

34218

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN THE MATTER OF:

CIVIL ACTION NO 07-A

THE PETITION FOR THE ADOPTION OF
JOHANNA CAROLINE D [REDACTED], GRANT THOMAS D [REDACTED]
AND JAMESON TODD D [REDACTED]

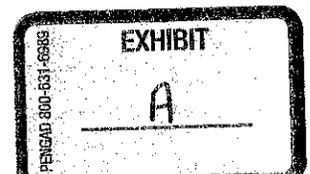
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KATHY S. GAINES, CLERK
KANAWHA CO. CIRCUIT COURT

FILED

ORDER DENYING PETITION TO ADOPT

On December 17, 2007, the parties appeared in person and by counsel on the Petition of Carey Lynn Baker for the Adoption of Johanna Caroline D [REDACTED] Grant Thomas D [REDACTED] and Jameson Todd D [REDACTED]. Upon review of the entire court file as well as notes of the evidence received during the course of the hearing, the Court makes the following Findings of Fact:

1. Mark D [REDACTED] is the biological father of the minor children named in the instant proceeding. He does not consent to the adoption of his children by the Petitioner.
2. Mr. D [REDACTED] has filed a petition to modify a custody order entered in Arkansas against his former wife, the mother of the children and now the wife of the petitioner. At the time of the filing of the instant petition, that petition to modify was pending in the Arkansas court.
3. Mr. D [REDACTED] is currently unemployed. He was admitted to drug rehabilitation from December 6, 2006 until August 15, 2007. The cost of the inpatient rehabilitation was \$10, 000 for the first 90 days.
4. Mr. D [REDACTED] is under indictment in Arkansas for 73 counts of prescription forgery. He is also charged with violation of probation for three counts of attempting to obtain narcotics in Tennessee and was place on pretrial diversion from December 23006 until October 30, 2007.



5. Mr. D [REDACTED] last saw his children during his October 2006 visitation.
6. Mr. D [REDACTED] testified that in November 2006, the Petitioner, Carey Lynn Baker told him he could not see or visit with his children.
7. Mr. D [REDACTED] testified that he attempted at least on time per month to contact the children by telephone while he was hospitalized for drug rehabilitation and the phone calls went unanswered. He testified that on at least one occasion when he called to speak with the children, the Petitioner told him never to call again and hung up the telephone.
8. Mr. D [REDACTED] testified that he sent letters to the children and the sending letters to them was also a part of his drug rehabilitation program. He received no response. He testified his last letter to the children was sent in July 2007.
9. Mr. D [REDACTED] did not present in documentary evidence to support his attempt to tact his children by letter or telephone.
10. The Petitioner denies ever hiding the children from Mr. D [REDACTED] or denying visitation. He testified that he has given Mr. D [REDACTED] his home phone number and cellar phone number.
11. On the issues of attempting to contact the children and interfering with contacting the children, the Court did not find any one witness more credible than the other.
12. Mr. D [REDACTED] testified he has not paid child support because he has been unemployed and unable to pay since May 2006. He was hospitalized in a drug rehabilitation program from December 2006 until August 2007. Mr. D [REDACTED] testified he successfully completed the drug rehabilitation program and is now seeking employment in order to satisfy his child support obligations.

13. The Petitioner testified that he is the sole source of monetary support for his wife and her children. He has never been convicted of any crime nor does he have any addictions to controlled substances.
14. Jamie Alicia Baker, the biological mother of the children testified that Mr. D [REDACTED] has been ordered to pay child support in the amount of \$245 weekly, and that he is \$19, 000 in arrears. She and Mr. D [REDACTED] were divorced of Order of the Circuit Court of Columbia County, Arkansas, entered December 1, 2004. She and the Petitioner were married December 31, 2004.
15. Both of the Bakers testified that Mr. D [REDACTED] has failed to financially support the children since April 2006 and has made no effort to visit with the children for more than 6 months. Both deny any inference with contact between Mr. D [REDACTED] and his children and both testified that they believed it was in the best interest of the children for the Court to grant the adoption.

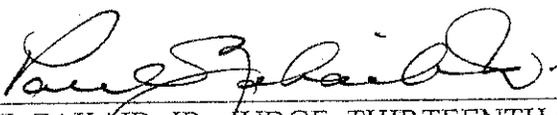
Conclusions of Law

1. The word "abandonment" in the context of adoption law is any conduct on the part of the parent which evinces a settled purpose to forego all parental duties and relinquish all parental claims to the child. See, In re Adoption of Mullins by Farley, 187 W. Va. 772, 421 S.E. 2d 680(1992). Also, Matter of Adoption of Schoffstall, a79 W.Va. 350, 368 S.E 2d 720(1988).
2. The standard of proof required to support a court order limiting or terminating parental rights to custody of minor children is clear, cogent and convincing evidence. Syllabus Point 1, Matter of Adoption of Schoffstall, a79 W.Va. 350, 368 S.E.2d 720(1988).

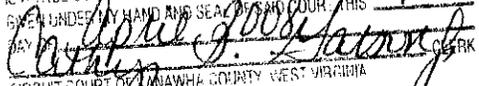
3. The Court cannot find that the biological father, Mr. D [REDACTED] has abandoned or permanently relinquished his parental right to the children.
4. While Mr. D [REDACTED] has not provided child support for some time, his addictions, problems with the law, and hospitalization for drug rehabilitation has likely been a major factor in hindering him from doing so, not any intent or settled purpose to forgo his parental duties or relinquish all parental claims to the children.
5. The Petitioner has failed to prove that the biological father has abandoned or permanently relinquished his parental rights to the children as abandonment is defined by W.Va. Code § 48-22-102.
6. The Petitioner has failed to show un rebutted conduct on the part of the biological father presumptively constituting abandonment as defined by W.Va. Code §48-22-306. The biological father has presented evidence of compelling circumstances preventing him from supporting, visiting or otherwise communications with his children. W.Va. Code §48-22-306(d).
7. Based upon the entire record, the Court cannot find intent to abandon the children by the biological father.

The Court therefore DENIES The Petition to Adopt. To all adverse rulings, the objections of both parties are preserved.

ENTERED THIS 3rd DAY OF April, 2008



PAUL ZAKAIB, JR., JUDGE, THIRTEENTH CIRCUIT

STATE OF WEST VIRGINIA
COUNTY OF KATAWHA SS
DANNY S. CATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 9th
DAY OF April, 2008

CIRCUIT COURT OF KATAWHA COUNTY, WEST VIRGINIA