policy of the legislature is as follows:

SECTION 2: LEGISLATIVE INTENT

"The General Assembly recognizes and values the important service provided by a resource family parent or parents in caring for children and youth within the foster care system. It is the intent of the General Assembly to ensure that persons serving as resource parents are treated equitably during all stages of a foster child=s placement including adoption."

A resource family seeking to adopt must meet three criteria as set forth in Act 68:

"SECTION 4: RESOURCE FAMILY ADOPTION INTERVIEW PROCESS

(A) INTERVIEW. – A RESOURCE FAMILY PARENT OR PARENTS SHALL BE GIVEN AN INTERVIEW WITH THE APPROPRIATE COUNTY OR PRIVATE AGENCY WHEN ALL OF THE FOLLOWING OCCUR:

(1) THE COUNTY OR PRIVATE AGENCY THAT PLACED THE CHILD WITH THAT RESOURCE FAMILY HAS CHANGED THE CHILD=S GOAL FROM FOSTER CARE TO ADOPTION.

(2) THE RESOURCE FAMILY PARENT IS INTERESTED IN BECOMING AN ADOPTIVE RESOURCE FOR THAT CHILD.

(3) THE CHILD HAS RESIDED WITH THAT RESOURCE FAMILY FOR SIX MONTHS OR MORE."

Act 68 further states:

"(D) Certain concerns not to be considered. No resource parent who meets the conditions set forth in subsection (A) shall be denied consideration as an adoptive parent solely because of the inability to access that individual as a resource family parent in the future."

Until the passage of Act 68, resource families often experienced heartbreak when seeking to make foster children a permanent part of their families. Now, not only do resource families have the

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opportunity to adopt the children who live with them, but other families who would not otherwise have considered being resource families may become available knowing they can ultimately adopt the child who becomes part of their family. Act 68 has been long overdue and works for the benefit of both the children and the resource families. •

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