

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:	:	JUDGES:
	:	Hon. Julie A. Edwards, P.J.
THE ADOPTION OF:	:	Hon. Sheila G. Farmer, J.
	:	Hon. Patricia A. Delaney, J.
KAT. P. AND KAS. P.	:	
	:	Case Nos. 10CA16
	:	10CA17
	:	
	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,
Probate Division, Case Nos. 085036 and
085037

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: August 4, 2010

APPEARANCES:

For Appellant

JAMES L. DYE
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For Appellee

CHAD A. FOISSET
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Farmer, J.

{¶1} On May 29, 2008, appellee, Jimmi Popcevski, filed a petition to adopt his two minor stepchildren without consent of their biological father, appellant, Sasho Dukovski.

{¶2} A hearing was held on October 6, 2008. By entry filed January 27, 2009, the trial court found appellant's consent was not needed because appellant failed without justifiable cause to provide for the maintenance and support of his minor children for at least one year prior to the filing of the petition, and failed without justifiable cause to communicate with his children for at least one year prior to the filing of the petition.

{¶3} Appellant filed an appeal and this court affirmed the decision. *In the Matter of the Adoption of Kat. P. and Kas. P.*, Fairfield Case Nos. 09CA10 and 09CA11, 2009-Ohio-3852.

{¶4} Thereafter, a best interests hearing was held on March 1, 2010. By entry filed March 8, 2010, the trial court found the best interests of the children would best be served by granting appellee's adoption petition.

{¶5} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶6} "THE TRIAL COURT ERRED TO THE PREJUDICE OF THE BIOLOGICAL FATHER IN DETERMINING THAT THE ADOPTION OF HIS MINOR CHILDREN WAS IN THOSE CHILDREN'S BEST INTERESTS PURSUANT TO R.C. 3107.161."

I

{¶7} Appellant claims the trial court erred in finding the granting of appellee's adoption petition was in the children's best interests. We disagree.

{¶8} An appellate court will not disturb a trial court's decision on adoption unless it is against the manifest weight of the evidence. *In re Adoption of Masa* (1986), 23 Ohio St.3d 163. A judgment supported by some competent, credible evidence will not be reversed by a reviewing court as against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279. A reviewing court must not substitute its judgment for that of the trial court where there exists some competent and credible evidence supporting the judgment rendered by the trial court. *Myers v. Garson*, 66 Ohio St.3d 610, 1993-Ohio-9.

{¶9} R.C. 3107.161 governs contested adoptions. Subsection (B) states the following in pertinent part:

{¶10} "(B) When a court makes a determination in a contested adoption concerning the best interest of a child, the court shall consider all relevant factors including, but not limited to, all of the following:

{¶11} "(1) The least detrimental available alternative for safeguarding the child's growth and development;

{¶12} "(2) The age and health of the child at the time the best interest determination is made and, if applicable, at the time the child was removed from the home;

{¶13} "(3) The wishes of the child in any case in which the child's age and maturity makes this feasible;

{¶14} "(4) The duration of the separation of the child from a parent;

{¶15} "(5) Whether the child will be able to enter into a more stable and permanent family relationship, taking into account the conditions of the child's current placement, the likelihood of future placements, and the results of prior placements;

{¶16} "(6) The likelihood of safe reunification with a parent within a reasonable period of time;

{¶17} "(7) The importance of providing permanency, stability, and continuity of relationships for the child;

{¶18} "(8) The child's interaction and interrelationship with the child's parents, siblings, and any other person who may significantly affect the child's best interest;

{¶19} "(9) The child's adjustment to the child's current home, school, and community;

{¶20} "(10) The mental and physical health of all persons involved in the situation."

{¶21} Pursuant to subsection (C), a "person who contests an adoption has the burden of providing the court material evidence needed to determine what is in the best interest of the child and must establish that the child's current placement is not the least detrimental available alternative."

{¶22} In its entry filed March 8, 2010, the trial court specifically addressed the best interests standard as follows:

{¶23} "First, the Court considers the least detrimental available alternative for safeguarding each child's growth and development. Each girl is doing well at home and school while living with Petitioner, Jimmi Popcevski, and their mother, but neither child

has had contact with Mr. Dukovski since 2003. Further, Mr. Popcevski has supported both these girls since 2004 while Mr. Dukovski provided no support for five years for these minor children. Certainly, Mr. Dukovski has not established that the current placement is not the least detrimental available alternative.

{¶24} ****

{¶25} "The only downside of granting these Adoption Petitions, as presented by Mr. Dukovski, is that it will sever the relationship between the girls and their biological father, in addition to severing relationships with other members of Mr. Dukovski's family such as their paternal grandmother, aunts, uncles and cousins. This fact is persuasive against finding that it is in the best interest of the girls to grant the Adoption Petitions. However, it is outweighed by all other factors, including but not limited to the fact that the girls are only nine and eleven years old and they have had no contact with any of these relatives for over six years. Furthermore, they are currently happy, healthy girls who are thriving well at school, home and in their community. They both enjoy a strong relationship with their mother, Mr. Popcevski and each other. Maintaining the permanency and stability of this family unit is definitely in the best interest of these two girls. These girls have not been able to count on their biological father for years to parent them, love them or support them; rather, they have come to depend on Mr. Popcevski to parent them, love them and support them."

{¶26} As the trial court noted, the specific facts leading to its determination were appellant's prolonged absence (six years) from the children's lives, and the stable nurturing relationship that the children have with appellee:

{¶27} "Most importantly, granting these Adoption Petitions will provide permanency, stability and continuity of relationships for these two girls' family unit. These girls love their mother and her husband, Jimmi Popcevski. They have lived as a family together since 2004. These girls have thrived. Being only nine and eleven years old and not having any contact with their biological father for over six years, they do not even know him. They have no feelings for him. The uncertainty posed by denying these Adoption Petitions is a concern for the long-term health and stability of these girls." Entry filed March 8, 2010.

{¶28} It is unfortunate that the unintended beneficiaries of appellant's apparent abandonment of his children are his own immediate family members. As appellant's mother, sister, and aunt testified, they have missed the companionship of the children. They believe the children will miss out on all of the love and nurturing that their extended family can offer them. T. at 102, 113, 115, 132. As we noted in the previous cases, Case Nos. 09CA10 and 09CA11, it was appellant's mother and sister who attempted to have contact with the children:

{¶29} "Ms. Dukovski and Sonya Canterbury, appellant's sister, testified as to the 2007 Christmas presents. They both stated 'we sent' the Christmas gifts. T. at 214, 225-227. Ms. Canterbury acknowledged that the telephone call she witnessed being made to Ms. Purdef was actually initiated by Ms. Dukovski, not appellant. T. at 229. Appellant acknowledged the 2007 Christmas gifts were a joint effort by his family, not his alone. T. at 245. He admitted that he did not purchase them. Id." *In the Matter of the Adoption of Kat. P. and Kas. P.*, Fairfield Case Nos. 09CA10 and 09CA11, 2009-Ohio-3852, ¶26.

{¶30} The trial court was cognizant of these issues; however, it found they did not outweigh the overall testimony offered by appellee, the mother of the children, and the independent witnesses. As the witnesses observed the interactions of appellee and the children, they witnessed a "proud dad" and positive parental interaction between them. T. at 23. As the maternal grandmother testified, appellee is active in the children's lives, "he's always there," and there is a strong parental bond between appellee and the children. T. at 35, 41. The relationship was best summed up by the mother of the children:

{¶31} "A. It's a very loving relationship. It's very mutual. Jim takes great pride in being their father. He is proud to brag to the neighbors, to co-workers, any of the events that our daughters have been involved in or that they've gotten very good grades at school. Um, likewise, they too brag about their dad. [Kat.P.] practices soccer with him and if she does something, she attributes it to, you know, 'Well, my dad taught me this. Watch this. He showed me how to do this,' or, um, they like to play on the Wii together and they spend a lot of time on that and play together and it's funny to watch when they have friends over because they'll say, 'Watch this, watch this, my dad showed me, you can do into this door and get into this screen and do this,' and their eyes just light up because you can tell that they're so fond of him and they're so proud to have him as a dad and they admire him. It's, it's present in both of them.

{¶32} "Q. And I think that you've sort of touched on it, but how do you perceive the way that your daughters view Jim?

{¶33} "A. Absolutely as their father." T. at 50.

{¶34} Given the testimony presented, we cannot find any abuse of discretion by the trial court in finding the best interests of the children are best served with adoption by appellee. The factors listed in R.C. 3107.161(B), subsections (1), (3), (4), (5), (7), (8), and (9), are overwhelmingly in favor of the adoption.

{¶35} The sole assignment of error is denied.

{¶36} The judgment of the Court of Common Pleas of Fairfield County, Ohio, Probate Division, is hereby affirmed.

By Farmer, P.J.

Edwards, J. and

Delaney, J. concur.

s/ Sheila G. Farmer

s/ Julie A. Edwards

s/ Patricia A. Delaney

JUDGES

IN THE COURT OF APPEALS FOR FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:
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JUDGMENT ENTRY

CASE NOS. 10CA16
10CA17

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Fairfield County, Ohio, Probate Division, is affirmed. Costs to appellant.

s/ Sheila G. Farmer

s/ Julie A. Edwards

s/ Patricia A. Delaney

JUDGES