

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR  
LEE COUNTY, FLORIDA** **CIVIL ACTION**

**In the matter of the adoption of  
J. J. S., a minor child,**

**Case No. YY DR XXXX N**

**ORDER DISMISSING COUNT I OF THE PETITION**

This matter having come before the court on the petition of B. J. T. to adopt J. J. S., a minor child, it is ordered:

1. Findings

The petition has two counts. In Count I, B. J. T. petitions to adopt J. J. S., a minor child. J. S. is the mother of J. J. S. and she has filed her consent to the adoption. However, her consent does not terminate or give up her parental rights in the child, *see* Florida Family Law Form 12.981(a)(1), and the petition does not allege there is a judgment terminating the mother's parental rights.

The petition alleges the biological father's consent is not necessary because he was an anonymous sperm donor, so the petition says the child does not have a legal father and a judgment terminating his parental rights is not necessary.

The petition does not allege that B. J. T. and J. S. are married, so B. J. T. is not a stepparent. A stepparent is a person who is married to a child's natural parent. The petition does not allege that B. J. T. is a "relative" of J. J. S., as defined by §63.032(16).

In Count II, the petition asks to change B. J. T.'s name.

2. Ruling

Count I of the petition is dismissed for failure to state a cause of action. Chapter 63, Florida Statutes, the "Florida Adoption Act" provides:

"(3) PREREQUISITE FOR ADOPTION. - A petition for adoption may not be filed until after the date the court enters the judgment terminating parental rights pending adoption. Adoptions of relatives, adult adoptions or adoptions of stepchildren are not required to file a separate termination of parental rights proceeding pending adoption. ..." §63.087(3).

and:

"(1) PETITION FOR ADOPTION. - A petition for adoption may not be filed until after

the entry of the judgment or decree terminating parental rights unless the adoptee is an adult or the petitioner is a stepparent or a relative. ..." §63.102(1).

Therefore, **the petition is dismissed without prejudice** because it does not allege a prerequisite to filing, that is, a judgment terminating the parental rights of the child's one legal parent and it does not allege the exceptions to that prerequisite, that is, that the petitioner is a relative or a stepparent of the child or that the adoptee is an adult.

**The petitioner is granted 30 days leave to amend to state a cause of action. If an amended petition is not filed within 30 days, then this dismissal of Count I is with prejudice and Count I is denied and this is a final order effective 30 days from this date.**

Count II is granted. Counsel for the petitioner shall prepare a form of judgment on Count II for the court's consideration.

Done and ordered in Fort Myers, Lee County, Florida, this \_\_\_\_\_

R. Thomas Corbin, Circuit Judge

Copies provided to:  
\_\_\_\_\_, Esq.