

Summary of SC92442, *In re the Matter of T.Q.L., a minor child, M.M.A. v. L.L. and Unknown Natural Father*

Appeal from the Greene County circuit court, Judge Daniel W. Imhof
Argued and submitted Oct. 23, 2012; opinion issued Dec. 18, 2012

Attorneys: The man (M.M.A.) was represented by John C. Holstein and Jennifer R. Growcock of Polsinelli Shughart PC in Springfield, (417) 869-3353, and Jack A. Cochran of The Cochran Law Firm in Blue Springs, (816) 229-2661. The mother (L.L.) did not file a brief or present an argument in this Court.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man who acted as a child's father but who later learned he is not the child's biological father appeals the circuit court's dismissal of his petition seeking custody of the child. In a 6-0 decision written by Judge Mary R. Russell, the Supreme Court of Missouri reverses the judgment and remands (sends back) the case to the circuit court for reinstatement of the man's third amended petition. The Court does not weigh the credibility or persuasiveness of the facts alleged in this petition, but those facts meet the statutory elements for third-party custody.

Facts: During a man's relationship with a woman, she gave birth to a son in 2003. Pursuant to a pre-birth agreement between the couple, the man's name was not listed as the child's name on the birth certificate. Over the years, the man acted as the child's father, taking an active role in his life. The two spent time together, including holidays, vacations, family trips and other short trips. After the relationship between the man and woman soured, the man in 2007 filed a petition in the circuit court seeking declaration of paternity, custody and visitation as the child's putative father. Eventually, the mother advised the man that he was not the child's biological father and that the biological father was a Brazilian man whose last name and whereabouts she did not know. The court required the man to take a DNA test, which revealed that he was not, in fact, the child's biological father. At that time, the court dismissed the man's petition for failure to state a claim because the man is not related biologically to the child. The court of appeals reversed the decision and remanded the case to allow the man to file an amended petition under other theories of custody. In his third amended petition, the man alleged in part that the mother and the unknown biological father were unfit parents. In 2010, the circuit court granted the mother's motion to dismiss the petition based on the man's failure to put forth a theory under which the child's custody could be determined properly. The man appeals.

REVERSED AND REMANDED.

Court en banc holds: The circuit court erred in finding that the man's petition was not sufficient to state a claim for third-party custody. In determining whether a petition should be dismissed for failure to state a claim on which relief should be granted, the court makes no effort to weigh the credibility or persuasiveness of the facts alleged but merely treats the facts in the petition as true and construes them liberally in favor of the plaintiff filing the petition. Section 452.375, RSMo Supp. 2011, outlines factors to be considered in awarding a custody arrangement that is in the

best interest of a child. Subsection 5(5)(a) specifically provides that custody or visitation may be awarded to a third party when the court finds that each parent is “unfit, unsuitable, or unable to be a custodian, or the welfare of the child requires, and it is in the best interests of the child” so long as the court deems the third party “to be suitable and able to provide an adequate and stable environment for the child.”

(a) The man’s petition stated facts that, if true, are sufficient to allege that the mother was unfit to be a custodian. These allegations include the mother’s suicide attempts, mental instability, conduct that would injure the child emotionally and false hotline reports made against the man.

(b) The petition also stated facts that, if true, are sufficient to allege that the unknown biological father was unfit to be a custodian. These allegations include that the father never has established any bond with the child, that he never has come forward to assert his rights as a father, and that his whereabouts are unknown and unascertainable.

(c) In addition, the petition stated facts that, if true, are sufficient to allege that third-party custody would be in the child’s best interest. These allegations include that the man has had extensive contact with the child; that they have established a strong and substantial bond, have spent significant amounts of time together, have traveled together and have celebrated holidays together; that the man is the only father the child ever has known; and that the man is able to provide an adequate and stable home environment in which he properly can raise and care for the child.

Because the man has alleged the statutory elements for third-party custody, the circuit court shall reinstate his third amended petition.