

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

In the Matter of:
The Adoption of: T.G.

Court of Appeals No. S-10-003

Trial Court No. 20094002

DECISION AND JUDGMENT

Decided: July 9, 2010

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M.H., pro se.

Christopher P. Fiegl, for appellees.

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HANDWORK, J.

{¶ 1} This case is before the court on appeal from the judgment of the Sandusky County Court of Common Pleas, Probate Division, which on December 21, 2009, following an evidentiary hearing, found that consent of the biological father was not necessary in order to proceed with the adoption of father's child, T.G., because father

failed to communicate with and provide maintenance and support of the minor for a period of at least one year prior to the maternal grandmother's filing of a petition for adoption. Father, pro se, timely appealed and raises the following assignments of error on appeal:

{¶ 2} "Assignment of Error 1

{¶ 3} "The trial court denied [father] equal protection and due process of the law in violation of fourteenth amendment of the U.S. Constitution and first amendment when finding that he failed without justifiable cause to communicate with [child] during the one year period prior to the filing of the Petition for Adoption is contrary to Law and is against the manifest weight of the evidence.

{¶ 4} "Assignment of Error 2

{¶ 5} "The trial court denied [father] of due process of law and his liberty interest in [child] in violation of the first and fourteenth amendment of the U.S. Constitution when it found that the father failed without justifiable cause to provide for maintenance and support of his child required by law and the adoption petition may proceed without his consent is against manifest weight of evidence and contrary to law and general assembly mandates."

{¶ 6} We will consider father's assignments of error together. In Ohio, a child cannot be adopted without the consent of the biological parents unless some specific statutory exemption applies to remove the consent requirement. *McGinty v. Jewish Children's Bur.* (1989), 46 Ohio St.3d 159, 161. R.C. 3107.07(A) provides one such

exemption, stating that a parent is not required to give consent to adoption "when it is alleged in the adoption petition and the court, after proper service of notice and hearing, finds by clear and convincing evidence that the parent has failed without justifiable cause to provide more than de minimis contact with the minor or to provide for the maintenance and support of the minor as required by law or judicial decree for a period of at least one year immediately preceding either the filing of the adoption petition or the placement of the minor in the home of the petitioner."

{¶ 7} On February 4, 2009, maternal grandmother filed a petition for adoption of the minor child, who had been living with grandmother since birth in 2001. Mother consented to adoption on January 23, 2009. Father, who was incarcerated from the onset and throughout the pendency of this case, objected to the adoption.

{¶ 8} The relevant facts are as follows. On July 26, 2005, the Sandusky County Court of Common Pleas gave custody to grandmother and ordered father to pay child support. On November 6, 2009, a hearing was held on the adoption petition. Although father had been served with notice of the hearing and filed a pleading objecting to the adoption, father was not present for the hearing and was not represented by counsel. Father had filed a pleading with the trial court asserting that his consent was required because he attempted to contact the child, but was thwarted by grandmother, and that he made child support payments from his inmate account while in prison. The trial court, however, determined that father's unattested statements contained in the pleading could not be considered as evidence. We agree with the trial court's finding in this regard.

{¶ 9} At the hearing, grandmother and grandmother's husband testified that they received no money or support from father during the year preceding the filing of the petition. Grandmother testified that she received notices from Children's Services Enforcement Agency ("CSEA") indicating that between \$3.38 and \$4.50 was withdrawn from father's inmate account on a monthly basis. Grandmother testified that father was approximately \$2,400 in arrears and owed the state for Medicaid assistance it provided to the child, and that these amounts were applied toward his arrears. Additionally, grandmother testified that none of the money withdrawn from father's inmate account was sent to her for the child's support. Grandmother and grandmother's husband also testified that father never contacted or attempted to contact the child during the relevant time period.

{¶ 10} Based on the evidence presented, the trial court found that, pursuant to R.C. 3107.07(A), father's consent to adoption was not required because of his failure to communicate with or provide support for the minor child. Even a meager contribution to the child's support could satisfy the maintenance and support requirement of R.C. 3107.07(A). *In re Adoption of R.M.*, 7th Dist. No. 07 MA 232, 2009-Ohio-3252, ¶ 75, citing *In re Adoption of McNutt* (1999), 134 Ohio App.3d 822. However, in this case, the testimony established that the CSEA withdrawals were not forwarded to the child or grandmother on behalf of the child's support and maintenance. Accordingly, based upon the absence of evidence, we find that father demonstrated no justifiable cause for failing to communicate with or provide maintenance or support to the child during the year in

question, we find that there was clear and convincing evidence to support the trial court's finding that father's consent to adoption was not required. Appellant's first and second assignments of error are therefore found not well-taken.

{¶ 11} On consideration whereof, the court finds substantial justice has been done the party complaining and the judgment of the Sandusky County Court of Common Pleas, Probate Division, is affirmed. Father is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

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, J.

JUDGE

Arlene Singer, J.

JUDGE

Keila D. Cosme, J.
CONCUR.

JUDGE

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:
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