

ESSAY QUESTION NO. 6

Answer this question in booklet No. 6

Frank and Monica's relationship resulted in the birth of their son, Cody, in 1995. They separated shortly after his birth. Cody has lived with Monica in Anchorage since his parents' breakup. Although Frank is on the birth certificate, the couple never had a formal custody support agreement or order. Despite Monica encouraging Frank's relationship with Cody, Frank has only visited Cody two or three afternoons a year since the separation. He would occasionally bring a toy for Cody or give Monica a small amount of cash. Monica finally gave up encouraging Frank after she met Sam in 2003. Frank hasn't visited since Christmas, 2003.

Sam and Cody have developed a wonderful bond. Cody calls Sam "Dad".

Sam and Monica wed in January, 2004. Sam has a daughter, Diana, who is now five years old. Sam and Monica wish to adopt each other's child. Diana's mother, Eve, has paid her support obligation and maintained contact with Diana. Originally, Eve signed a consent to the adoption but now has filed a withdrawal notice of her consent.

1. Discuss whose consent is required for Sam to adopt Cody, whether any consent can be dispensed with, and why.
2. Was Eve's withdrawal of her consent effective?

GRADER'S GUIDE

*** QUESTION NO. 6 ***

SUBJECT: FAMILY LAW

1. Consent Required for Cody's Adoption (70 points)

In order to accomplish Sam's adoption of Cody, Monica, as the mother, must consent (AS 25.23.040(a)(1)).

Cody must consent because he is 11 years old. Consent of the minor is required if the child is 10 years of age or older unless the court finds that it is in the minor's best interests to dispense with the youngster's consent. (AS 25.23.040(a)(5)). There are no facts presented to suggest that Cody would not consent.

The father's consent to his child's adoption is required if he was married to the mother at conception or anytime after conception, the father had adopted the child or the father has otherwise legitimized the child under the laws of the state. (AS 25.23.040(a)(2)).

Since Frank is listed on the birth certificate, he has legitimized Cody (AS 25.20.050) and must consent to the adoption unless his consent is waived.

The petitioner, Sam, can ask the court to dispense with Frank's consent. Sam can ask that the dispensing of consent be done because Frank has abandoned Cody or because Frank has failed to support or visit Cody for more than a year.

AS 25.23.050 reads as follows:

Persons as to whom consent and notice not required

(a) Consent to adoption is not required of

(1) for purposes of this section, a parent who has abandoned a child for a period of at least six months;

(2) a parent of a child in the custody of another, if the parent for a period of at least one year has failed to significantly without justifiable cause, including but not limited to indigency,

(A) to communicate meaningfully with the child, or

(B) to provide for the care and support of the child as required by law or judicial decree...

The minor's best interests are not relevant to a determination of whether a parent's consent can be dispensed with by the trial judge. D.L.J. v. W.D.R., 635 P.2d 834 (Alaska 1981), In re L.A.H., 597 P.2d 513 (Alaska 1979).

To prove abandonment, a two pronged inquiry must be made by the court.

Has the parent's conduct evidenced a disregard for his or her parental obligations? Has that disregard led to the destruction of the parent/child relationship? In re A.J.N., 525 P.2d 520 (Alaska 1974).

Frank has had no contact with Cody for more than two years. Prior to his total cessation of visiting Cody, Frank had rarely visited his son. His non-contact could be viewed as a conscious disregard of his parental obligation to Cody. This conduct could lead the court to dispense with Frank's consent as abandonment (AS 25.23.050(a)(1) or failure to communicate (AS 25.23.050(a)(2)(A)).

Although there is no formal order of support, Alaska law requires a parent to maintain the parent's child when a child is poor and unable to work to maintain themselves. (AS 25.20.030) (Matthews v. Matthews, 739 P.2d 1298 (Alaska 1987). The obligation to support your child begins at the child's birth. (State, Dept. Of Revenue ex rel. Hawthorne v. Rios, 938 P.2d 1013 (Alaska 1997)).

Frank occasionally giving a toy to Cody or a small amount of cash to Monica is not sufficient to satisfy his duty to support. In re J.J.J.m 718 P.2d 948 (Alaska 1986) held that sporadic partial payments does not preclude a court finding that there has been a significant failure to provide child support.

Sam has the burden of proving by clear and convincing evidence that the natural parent failed to significantly communicate with Cody or provide for Cody's support. D.L.J. v. W.D.R., 635 P.2d 834 (Alaska 1981)

2. Eve's Withdrawal of Her Consent (30 points)

The facts do not indicate when Eve withdrew her consent for Monica adopting Diana. If Eve withdrew within ten days after she gave her consent, then the consent is withdrawn under AS 25.23.070(b). A consent is withdrawn by delivering notice to the person who obtained the consent.

If the ten day period has passed since the consent was given, the court must have a hearing on whether the consent's withdrawal is in the minor's best interest. B.J.B.A. v. M.J.B., 620 P.2d 652 (Alaska 1980).

Notice of the hearing and an opportunity to be heard must be given to the petitioner(s), the person who want to withdraw his or her consent, and if an agency placed the child, to it also.

If the court finds that withdrawal is in the adoptee's best interest, the court must allow the withdrawal. (AS 25.23.070(b)).