JUVENILE COURT CITY AND COUNTY OF DENVER 520 WEST COLFAX AVENUE DENVER, CO 80204	
IN THE INTEREST OF K.A.B., Minor Child. UPON THE PETITION OF: CARIE TERRY n/k/a CARIE MORELOCK, Petitioner, AND CONCERNING ROBERT MANZANERES, Respondent, AND, SCOTT BYINGTON and JULISSA BYINGTON, Interested Parties.	^ **COURT USE ONLY** ^
	Case No.: 12JR1 Division: 2F
ORDER	

THIS MATTER is before the court on the Verified Petition for Conditional Relinquishment (the "Petition") that was filed by the biological mother Carie Terry n/k/a Carie Morelock ("Mother"), on February 23, 2012. Mother proposes to relinquish her parental rights to the minor child, K.A.B. (the "Child"), but only if the parental rights of the biological father are terminated. (Petition, at ¶ 3.) She also wants the child to be adopted by her brother and sister-in-law, Scott and Julissa Byington, (the "Interested Parties"). (Petition, at ¶ 3.)

Mother's position is supported by the Interested Parties, who are the Child's current caretakers. Mother's position is opposed by Respondent Robert Manzanares ("Father"), the biological father.

For the reasons stated in this order, the court holds that Mother's proposal to relinquish her parental rights is conditional. Because a conditional proposal to relinquish parental rights is not permitted in Colorado, Mother's Petition is stricken.

Background

The litigation between these parties originally began in 2008 in the Denver Juvenile Court, when Father filed a paternity action in the related case, 2008-JV-141. Father filed the case before the Child was born. Section 19-4-105.5(3), C.R.S. (2011) (Paternity proceedings may be "commenced prior to the birth of the child."). Mother responded to Father's paternity action by acknowledging that he was the Father.

The Child was born on February 17, 2008, in Utah. On February 29, 2008, following a hearing, this court entered a final order of paternity, determining that there is a parent-child legal relationship between the biological father and the Child. Section 19-4-116(1), C.R.S. (2011). The court's action conferred and imposed "rights, privileges, duties, and obligations," on the Father with respect to the Child. Section 19-4-102, C.R.S. (2011). The court's decision was delivered orally from the bench. At the time of the court's decision, the court ordered that the Father's name be placed on the Child's birth certificate. Section 19-4-116(2), C.R.S. (2011). The court's ruling was not appealed.

At the time this court was acting, court proceedings were also underway in Utah where the Mother executed a consent to adoption, and the child was placed with her brother and sister-in-law, the Interested Parties. The Father strenuously objected to Mother's and the Interested

Parties' attempts to have the Child adopted. Father ultimately took his case to the Utah courts, while this court's case in 2008-JV-141, remained open but idle.

On January 27, 2012, following almost four years of litigation in Utah, the Utah Supreme Court reversed the Utah trial court's decision to terminate Father's parental rights and proceed with a Utah adoption. The Utah Supreme Court sent the case back to the Utah trial court to determine whether under Utah law: (1) the Father fully complied with Colorado's requirements to establish his parental rights in the Child; and, (2) determine whether he demonstrated a full commitment to his parental responsibilities. *In the Matter of the Adoption of Baby B.*, 2012 WL 252005, *20 (Utah 2012).

Father notified this court of the Utah Supreme Court's decision in a filing in 2008-JV-141 on January 30, 2012. Thereafter Mother began this case, 2012-JR-1, by filing her Petition. The Interested Parties simultaneously in this case filed a Petition to Terminate the Parent-Child Legal Relationship of the Birth Father, and requested a termination hearing.

This court has held two status hearings in both pending Colorado cases since the Utah Supreme Court acted. In those hearings, the parties stated that they now wish to have the legal custody of the Child finally determined in Colorado, under Colorado law. The parties reported that the Utah adoption case was being dismissed, in favor of bringing the matter to Colorado. (See Petitioner/Birth Mother's Brief Regarding Relinquishment at ¶ 3, where she states "[u]pon information and belief, the Utah case has been dismissed . . . .")

At the last hearing, the court questioned whether Mother's Petition was valid under Colorado law since it proposed to relinquish her rights only if the Father's rights are terminated. (See Petition at ¶ 3.) The court also questioned whether it was appropriate to hold Mother's Petition in abeyance pending a hearing on the motion to terminate involuntarily Father's parental

rights. The court asked the parties to brief the issues. The court received and read the briefs, reviewed the filings and record, and applicable law. The court is now fully advised and prepared to rule.

Analysis

I.

Father argues that Mother's Petition is a conditional relinquishment of a parent's rights that is not authorized by the statute. The court agrees with Father.

Under §19-5-103, C.R.S. (2011), the court has the discretionary power to grant or deny a petition for relinquishment after a hearing. According to the statute:

> (6) If the court finds after the hearing that it is in the best interests of the child that no relinquishment be granted, the court shall enter an order dismissing the action.
> (7)(a) The court shall enter an order of relinquishment if the court finds after the hearing that:
> (I) The relinquishing parent or parents . . . have been counseled as provided . . . ;
> (II) The parent's decision to relinquish is knowing and voluntary and not the result of any threats, coercion, or undue influence or inducements; and
> (III) The relinquishment would best serve the interests of the child to be relinquished.

Section 19-5-103, -(6), -(7)(a), C.R.S. (2011).

Nothing in this statute allows a court to accept a conditional relinquishment. In addition, the statute has been interpreted by our court of appeals to preclude a partial or conditional relinquishment.

In *People in the Matter of K.W.E. and M.C.E.*, 500 P.2d 167, 168 (Colo. App. 1972), the court of appeals held that a partial or conditional relinquishment is not permitted by a former version of the statute. In *K.W.E.*, the mother testified she was under pressure to relinquish her child. Both the mother and father expressed a desire to continue to visit the child. The court noted the relinquishment proceedings were instituted as part of a "family plan that the child

would be adopted by the grandparents." *Id.* The court held that the parents were attempting a "partial" or "conditional relinquishment," stating that "[s]uch a relinquishment is not authorized by the statute." *Id.* The statute has been changed, but not substantively, since this 1972 decision. Accordingly, the court of appeals' ruling is binding on this court. C.A.R. 35(f) (published court of appeals' opinions "shall be followed as precedent by the trial judges of the state of Colorado.").

In this case, the Petition filed by Mother is clearly conditional. According to the Petition:

> Relinquishment is desired if the Child . . . can be made available for adoption through the termination of the Birth Father's parent-child legal relationship. Petitioner believes it is in the best interests of the Child to be adopted by the couple she is hereby designating, the child's aunt and uncle, Interested Parties . . . who can provide for the Child more completely than Petitioner can at this time. Nevertheless, Petitioner believes that if the Birth Father's rights cannot be terminated, that Petitioner is in a better position to care for the Child than the Birth Father. Therefore, she is only proposing to relinquish at this time so as to require a hearing pursuant to C.R.S. 19-5-105 as to whether birth father's rights should be terminated. If his rights are terminated, Petitioner intends to seek a relinquishment order concerning her rights to the child.

(Petition at ¶ 3.)

The court finds the Mother's Petition is conditional because it seeks to terminate her parental rights *only* if Father's parental rights are terminated. It is also conditional insofar as it seeks to designate who will adopt the Child. Mother appears to want only the uncle and aunt to adopt. Mother's Petition states that if birth Father's rights cannot be terminated, then Mother -- rather than the Father -- is in a better position to care for the child. These conditions are not permitted by our statute and the Mother's Petition must therefore be stricken. *See In the Matter of the Petition of D.S.L.*, 18 P.3d 856, 858 (Colo. App. 2011) (holding that a mother may not "keep her relationship intact but involuntarily end father's, in order to make the children available for stepparent adoption").

Mother's reliance on the expedited relinquishment procedures for children under the age of one is inapposite, and therefore rejected. Here, it is undisputed that the child is four years-old. Likewise, Interested Parties' reliance on the decision in *In the Matter of the Petition of A.T.M*, 250 P.3d 703 (Colo. App. 2010) is also inapposite. In *A.T.M.*, the court held that a parent in an expedited relinquishment proceeding may withdraw her relinquishment petition prior to the actual entry of an order terminating her parental rights. *Id.* at 705. Nothing in *A.T.M.* holds that a mother or father may place conditions on the relinquishment of their parental rights.

II.

The holding that Mother's Petition is conditional and must be stricken means that the court need not reach the issue of how a relinquishment action proceeds. However, because Mother may seek to revive her Petition, the court finds it is in the interest of judicial economy to rule on the issue.

A.

Mother and the Interested Parties argue that the court may: (1) hold a hearing on whether to terminate involuntarily Father's parental rights; (2) enter an order terminating his parental rights; and, (3) then proceed to accept Mother's relinquishment of her parental rights so that the Child may be adopted by the Interested Parties. The court disagrees.

The Mother and Interested Parties point the court to what they argue is the relevant statutory provision, §19-5-104(6), C.R.S (2011). According to the statute:

> If one parent files a petition for the relinquishment of a child and the agency or person having custody of the child files a petition to terminate the rights of the other parent pursuant to section 19-5-105, the court shall set a hearing, as expeditiously as possible, on the relinquishment petition. A court may enter an order of relinquishment for the purpose of adoption prior to the relinquishment or termination of the other parent's parental rights.

Section 19-5-104(6), C.R.S. (2011).

Nothing in the statute says that a hearing to terminate the non-relinquishing parent's rights shall be held and decided *before* ruling on a voluntary relinquishment petition. On the contrary, the statute directs the court to set a hearing "*on the relinquishment petition,*" not the motion to terminate parental rights. *Id.* (emphasis added). The statute goes on to allow the court to enter an order of relinquishment for the purpose of adoption prior to the "relinquishment or termination of the *other parent's parental rights*." *Id.* (emphasis added). Nothing in the statue says the court must first determine whether to terminate the non-relinquishing parent's rights before accepting a voluntary relinquishment.

The court holds that it must first rule on whether to grant or deny the relinquishment petition before deciding whether to forcibly terminate the non-relinquishing parent's rights.

The termination statute at section 19-5-105, C.R.S. (2011) does not help Mother and Interested Parties evade the court's holding. §19-5-105, C.R.S. (2011) provides that when a parent "relinquishes or proposes to relinquish or consents to the adoption of a child" that a hearing be held to determine "whether the interests of the child or of the community require that the other parent's rights be terminated." 19-5-105(1), (3). Nothing in this statute states that an involuntary termination hearing must be held before a voluntary relinquishment is accepted.

The court holds that if a voluntary relinquishment is not accepted, there is no need to proceed to the next step and determine whether the non-relinquishing parent's rights will be involuntarily terminated. Reading the relevant statutes together, the court rejects the argument that an involuntary termination hearing may be held before a voluntary relinquishment is finally accepted. *In the Matter of the Petition of D.S.L.*, 18 P.3d at 858 (stating that "relinquishment and adoption statutes must be read together in order to effectuate the legislative intent and to give consistent, harmonious, and sensible effect to all of their parts").

Because relinquishment is discretionary and not guaranteed, it would not be a good use of limited judicial resources for a court to hold a proposed relinquishment in abeyance while it determines whether to terminate the non-relinquishing parent's rights. Rather, the proper and most efficient procedure is for the court to decide whether to grant or deny the proposed relinquishment. The court reaches the issue of termination of the non-relinquishing parent's rights only if it grants the voluntary relinquishment. Section 19-5-103(6), (7)(a), C.R.S., (2011). Following this procedure also prevents a parent from making a conditional relinquishment, an act that is not permitted by Colorado law.

Accordingly, it is hereby ORDERED:

For the reasons stated, Mother's relinquishment Petition is stricken. Should the Mother file an amended relinquishment petition that is unconditional, the court will proceed to rule on that petition before deciding whether to involuntarily terminate Father's parental rights. If an amended petition filed by Mother is granted, Mother shall cease to be a party to the case at the time the final order is signed. The final order will be signed before the court holds a hearing on a motion to terminate Father's parental rights.

Done this 24th day of April, 2012 at Denver, Colorado.

DONE BY THE COURT:

Judge D. Brett Woods
Denver Juvenile Court

CERTIFICATE OF MAILING

I hereby certify that I have personally mailed a true and correct copy of the foregoing ORDER on this 24th day of April 2012 to the following persons:

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By: _____
Ruchi Kapoor
Law Clerk