

NOT DESIGNATED FOR PUBLICATION



STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 CJ 1715

**IN RE: JOSEPH DANIEL GUY AND MARY EDWARDS GUY
APPLYING FOR INTRAFAMILY ADOPTION OF C.B.G.¹**

RHP

JMM


**On Appeal from the 21st Judicial District Court
Parish of Livingston, Louisiana
Docket No. 139,618, Division "A"
Honorable Wayne Ray Chutz, Judge Presiding**

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Livingston, LA**

**Attorney for
Plaintiffs-Appellants
Joseph Daniel Guy and
Mary Edwards Guy**

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**Attorney for
Defendant-Appellee
Melissa Swann**

BEFORE: PARRO, McDONALD, AND DRAKE, JJ.

Judgment rendered JUN 18 2014

¹ Initials of the minor are used to protect his identity in this confidential proceeding.

PARRO, J.

The father and stepmother of a child appeal the judgment of the trial court, which denied their petition for intrafamily adoption for lack of consent of the child's biological mother. For the reasons that follow, we affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Appellants, Joseph Daniel Guy (Daniel) and Mary Edwards Guy (Mary), filed the underlying petition for intrafamily adoption, seeking to have Daniel's wife, Mary, adopt the minor child, C.B.G. Daniel is the biological father of C.B.G., and the child's biological mother is Melissa Swann (Melissa).

C.B.G. was born on June 25, 2004. At the time of the child's birth, Daniel was 27 years old, and Melissa was 16 years old.² Melissa dropped out of school to care for her child, and she and Daniel shared custody and visitation of the child until 2007, when Daniel filed a petition for custody in the Family Court for the Parish of East Baton Rouge. At the custody hearing, Melissa failed to appear, and Daniel was granted sole custody of C.B.G.³ At the adoption hearing, Melissa testified that she called Daniel on his cell phone after the custody hearing; however, according to Melissa, Daniel told her never to call him again and hung up. Daniel subsequently changed his phone number and did not advise Melissa of the new number.

After the custody hearing, Daniel allowed Melissa's mother, Glenda Swann, and her friend, Thomas Lillis, to visit with C.B.G. in 2007 and early 2008. In addition, Melissa's sister and brother-in-law, Brook and Phillip Black, were friends with Daniel and were often invited by Daniel to C.B.G.'s birthday parties and other events. However, Daniel made it clear to them that he did not want Melissa to have contact with C.B.G. Nevertheless, Ms. Swann and Mr. Lillis allowed Melissa to visit with C.B.G. when the child was with them. When Daniel discovered that Ms. Swann and Mr. Lillis had been allowing these secret visits with C.B.G., he ceased all visitation between C.B.G. and Ms.

² Daniel and Melissa were never married.

³ According to Melissa's testimony at the hearing on the intrafamily adoption, she went to the wrong courtroom on the day of the custody hearing and did not realize her mistake until after the hearing had concluded.

Swann and Mr. Lillis. At some point in 2008, Daniel relocated and did not inform Melissa, Ms. Swann, or Mr. Lillis of his new address or how to contact him or C.B.G. In addition, although Brook and Phillip Black were aware of Daniel's location and how to contact him, they respected his wishes and did not divulge this information to Melissa or Ms. Swann. Nevertheless, Brook did deliver presents to C.B.G. on behalf of Melissa.

From 2008 through 2011, Melissa and her mother searched together for C.B.G. Both Melissa and Ms. Swann regularly asked Brook for information about Daniel's new address. In addition, Ms. Swann used her connections with her employment in the Livingston Parish school system to inquire if any teachers or staff members recognized her grandchild, and she checked the area newspaper for names of honor roll students, hoping to find C.B.G.'s name and identify the child's school.⁴

In 2011, Melissa finally was able to contact Daniel's sister, Brandi Guy (Brandi), who informed her that Daniel and C.B.G. lived in Livingston Parish near a landing. Based on this information, Ms. Swann purchased a yearbook for Frost Elementary School, believing that this was the school that C.B.G. would attend; however, that assumption proved to be incorrect. Nevertheless, Melissa and Ms. Swann continued their search for C.B.G. by asking friends who were familiar with Livingston Parish to help them locate the landing in question in an effort to determine C.B.G.'s whereabouts. In November 2011, Melissa and her mother followed a friend's drawing of the rural area near the landing in Livingston Parish and located the house in which Daniel and C.B.G. lived. Melissa then contacted Brandi and obtained Daniel's phone number, which she called several times, as well as sent several text messages. Daniel never replied to any of the phone calls or the text messages.⁵ In October 2012, Melissa and her mother purchased books from Ms. Swann's school book fair and sent them anonymously to C.B.G.'s school. Ms. Swann subsequently went to Daniel's residence and informed him that she and Melissa had sent the books to C.B.G., and she further asked that he allow

⁴ Daniel, Mary, and C.B.G. had moved to Springfield in Livingston Parish in 2008.

⁵ Daniel testified at the hearing on the adoption that he believed that, if Melissa wanted to see C.B.G., she should simply take him to court.

them to visit with C.B.G. Daniel refused.

At various times throughout her search for C.B.G., and during the time that the parties were litigating the custody issue, Melissa attempted to hire legal representation; however, she testified that she was unable to afford a lawyer. In 2011, Melissa attempted to obtain legal representation through the Southern University Law Center (SULC) and was ultimately successful. In November 2012, after Daniel refused to allow Melissa and her mother to visit with C.B.G., Melissa's lawyer with the SULC sent Daniel a certified letter requesting visitation for Melissa with C.B.G.⁶ Approximately one month later, Daniel and Mary filed the underlying petition for intrafamily adoption in this matter.

After a hearing, the trial court denied the adoption, finding that Melissa's consent was necessary for the adoption to proceed. The trial court specifically found that, from the point that Daniel had ceased allowing Melissa and Ms. Swann to visit with C.B.G. and had relocated with the minor child, both Melissa and her mother had performed numerous investigations, inquiries, and other attempts to locate the minor child. Accordingly, the trial court concluded that Daniel and Mary had failed to meet their burden of proof that Melissa had refused or failed to visit, communicate, or attempt to communicate with C.B.G. without just cause for a period of at least six months. It is from this judgment that Daniel and Mary have appealed.

DISCUSSION

Generally, a parent's consent is required for an intrafamily adoption. LSA-Ch.C. art. 1193. However, pursuant to LSA-Ch.C. art. 1245, consent of a parent is not necessary if the petitioner proves that the parent has forfeited his right to consent, as follows:

A. The consent of the parent as required by Article 1193 may be dispensed with upon proof by clear and convincing evidence of the required elements of either Paragraph B or C of this Article at the hearing on the opposition and petition.

B. When a petitioner authorized by Article 1243 has been granted

⁶ The letter was dated November 9, 2012, and according to the signed receipt, Daniel received it on November 16, 2012.

custody of the child by a court of competent jurisdiction and any one of the following conditions exists:

(1) The parent has refused or failed to comply with a court order of support without just cause for a period of at least six months.

(2) The parent has refused or failed to visit, communicate, or attempt to communicate with the child without just cause for a period of at least six months.

C. When the spouse of a stepparent petitioner has been granted sole or joint custody of the child by a court of competent jurisdiction or is otherwise exercising lawful custody of the child and any one of the following conditions exists:

(1) The other parent has refused or failed to comply with a court order of support without just cause for a period of at least six months.

(2) The other parent has refused or failed to visit, communicate, or attempt to communicate with the child without just cause for a period of at least six months.

The party petitioning the court for adoption carries the burden of proving a parent's consent is not required under the law. In re J.A.B., 04-1160 (La. App. 1st Cir. 9/17/04), 884 So.2d 678, 681, writ denied, 04-2963 (La. 12/14/04), 888 So.2d 848. To constitute "just cause," a parent's failure to support, visit, or communicate with his or her children must be due to factors beyond his or her control. Id.

In this case, Daniel and Mary contended that Melissa's consent was not necessary, because she had refused or failed to visit, communicate, or attempt to communicate with C.B.G. without just cause for a period in excess of six months. Specifically, they asserted that Melissa had failed to be in contact with her child since she had lost custody in 2007. However, the record demonstrated that Melissa had visited with her child after losing custody through secret visitation arranged by her mother. In addition, the trial court found that, even though Daniel put a stop to these visits once he discovered them and that he relocated with the child to a location without providing Melissa with the means to contact him, Melissa and her mother continued to search for her child for years, until she finally found her child.

As an appellate court, we cannot set aside the trial court's factual findings unless we determine that there is no reasonable factual basis for the findings and the findings

are clearly wrong (manifestly erroneous). Stobart v. State, Department of Transportation and Development, 617 So.2d 880, 882 (La. 1993). If the findings are reasonable in light of the record reviewed in its entirety, an appellate court may not reverse, even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Furthermore, when factual findings are based on the credibility of witnesses, the fact finder's decision to credit a witness's testimony must be given "great deference" by the appellate court. Rosell v. ESCO, 549 So.2d 840, 844 (La. 1989).

In this case, the trial court clearly believed the testimony of Melissa and her mother concerning the difficulties they had in locating Daniel and C.B.G. We note that Daniel acknowledged that he relocated without advising Melissa of his whereabouts and the whereabouts of her child, and he further acknowledged not providing her with a current phone number. Accordingly, we find no error in the trial court's finding that Daniel and Mary failed to carry their burden of proof, by clear and convincing evidence, that Melissa had refused or failed to visit, communicate, or attempt to communicate with C.B.G. without just cause for a period of at least six months. The judgment of the trial court is affirmed.

DECREE

For the foregoing reasons, the trial court judgment is affirmed. All costs of this appeal are assigned to Joseph Daniel Guy and Mary Edwards Guy.

AFFIRMED.