

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

In the Matter of: J. A. and J. A.

Court of Appeals No. L-09-1069

Trial Court No. 2009 ADP 000022
2009 ADP 000023

DECISION AND JUDGMENT

Decided: August 14, 2009

* * * * *

Jeffrey D. Levy, for appellants.

Terrance K. Davis and Nathan A. Hall, for appellees.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, Probate Division, which dismissed appellants' February 6, 2009 adoption petition. The disputed petition was filed germane to an adoption in which the trial court had previously made a best interest determination on December 7, 2007. That judgment was

affirmed by this court in a decision captioned *In re Jeffrey A.*, 6th Dist. No. L-08-1006, 2008-Ohio-5135, issued on October 3, 2008.

{¶ 2} Subsequent to this court's affirmance of the trial court's best interest determination in favor of appellees, the adoption of the minor children to appellees, their foster parents, was finalized. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 3} Appellants, T. A. and K. A., set forth the following assignment of error:

{¶ 4} "I. WITHOUT HOLDING A BEST INTEREST HEARING, THE PROBATE COURT'S DISMISSAL OF APPELLANTS' PETITIONS FOR ADOPTION, BASED UPON EVIDENCE FROM A PRIOR HEARING TO WHICH APPELLANTS WERE NOT PARTIES, CONSTITUTES REVERSIBLE ERROR UNDER OHIO LAW."

{¶ 5} The following undisputed facts are relevant to the issues raised on appeal. On September 21, 2006, appellants filed petitions to adopt their two foster children. On December 12, 2006, competing adoption petitions were filed by the great-grandparents. The court consolidated the cases in order to conduct a combined best interest hearing.

{¶ 6} The children had been placed with appellees following permanent termination of the biological parents' parental rights. Permanent custody was awarded to the Lucas County Children Services Board ("CSB"). CSB placed the children with appellees following unsuccessful efforts at relative placement.

{¶ 7} Following a four-day contested hearing in the fall of 2007, the trial court engaged in a precise and thorough consideration of all relevant statutory factors and guidelines. The court ultimately determined that it was in the best interest of the minor children to grant the adoption sought by appellees. An appeal ensued. The judgment was affirmed by this court on October 3, 2008. On December 31, 2008, the great-grandparent's writ of certiorari to the Ohio Supreme Court was denied.

{¶ 8} On February 6, 2009, appellants, a great-aunt and uncle, filed petitions seeking adoption of the minor children. On March 9, 2009, the trial court dismissed appellants' adoption petitions. The court expressly based the dismissal upon the affirmation upon appeal of its prior best interest determination in favor appellees.

{¶ 9} In their sole assignment of error, appellants assert that the trial court abused its discretion in not conducting another best interest hearing. Appellants' contention is proffered despite a scenario in which an adoption petition was previously filed applicable to these same minor children, a contested four-day best interest hearing was held, judgment was rendered in favor of appellees, an appeal was filed and rejected by this court, an appeal to the Ohio Supreme Court was rejected, and the adoption by appellees was finalized and granted.

{¶ 10} The standard of review applicable to this matter is the abuse of discretion standard. *In re Adoption of Ridenour* (1991), 61 Ohio St.3d 319, 320. The abuse of

discretion evidentiary burden of establishing unreasonable, arbitrary or unconscionable acts has been held to be fully applicable to the domestic relations context. *Id.*

{¶ 11} In support of their assignment, appellants obtusely assert without any objective evidentiary support that the trial court abused its discretion in failing to conduct a new best interest hearing in a case in which a best interest hearing was previously held, previously ruled upon, and unsuccessfully challenged at every level of the Ohio judicial system.

{¶ 12} Adherence to appellants' untenable contention would improperly enable perpetual filings of new adoption petitions in adoption cases in which best interest determinations have already been made and affirmed on appeal. As such, *stare decisis* prohibits such an inexplicable course of action. The best interest determination in favor of appellees regarding the two minor children was made by the trial court, affirmed by the appellate court, and undisturbed by the Ohio Supreme Court.

{¶ 13} The adoption by appellees in the best interest of the minor children is final and complete. The trial court properly held, "Prior to the finalization of these adoptions, the issues presented were appealed to the Sixth District Court of Appeals, which rendered a decision in [sic] judgment entry on October 3, 2008, finding that the probate court did not abuse its discretion in determining that the appellees' [foster-parents] adoption of the children was in the children's best interest. Therefore, this Court has previously ruled and been affirmed by the appellate court that the adoption of these children by the [foster-

parents] is in their best interest * * * this Court determines that an additional best interest hearing is not required or proper in this matter."

{¶ 14} We concur in this assessment. We find that appellants' February 6, 2009 petition was a nullity for which a best interest hearing was not required. On the contrary, holding such a hearing under the facts and circumstances of this case would have been improper. Wherefore, we find appellants' sole assignment of error not well-taken.

{¶ 15} On consideration whereof, this court finds that substantial justice was done the parties complaining and the judgment of the Lucas County Court of Common Pleas, Probate Division, is affirmed. Appellants are ordered to pay the cost of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

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A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, P.J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James R. Sherck, J.
CONCUR.

JUDGE

Judge James R. Sherck, retired, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.