

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 07-162

Adoptions by More Than Two Persons or Persons Not Cohabiting

QUESTIONS

1. Assuming it is in the best interest of the child, do Tennessee adoption statutes allow three or four people jointly to adopt a child?
2. Assuming it is in the best interest of the child, do Tennessee adoption statutes allow two adults jointly to adopt a child even though they are not a couple and not cohabiting?

OPINIONS

1. No, Tennessee adoption statutes do not permit more than two persons jointly to adopt a child.
2. No, Tennessee adoption statutes do not permit two adults jointly to adopt a child if they are not a couple and not cohabiting in the same home.

ANALYSIS

The right of adoption in Tennessee is governed solely by statute. *Delamotte v. Stout*, 207 Tenn. 406, 340 S.W.2d 894 (1960). The adoption statutes must be strictly construed. *In re K.A.Y.*, 80 S.W.3d 19 (Tenn. Ct. App. 2002). The right of adoption was created for the purpose of protecting the interests of children whose parents are unable or unwilling to provide for their care. *Doe v. Sundquist*, 2 S.W.3d 919, 926 (Tenn. 1999).

The questions posed require construction of the adoption statutes to determine if the legislature intended to allow the adoption of a child jointly by three or four persons or by two persons who are not a couple and not cohabiting in the same home. In construing statutes, courts must “ascertain and give effect to the legislative intent without unduly restricting or expanding a statute’s coverage beyond its intended scope.” *Wilson v. Johnson County*, 879 S.W.2d 807, 809 (Tenn. 1994). When the statute is unambiguous, legislative intent is determined from the plain and ordinary meaning of the language used in the statute. *Freeman v. Marco Transp. Co.*, 27 S.W.3d

909, 911 (Tenn. 2000). The statutory language must be “read in the context of the entire statute, without any forced or subtle construction which would extend or limit its meaning.” *National Gas Distribs. v. State*, 804 S.W.2d 66, 67 (Tenn. 1991). Statutes that are related to the same subject matter should be read *in pari materia*. *In re C.K.G.*, 173 S.W.3d 714, 722 (Tenn. 2005). In addition, a statute should be construed so that “no part will be inoperative, superfluous, void or insignificant.” *State v. Northcutt*, 568 S.W.2d 636, 637-38 (Tenn. 1978). At the same time, a statute should not be construed to produce an absurd or incongruous result. *Barnett v. Barnett*, 27 S.W.3d 904, 908 (Tenn. 2000).

It appears that the legislature did not intend to allow the adoption of a child jointly by three or four persons or by two persons who are not a couple and are not cohabitating in the same home. The purpose of the adoption statutes is to place children in a safe, stable and permanent home. Tenn. Code Ann. §§36-1-101 *et seq.* In order to adopt a child, petitioners must meet certain requirements. Specifically, the adoption statute provides:

(a) Any person over eighteen (18) years of age may petition the chancery or circuit court to adopt a person and may request that the adopted person’s name be changed.

(b) The petitioners must have physical custody or must demonstrate to the court that they have the right to receive custody of the child sought to be adopted as provided in §36-1-111(d)(6) at the time the petition is filed, unless they are filing an intervening petition seeking to adopt the child.

(c) If the petitioner has a spouse living, competent to join in the petition, such spouse shall join in the petition; provided, that if the spouse of the petitioner is a legal or biological parent of the child to be adopted, such spouse shall sign the petition as co-petitioner, and this shall be sufficient consent by the legal or biological parent for the petitioner’s spouse to adopt the child of the legal or biological parent, and no surrender shall be necessary by such co-petitioning legal or biological parent. Such action by the legal or biological parent shall not otherwise affect the legal relationship between that parent and the child.

(d) The petitioner or petitioners shall have lived, or maintained a regular place of abode, in this state or on federal territory within the boundaries of this state for six (6) consecutive months immediately preceding the filing of the adoption petition.

(e) If the petitioner is in military service stationed out of this state, but had lived, or maintained a regular place of abode, within this state

for six (6) consecutive months immediately prior to entering military service, the residency requirement in subsection (d) shall not apply.

(f) Where the petitioner is seeking to adopt a child that is related, the residency requirement in subsections (d) and (e) shall not apply if the petitioner is an actual resident of this state at the time the petition is filed.

(g)(1) When a child is placed in a foster home by the department or otherwise, and becomes available for adoption due to the termination or surrender of all parental or guardianship rights to the child, those foster parents shall be given first preference to adopt the child if the child has resided in the foster home for twelve (12) or more consecutive months immediately preceding the filing of an adoption petition.

(2) In becoming adoptive parents, the foster parents shall meet all requirements otherwise imposed on persons seeking to adopt children in the custody of the department, and shall be subject to all other provisions of this part.

Tenn. Code Ann. §36-1-115.

In addition, upon the filing of a petition for adoption, a home study must be conducted and filed with the court, unless the court waives the home study for prospective adoptive parents who are related to the child. Tenn. Code Ann. §36-1-116(e). A final order of adoption terminates any existing parental rights or guardianship orders and establishes the relationship of parent and child as if the adopted child had been born to the adoptive parents. Tenn. Code Ann. §36-1-121.

Reading the adoption statutes as a whole, it can be inferred that it was the legislature's intent to confine adoption to applicants who will most likely provide a unified and stable household for a child. The Tennessee adoption scheme expresses a policy of severing, at law, the prior, natural family relationship and creating a new and complete substitute relationship after adoption. Once a final order of adoption is entered, the adoptive parents become the joint and equal legal guardians of the minor child. Tenn. Code Ann. §36-1-121.

Neither the adoption statutes nor other statutes regarding the rights and obligations of parents, however, contemplate the creation or existence of more than two legal parents. While Tennessee adoption law allows adoptions by single or married persons, the statutes contemplate a single adoptive home with one or two adoptive parents. Except for an adoption by a spouse, a child may not be adopted without first terminating the parental rights of any prior legal parent. Tenn. Code Ann. §§36-1-113, 36-1-115, 36-1-121. Even in cases of adoption by a spouse, any pre-existing parental rights of the non-spouse must first be terminated. Tenn. Code Ann. §36-1-115. Thus, the adoption statutes do not contemplate the existence of more than two legal parents at any

time. This is consistent with other state statutes regarding the legal rights and obligations of parents. For example, state law on guardianships recognizes that parents are the joint natural guardians of their minor children and addresses who will exercise guardianship if either parent dies or is incapable of acting or if the parents of a minor child are divorced. Tenn. Code Ann. §34-1-102. This statute does not recognize the existence of more than two legal parents. Tennessee law regarding paternity and legitimation also clearly contemplates the existence of only two legal parents. Tenn. Code Ann. §§36-2-301 *et seq.* Similarly, Tennessee child support statutes also contemplate the existence of only two legal parents. Tenn. Code Ann. §§36-5-101 *et seq.* Accordingly, in construing the adoption statutes as a whole and avoiding any absurd or incongruous result, it is the opinion of this Office that the Tennessee adoption statutes do not permit more than two adults jointly to adopt a child and thereby become the legal parents of such child.

Likewise, the joint adoption by two adults who are not a couple and are not cohabitating in the same home is also not contemplated by Tennessee adoption statutes.¹ As noted above, the purpose of the adoption statutes is to place children in a safe, stable and permanent home. Tenn. Code Ann. §36-1-101. This objective is not likely to be served by allowing the adoption of a child by two adults who are not a couple and not cohabitating. If the court grants a joint petition to adopt by applicants who do not share the same home, the court's next task would presumably be to decide with whom the child would live. That is, it would have to make a custody determination separate from the decree of adoption itself. The adoption statutes, however, do not contemplate custody determinations. Rather, the adoption statutes presume the adoption by two persons will result in the child being placed in a unified and stable household.

No reported Tennessee cases directly addressing these issues were found. Other jurisdictions, however, have denied the right to adopt by persons not residing together as a couple. *In re Jason C.*, 129 N.H. 762, 533 A.2d 32 (1987)(divorced foster parents could not jointly adopt child); *In re Adoption of M.C.D.*, 42 P.3d 873(Okla. Civ. App. 2001)(divorced couple not allowed to adopt); *In re Adoption of K.M.W.*, 718 A.2d 332 (Pa. Super. 1998)(maternal grandmother not allowed to adopt while mother retained her parental rights); *In the Matter of Adams*, 189 Mich. App. 540, 473 N.W.2d 712 (1991)(biological parents married to other people not allowed to adopt adult daughter). These cases have distinguished between unmarried adults living together as a couple in a stable home and persons not living in a stable, permanent home as a family "unit."

Thus, construing the adoption statutes as a whole and avoiding any absurd or incongruous result, it is the opinion of this Office that the Tennessee adoption statutes do not permit more than two adults jointly to adopt a child. Further, the Tennessee adoption statutes do not allow two adults jointly to adopt a child together if they are not a couple and are not cohabitating in the same home.

¹This is assuming that both applicants who are not living in the same home could even be able to prove each has physical custody of the child or the right to receive physical custody of the child pursuant to a properly executed surrender so as to have standing to file a petition to adopt. See *In re Adoption of M.J.S.*, 44 S.W.3d 41, 52 (Tenn. Ct. App. 2000).

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