

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

**In the matter of the adoption of
M. O. M., a minor child,**

Case No. XX DR YYYY N

ORDER DISMISSING PETITION

This matter having come before the court on the joint petition of M. J. M. and S. F. for the adoption of M. O. M., a minor child, by S. F., it is ordered:

1. Findings

The petition alleges that M. J. M. is the natural mother of M. O. M., a minor child, and that S. F. is the stepparent of the child. However, the petition does not allege that M. J. M. and S. F. are married, so S. F. is not a stepparent. A stepparent is a person who is married to a child's natural parent. The petition does not allege that S. F. is a "relative" of M. O. M., as defined by §63.032(16).

M. J. M. joins the petition and consents to the adoption by S. F. However, M. J. M. has not agreed to give up and terminate her parental rights, *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 that the mother knows the identity of the biological father. The mother filed an "Affidavit of Non-Paternity" signed by her, in which she says, in so many words, that the biological father has no parental rights.

However, the petition does not allege the existence of a judgment terminating the father's parental rights, and it does not allege facts demonstrating the father's consent is not required or facts justifying termination of his parental rights. The father has not been served with process and he has not made a voluntary appearance. He has not filed a consent that gives up his parental rights, *see* Florida Family Law Form 12.981(a)(1), or an affidavit of nonpaternity signed by him that waives a claim to paternity. *See* Florida Family Law Form 12.981(a)(3), which may be used in stepparent adoptions.

2. Ruling

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 natural parents or their consents giving up or terminating their parental rights. The petition also 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.

With regard to the father, even if the petition were served on him and a default entered against him, a judgment terminating his parental rights could not be entered because the petition does not state a cause of action for terminating his parental rights or declaring that he has no parental rights. The mother's "Affidavit of Non-Paternity" may contain some allegations on these issues but it is not a petition. No authority is cited for the mother's "Affidavit of Non-Paternity." It is self-serving testimony that states her conviction that the father has no parental rights.

The petitioners are granted 30 days leave to amend to state a cause of action for adoption. If an amended petition is not filed within 30 days, then this dismissal is with prejudice and the petition is denied and this is a final order effective 30 days from this date.

Done and ordered in Fort Myers, Lee County, Florida, this _____

R. Thomas Corbin, Circuit Judge

Copies provided to:
_____, Esq.