



July 6, 1961

Honorable A. Basey Vanlandingham
Missouri State Senator for 19th District
Missouri State Senate
Jefferson City, Missouri

Dear Senator Vanlandingham:

This office is in receipt of your opinion request of February 6, 1961, which is as follows:

"I should like an opinion from your office as to whether or not the consent of a natural father is necessary to the adoption by the mother of the child and her second husband. It appears that consent to adoption is not required when the parent has abandoned or willfully neglected to provide proper care and maintenance for the child for a period of at least one year immediately prior to the filing of the petition for adoption, and also by Section 453.060, Vernon's Annotated Revised Statutes, service of summons and a copy of the petition is not required unless consent to adoption is itself required.

"Are the amendments, as adopted by House Bill No. 438, Section 1, Laws 1959, intended to do away with the necessity of serving a parent, such as the father, where a one-year neglect to maintain or care for the child exists?

I.

Your first query states: "--whether or not the consent of the natural father is necessary to the adoption by the mother of the child and her second husband."

Although not expressly stated in your letter, I am assuming that the natural father of said child was the former husband of petitioner, and that the child was born during wedlock.

Section 453.030(3), RSMo 1959, states:

"With the exceptions specifically enumerated in Section 453.040, when the person sought to be adopted is under the age of twenty-one years, the written consent of the parents, or surviving parent, of such person, or of the mother alone of such person if such person was born out of wedlock, to the adoption shall be required and filed in and made a part of the files and record of the proceeding, * * *."

Section 453.040(4), RSMo 1959, further provides:

"The consent of the adoption of a child is not required of a parent who has for a period of at least one year immediately prior to the filing of the petition for adoption, either willfully abandoned the child or willfully neglected to provide him with proper care and maintenance."

In *In re Slaughter*, 290 S. W. 2d 408, the natural mother of a 13 year old child appealed from a decree of adoption rendered by the Juvenile Division of the Circuit Court of Pulaski County, Missouri, on a petition to adopt said child. Petitioners' amended petition had alleged that the child had been declared a neglected and dependent child of the Circuit Court of Dent County, Missouri, on the 20th day of May, 1949, and made a ward of the court under the supervision of the State Health and Welfare Agency; that the child's parents wilfully neglected to provide said minor with proper care and maintenance for a period of more than one year next before the filing of adoption petition; that petitioners have had actual custody of the child since June 1953.

The natural mother filed answer to the amended petition in which she denied that the child had been declared

a neglected child by the Juvenile Division of the Circuit Court of Dent County and made a ward of the court and specifically denied that she had wilfully abandoned said child and wilfully neglected to provide him with proper care and maintenance for a period of one year before the filing of the adoption petition. She asked the court to deny petitioners' request for adoption.

In affirming the decree of the Circuit Court, granting adoption to petitioners, the Supreme Court stated, l.c. 412:

"Our courts may not decree an adoption of any minor without the consent of the natural parents unless such parent, for a period of at least one year immediately prior to the filing of the petition, has either wilfully abandoned such minor or wilfully neglected to provide him with proper care and maintenance, and, the question presented in the case at bar is whether the mother may be fairly said to have wilfully abandoned the minor sought to be adopted, or wilfully neglected to provide him with proper care and maintenance for one year immediately prior to the filing of the adoption petition."

Although Section 453.040(4), RSMo 1959, expressly states that consent of a parent is not required in an adoption proceeding where such parent has wilfully abandoned the child or wilfully neglected to provide said child with proper care and maintenance for the period of one year immediately before the filing of the adoption petition, it is to be noted that the parent's consent is not to be dispensed with under Section 453.040(4) upon the ground of abandonment or neglect unless it is shown by petitioners that such abandonment or neglect was wilful.

** * * The statute obviously contemplates the same result, and the parent's consent to the adoption is not to be dispensed with upon the ground of his neglect of his

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child unless it is shown that such neglect was intentional, deliberate, and without just cause or excuse, evincing a settled purpose to forego his parental duties over the period of time which the statute prescribes * * *."

In re Perkins, 117 S.W. 2d 686, 1.c.692.

II.

The second part of your question states:

"Are the amendments, as adopted by House Bill No. 438, Section 1, Laws 1959, intended to do away with the necessity of serving a parent, such as the father, where a one-year neglect to maintain or care for the child exists?"

House Bill No. 719, which, as you know, was passed by the Missouri Senate on June 28, 1961, without amendment has amended Section 453.060(2), RSMo 1959.

Although said Bill has not been signed, there is no reason to believe the Governor will not do so.

As a result of the amendments in said Bill, the second part of your question has been specifically answered by this legislation.

I sincerely hope that the foregoing fully and satisfactorily answers your inquiry.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

GWD lc
1 enclosure