

DA 19-0272

IN THE SUPREME COURT OF THE STATE OF MONTANA

2020 MT 33

IN RE THE ADOPTION OF N.P.M.,

K.N.M.,

Petitioner and Appellant,

v.

M.M.,

Respondent and Appellee.

APPEAL FROM: District Court of the Eighth Judicial District,
In and For the County of Cascade, Cause No. BDA-19-002
Honorable Elizabeth A. Best, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Bradley J. Jones, Jones & Cook, Attorneys at Law, Missoula, Montana

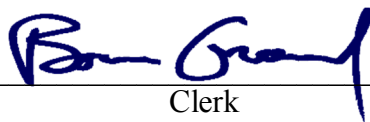
For Appellee:

Marcia Birkenbuel, Attorney at Law, Great Falls, Montana

Submitted on Briefs: November 20, 2019

Decided: February 11, 2020

Filed:


Clerk

Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 This action involves the stepparent adoption of the minor child, N.P.M., by his Stepmother, K.N.M. (Stepmother). Stepmother appeals the denial of her Petition for Stepparent Adoption (Petition) entered in the Montana Eighth Judicial District Court, Cascade County, on April 3, 2019.

¶2 Stepmother presents several issues for review. We find the following issues dispositive:

1. *Does a person with a parental interest established by a court have standing to object to the child's adoption by a stepparent?*
2. *Did the District Court correctly interpret § 42-2-301, MCA, to require consent to adopt from a person whose parental rights have been established by a court?*
3. *Did the District Court properly analyze the best interests of N.P.M.?*

¶3 We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶4 K.A.M. (Mother) and K.P.M. (Father) are the biological parents of N.P.M. Prior to December 2014, both parents sought help providing for N.P.M. from Mother's parents: S.M. (Grandfather) and M.M. (Step-grandmother). Thereafter, Grandfather and Step-grandmother filed, in a different proceeding, a Petition for Parental Interest.¹ On December 17, 2014, Mother and Father voluntarily entered into a Stipulated Parenting Plan with Grandfather and Step-grandmother, which provided, in pertinent part:

¹ Stepmother has not provided the record from District Court Cause No. BDR-14-033, *In Re the Parenting of N.P.M.*, wherein the Petition for Parental Interest was filed. Step-grandmother has provided some of the filings from this earlier case. However, the original Petition for Parental Interest was not included in this appeal.

IT IS HEREBY STIPULATED that it is in the best interests of [N.P.M.] if the Intervenors [Grandfather and Step-grandmother], are granted a parental interest with respect to him with rights as designated below. The parties further stipulate that the factual basis for this third party parental interest exists in this case, as required by Section 40-4-228 M.C.A.

The court approved the Stipulated Parenting Plan and issued its Findings of Fact, Conclusions of Law and Order concluding, “[o]ne or both of the child’s biological parents have voluntarily permitted the child to remain continuously in the care of [Grandfather and Step-grandmother], so that they have stood in loco parentis to the child.” The court concluded Grandfather and Step-grandmother had established a parent-child relationship with N.P.M., as defined by § 40-4-211(6), MCA, finding N.P.M.’s grandparents had provided N.P.M. with:

necessary care, education, and discipline, and they have through interaction, companionship, interplay, and mutuality, fulfilled the child’s psychological needs for a parent as well as his physical needs, and they have met the child’s need for continuity of care by providing permanency and stability in residence, schooling, and activities outside the home.

¶5 Under the Stipulated Parenting Plan, N.P.M. resided primarily with Grandfather and Step-grandmother. However, Grandfather died in July 2016, and N.P.M. thereafter resided only with Step-grandmother. In August 2016, Father filed a motion to modify the parenting plan asserting, “the original parenting plan is not in the child’s best interest because it was based on the child living with his grandfather and his wife during the weekdays. That situation now has significantly changed.” Step-grandmother objected to Father’s motion. Father and Step-grandmother were able to subsequently agree to arrangements for N.P.M., with Step-grandmother remaining the primary physical custodian of the child and Father

gradually increasing his time with N.P.M. This agreement was approved by the court on May 22, 2017, and the proceeding was closed on April 26, 2018.

¶6 On January 14, 2019, Stepmother filed the instant Petition. The Petition included an “Affidavit of Waiver of All Parental Rights, Relinquishment of Child, and Consent to Adoption” executed by Mother. The Petition also included a “Consent of Father to Adoption” executed by Father. Step-grandmother objected to the Petition, arguing that she had a parental interest and her consent to the adoption was required under § 42-2-301, MCA. The District Court ordered additional briefing and held a hearing on February 19, 2019. On April 2, 2019, the District Court issued its order concluding that the plain language of § 42-2-301, MCA, required Step-grandmother’s consent.

STANDARDS OF REVIEW

¶7 A district court’s determination regarding standing presents a question of law which we review de novo for correctness. *Chipman v. Northwest Healthcare Corp.*, 2012 MT 242, ¶ 16, 366 Mont. 450, 288 P.3d 193 (citation omitted).

¶8 A district court’s interpretation and application of a statute in an adoption case is a conclusion of law, which is reviewed for correctness. *In re Adoption of S.R.T.*, 2011 MT 219, ¶ 11, 362 Mont. 39, 260 P.3d 177.

DISCUSSION

¶9 *1. Does a person with a parental interest established by a court have standing to object to the child’s adoption by a stepparent?*

¶10 Standing is one of several justiciability doctrines which limit Montana courts, like federal courts, to deciding only “cases” and “controversies.” *Heffernan v. Missoula City*

Council, 2011 MT 91, ¶ 29, 360 Mont. 207, 255 P.3d 80 (citation omitted). A court lacks power to resolve a case brought by a party without standing—i.e., a personal stake in the outcome—because such a party presents no actual case or controversy. *Heffernan*, ¶ 29. Hence, standing is a threshold, jurisdictional requirement in every case. *Heffernan*, ¶ 29. On appeal, Stepmother expressly challenges Step-grandmother’s standing to object to her adoption of N.P.M. because Step-grandmother’s “parenting interest in N.P.M. will not be affected by his adoption by his stepmother.” Stepmother maintains that Step-grandmother will still be able to exercise her parental interest following Stepmother’s adoption of N.P.M.

¶11 In Montana, to meet the constitutional case-or-controversy requirement, the plaintiff must clearly allege a past, present, or threatened injury to a property or civil right. *Heffernan*, ¶ 33. Furthermore, the injury must be one that would be alleviated by successfully maintaining the action. *Heffernan*, ¶ 33. Importantly, the legislative branch, “may enact statutes creating legal rights, the invasion of which creates standing, even though no injury would exist without the statute.” *Heffernan*, ¶ 34. We explained, “standing often turns on the source of the plaintiff’s claim, since the actual or threatened injury required by the Constitution might exist solely by virtue of statutes creating legal rights.” *Heffernan*, ¶ 35.

¶12 This Court previously stated § 40-4-211(4)(b), MCA, “allows a non-parent standing to seek a parenting interest of a minor child if the person has established a parent-child relationship.” *Kulstad v. Maniaci*, 2009 MT 326, ¶ 57, 352 Mont. 513, 220 P.3d 595. Section 40-4-211(4)(b), MCA, provides, in pertinent part: “[a] parenting plan proceeding

is commenced in the district court: (b) by a person other than a parent if the person has established a child-parent relationship with the child, by filing a petition for parenting in the county in which the child resides or is found.” Under this statute, a person who has established a child-parent relationship as defined in § 40-4-211(6), MCA, may commence a parenting plan proceeding to obtain a parenting interest. Once a parenting interest is established, a parent has an interest, for which its “invasion . . . creates standing.” *Heffernan*, ¶ 34.

¶13 Consistent with § 40-4-211(4)(b), MCA, § 42-2-301(3), MCA, provides, in pertinent part: “[a]n adoption of a child may be decreed when written consents to adoption have been executed by: (3) any other person whose parental rights have been established by a court.” Therefore, “the actual or threatened injury” which Step-grandmother stands to suffer through the stepparent adoption of N.P.M. is the vesting of parental rights in a non-parent, to the detriment of an already-established parenting interest. *Heffernan*, ¶ 35. Accordingly, Step-grandmother possesses standing to object to Stepmother’s Petition to adopt N.P.M.

¶14 2. *Did the District Court correctly interpret § 42-2-301, MCA, to require consent to adopt from a person whose parental rights have been established by a court?*

¶15 Stepmother contends the District Court erred by determining § 42-2-301, MCA, required Step-grandmother’s consent. Section 42-2-301, MCA, provides:

An adoption of a child may be decreed when written consents to adoption have been executed by:

- (1) the birth mother;
- (2) the husband of the birth mother if the husband is the presumed father of the child under 40-6-105;

- (3) any other person whose parental rights have been established by a court;
- (4) the department or an agency that has custody of the child and the authority to place the child for adoption;
- (5) the legal guardian of the child if both parents are dead or their rights have been judicially terminated and the guardian has authority by order of the court appointing the guardian to consent to the adoption;
- (6) the child, either in writing or in court, if the child is 12 years of age or older unless the child does not have the mental capacity to consent.

¶16 When this Court interprets a statute, our aim is, “simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted.” Section 1-2-101, MCA. Therefore, we determine legislative intent based on, “the plain meaning of the language used by the Legislature.” *Contreras v. Fitzgerald*, 2002 MT 108, ¶ 14, 311 Mont. 257, 54 P.3d 983 (citation omitted). We must reasonably and logically interpret the statutory language, “giving words their usual and ordinary meaning.” *Contreras*, ¶ 14.

¶17 Here, we agree with Step-grandmother that the language of § 42-2-301, MCA, is clearly intended to be conjunctive. The consent of the birth mother; the presumed father; any other person whose parental rights have been established by a court; and the child, if he is 12 years of age or older, are all required, when applicable under the facts of any given case. Subsection (4) of 42-2-301, MCA, requires the consent of the department or an agency with authority to place the child for adoption when the child is placed with that department or agency. Finally, the consent of the child’s guardian is required when the child has a legal guardian and no parents, and the guardian has authority by order of the court to consent to an adoption. The plain language of § 42-2-301, MCA, requires consent when *any* of the applicable subsections apply given the facts and circumstances of the

child's life. Moreover, the first line of the statute requires the written "consents". (Emphasis supplied.) The use of the plural form makes it clear that all applicable consents must be obtained before a stepparent adoption may be considered.

¶18 Additional support for this interpretation of the statute can be found elsewhere in the Code. Under § 42-4-310, MCA, "[a] stepparent who desires to adopt a stepchild shall obtain an order of termination of parental rights of the child's noncustodial parent prior to or contemporaneously with the petition to adopt. Any necessary *consents* must be filed with the petition for adoption." (Emphasis supplied.) Here, the legislature required the consent of any person listed in § 42-2-301, MCA, prior to adoption. This is in keeping with the Official Comments to Title 42, Chapter 2 of the Montana Adoption Act, which provide: "[i]t is the theory of this act that the adoption proceedings should be based on consent." Accordingly, the District Court correctly interpreted § 42-2-301, MCA, as requiring the consent of Step-grandmother, who had a parental interest in N.P.M.

¶19 3. *Did the District Court properly analyze the best interests of N.P.M.?*

¶20 Stepmother contends the District Court failed to consider the best interests of N.P.M. under § 42-5-107, MCA, when it denied her petition to adopt N.P.M. A court is obligated to determine child custody matters based upon the children's best interest and the application of statutory factors. *Kulstad v. Maniaci*, 2010 MT 248, ¶ 28, 358 Mont. 230, 244 P.3d 722 (citation omitted). However, "[s]tatutory consent requirements in adoption cases must first be met after which the welfare of the child becomes paramount." *In re Adoption of Smigaj*, 171 Mont. 537, 539, 560 P.2d 141, 143 (1977). Section 42-5-106(1)(c), MCA, provides, in pertinent part: "(1) The court shall issue a decree of adoption

awarding custody of the child to the petitioners based on the evidence received *if* it determines that: (c) *every necessary consent*, relinquishment, waiver, disclaimer, or judicial order terminating parental rights has been obtained and filed with the court.” (Emphasis supplied.) Here, the District Court properly determined that “every necessary consent” had not been given, as Step-grandmother, who possessed a parental interest in N.P.M., expressly objected to the adoption. We conclude the District Court did not err in its application of § 42-2-301, MCA.

CONCLUSION

¶21 M.M. possessed standing to object to Stepmother’s Petition to adopt N.P.M. The District Court correctly applied § 42-2-301, MCA, to require that all applicable consents be obtained prior to addressing the merits of Stepmother’s Petition.

¶22 Affirmed.

/S/ LAURIE McKINNON

We concur:

/S/ JAMES JEREMIAH SHEA

/S/ INGRID GUSTAFSON

/S/ DIRK M. SANDEFUR

/S/ JIM RICE