

Fact Narrative for Paternity MCLE

Mother and Stepfather were living together with four children, two of whom were biological to Stepfather. Only one of the children (Christian, a 14-year old boy) is at issue in this case.

Mother and Stepfather divorced in 2016, but subsequently reconciled and were living together. When they divorced, custody was granted to Stepfather over all four children, including Christian.

Mother:

Mother is frequently intoxicated and locks herself in her room or in the bathroom, away from her children, when she drinks. Christian says this worries him, and he fears for his mother's safety when she behaves like that. Christian also said that when Mother drinks and locks herself in her room, it can last for hours on end and the children are left to fend for themselves.

Mother is physically abusive to her four children and Stepfather. Christian stated that she pushes Stepfather when she drinks. At one point, she hit her eldest child in the head with a broomstick. Stepfather and Mother engage in domestic violence, yelling and pushing each other in front of all four children.

Mother has suicidal tendencies, and has threatened suicide in front of the children. In one instance, Christian had to take a knife away from Mother when she was intoxicated and threatened to harm herself with it. Christian then hid all the knives in the house to keep Mother from self-harming.

Stepfather:

Stepfather had been raising Christian since he was 2 years old, and married Christian's Mother. Stepfather engages in domestic violence with Mother. When this occurs, he leaves the home for days at a time. Stepfather knows about Mother's drinking, abuse, and suicidal tendencies, but he often leaves the children alone at home with her. Stepfather previously failed to cooperate with efforts from the Agency to alleviate protective concerns that arose in their home.

When Mother and Stepfather divorced in 2016, the family court named Stepfather as Christian's legal father, and granted custody over all four children to Stepfather. Your client, Father, was never notified about these proceedings, as it was claimed his whereabouts were unknown.

Biological Father (Your Client):

Father and Mother have never been married. Father was not at Christian's birth, but not for lack of trying. Mother did not tell Father where the hospital was, and Father was unsure if he was even on Christian's birth certificate. After Stepfather and Mother divorced, the juvenile court would not allow Father to go back and resolve the conflicting paternity orders.

Father was not involved in most of Christian's life, but repeatedly went to family court to obtain custody. Father took a paternity test, where it was revealed that he was Christian's biological father. Since 2012, Father had a paternity declaration on file with child support services and he was ordered to pay \$235 per month in child support. Father paid a limited amount of child

support, and his child support payments were in arrears. At the time of the instant matter, Father said he made roughly \$6,000 per month. Father is noncustodial and was unaware of Mother's drinking problem.

In 2004, Christian was sexually abused by his stepbrother while at Father's house. Currently, the stepbrother no longer lived with Father.

Instant Case:

The Agency filed a petition alleging that Mother suffered from substance abuse, Stepfather failed to protect the children and had engaged in domestic violence with Mother, and Father was not a household member and failed to support Christian.

At the detention hearing, the court made it clear it was aware of the conflicting family court orders. The court reserved as to the paternity finding for Christian, but ordered Christian to remain in the care of Stepfather. The court also ordered visitation and services for Father.

At the disposition hearing, the court found Stepfather as a presumed father, but referred to Stepfather as "a second presumed father... an additional presumed father." At various points, the court stated, "you are both fathers," and "in my mind [Father] is the biological father, [Stepfather] is the presumed father." Additionally, Mother's attorney said, "[Counsel] was going to be asking this court to declare [Stepfather] as a presumed father. Obviously, [Father] is as well..." Nobody else objected or commented. The court never made a clear ruling as to Father's paternity status. The court ordered reunification services and visitation for Father, even without making a required finding as to paternity.

Christian wanted to live with Stepfather, and he stated that he did not feel comfortable and "felt weird" with Father. The court found it would cause severe emotional detriment to place Christian with Father. Father did request custody of Christian, but the court placed Christian with Stepfather under Family Code section 360(c). The court ordered a family maintenance plan, and a condition that Mother remain out of the home.

Father, wanting custody of Christian, appealed the decision.