

Can Parental Rights Be Restored After an Adoption?

In a recent ruling by New York's Appellate Division Third Department, *The Matter of Mahogany Z. v. Wayne O.*, 2010 NY Slip Op. 0705 (3d Dept Apr 4, 2010), raises the possibility of a birth parent retaining parental rights of a child who has been legally adopted. While the court did not directly address this question it ruled that a birth parent has the right to appeal a termination of parental rights even after the child has been adopted.

In this case, shortly after the child's birth in March of 2007, the unwed birth mother consented to place the child in foster care by the Albany County Department of Children, Youth and Families (the "CYF"). In December of 2007 the CYF began an action to terminate the parental rights of the birth father on the basis of abandonment. In April of 2009 the Family Court of Albany County terminated the birth parents' parental rights and granted guardianship to the CFY. The birth father appealed the ruling.

Before the appeal was argued before the Appellate Division, the foster parents adopted the child and the CYF argued that the father should not be allowed to appeal the termination of his parental rights. The court, however, disagreed reasoning a ruling of neglect creates a permanent stigma for the parents which could effect future proceedings and therefore they should have the right to appeal. After reviewing the facts of the case the court affirmed the Family Court's decision.

However, the court left open the question of how the restoration of parental rights would effect the adoption. Under New York law, a determination of abandonment occurs when a parent makes no attempt to contact the child in the six months prior to petition to terminate the parental rights. Consequently, if the Appellate Division found that a parent had attempted to maintain contact, parental rights could be restored. However, a restoration of parental rights might not by itself be sufficient to contest the adoption if the parent was an unwed father.

Under New York law, an unwed father's consent to the adoption of his child who is older than six months is required when the father provides financial support for the child and maintains regular contact with the child. If the father had maintained contact with the child but refused to provide financial support, his consent would not be needed for the adoption. Sufficient notice would be all that was required. However, the father's contact with the child could be grounds to overturn the ruling of abandonment. Presuming the father's consent was not required and he received sufficient notice, the father would have no basis to contest the adoption even though his parental rights were restored.