

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**IN RE THE ADOPTION OF N.L.B.,
PLAINTIFF,**

**M.T. and S.T.,
RESPONDENTS,**

vs.

**C.L.
APPELLANT**

WD70177

DATE: JANUARY 27, 2009

Appeal from:
JACKSON COUNTY CIRCUIT COURT
THE HONORABLE ANN MESLE, JUDGE

Appellate Judges:
Division Three: Howard, P.J., Ellis and Ahuja, JJ.

Attorneys:
Cheri Cole Simpkins, Esq., Independence, MO., for Respondent

Robert Edward Arnold, Olathe, KS, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS, WESTERN DISTRICT

**IN RE THE ADOPTION OF N.L.B.,
M.T. and S.T.,
RESPONDENTS**

PLAINTIFF

**vs.
C.L.**

APPELLANT

WD 70177

Jackson County, Missouri

Before Division Three Judges: Howard, P.J., Ellis and Ahuja, JJ.

Father appeals from a judgment terminating his parental rights to his son, N.L.B., and granting Respondents' petition for the adoption of N.L.B.

REVERSED and REMANDED.

Division Three holds:

- (1) Father's claim that his consent to the adoption was required under § 453.030 because his paternity had been established was refuted by the Supreme Court's previous opinion in this case, *In re Adoption of N.L.B.*, 212 S.W.3d 123 (Mo. banc 2007). While the Supreme Court's opinion allowed Father to contest the adoption, it expressly held that § 453.030 did not require his consent to the adoption.
- (2) As determined noted in *In re Adoption of N.L.B.*, 212 S.W.3d 123, 127 (Mo. banc 2007), the statutory scheme in place for adoptions does not violate Father's constitutional rights as it affords Father the opportunity to challenge the adoption and to be heard on the issue of parental fitness.
- (3) The trial court's finding that Father neglected N.L.B. sufficiently to warrant terminating his parental rights by failing to pay child support from birth until March 2007 is not supported by the record and is against the weight of the evidence. The Missouri Supreme Court already determined that the evidence of Father's actions prior to the first judgment did not support a finding of abandonment or neglect. The trial court erred in finding that Father's failure to pay child

support while the trial court's prior judgment was pending before the Missouri Supreme Court constituted neglect warranting termination of his parental rights under § 211.447.5(2).

- (4) Despite Father's claims to the contrary, the trial court did not make any findings as to whether extraordinary and unusual circumstances existed in this case that, in the event the adoption was not proper, warranted granting Respondents guardianship over N.L.B. under *In re Hill*, 937 S.W.2d 384 (Mo. App. W.D. 1997). The trial court will be afforded the opportunity to address that issue on remand.

Opinion by Joseph M. Ellis, J.

January 27, 2009

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