

[Cite as *In re Adoption of J.N.G.* , 2010-Ohio-6399.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN RE: THE ADOPTION OF
J.N.G.

JUDGES:
Hon. Julie A. Edwards, P.J.
Hon. W. Scott Gwin, J.
Hon. William B. Hoffman, J.

Case No. 2010CA00225

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Probate Division,
Case No. 207405

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

December 27, 2010

APPEARANCES:

For Appellants

Community Services of Stark County

JOY S. WAGNER
507 W. Park Ave.
Barberton, Ohio 44203

Community Services of Stark County
625 Cleveland Ave NW
Canton, Ohio 44702

Hoffman, J.

{¶1} Petitioners-appellants Rudy Guerrero, Sr. and Alice Guerrero (“Grandfather” and, “Grandmother”, individually; “Grandparents”, collectively) appeal the July 20, 2010 Judgment Entry entered by the Stark County Court of Common Pleas, Probate Division, which denied their petition to adopt J.N.G.

STATEMENT OF THE CASE AND FACTS

{¶2} Grandparents are the paternal grandparents of J.N.G. (DOB 4/5/04). When J.N.G. was four months old, the Carroll County Department of Job and Family Services (“the Agency”) placed her in Grandparents’ care. On September 7, 2004, the Carroll County Court of Common Pleas, Juvenile Division, granted Grandparents custody of the child. The trial court subsequently granted the Agency’s motion to terminate its protective supervision relative to J.N.G.

{¶3} On November 2, 2009, Grandparents filed a petition for the adoption of J.N.G. in the Stark County Court of Common Pleas, Probate Division. Rudy Guerrero, Jr. (“Father”), J.N.G.’s biological father, consented to the adoption. The petition indicated the consent of the biological mother, Ashley Cloud (“Mother”), was not required due to her failure without justifiable cause to provide maintenance and support of the child. The trial court approved the appointment of Community Services of Stark County as the assessor, and ordered Community Services to conduct a home study and file a report with recommendations. The trial court conducted an evidentiary hearing on the petition on May 24, 2010.

{¶4} The following evidence was adduced at the hearing. Father, who resides in San Bernadino, California, had not seen J.N.G. since she was three years old.

Father had last spoken to her on the telephone two and a half months prior to the hearing. The Agency removed J.N.G. from Mother's home when she was one month old. According to Grandmother, Mother and Father had drug problems, which prevented them from properly caring for J.N.G. Initially, J.N.G. was placed in a foster home. The Agency conducted a background check and home study after which the child was placed with Grandparents.

{¶15} The FBI background check, which was completed prior to the hearing, revealed Grandfather had several criminal charges, including possession of a teargas weapon in 1980; possession of a weapon in 1985; battery in 1987; inflicting injury in 1992; inflicting corporal injury on a spouse or cohabitant in 1994; and possession of a controlled substance in 1994. Grandfather explained the charges were the result of his being young and stupid. Grandfather also was convicted of DUI in 1996. In lieu of jail time, Grandfather completed a 72 hour program with classes and sessions relative to alcohol and alcohol awareness. Grandfather stated he stopped drinking eight months prior to the hearing.

{¶16} Grandparents were married in 2002. Both classify their relationship as good, but conceded there had been the occasional argument which was loud enough for the neighbors to hear. Grandmother does not believe the couple needs marriage counseling, and stated Grandfather had never been violent. Grandfather has three children of his own, all of whom live in California. It has been several years since Grandfather has visited or been visited by his children. Grandmother has two children of her own, a 33 year old son who is in the army, and a 30 year old daughter. Grandmother's son was removed from her home due to unruly behavior, and was

emancipated prior to graduating from high school. Grandmother acknowledged she had been the defendant in several municipal court cases which were the result of unpaid healthcare expenses for her deceased first husband.

{¶7} Jennifer Werstler, a licensed social worker with Community Services of Stark County, conducted the investigation in this matter. Werstler found Grandparents home to be clean and tidy. Werstler described J.N.G. as comfortable in the home. J.N.G. has her own bedroom and, as Werstler described, quite a few toys. The child did gravitate toward Grandmother, but Werstler was not concerned about that. Grandparents both denied having engaged in any form of counseling, including marriage, and/or substance abuse. J.N.G. was integrated into Grandparents' home. All of the child's emotional, physical, and medical needs appear to be met. Although one of Grandparents' references was positive, another raised concerns about alcohol consumption. The third reference was unable to provide any information, either positive or negative, relative to Werstler's concerns. Werstler indicated Grandparents neither attended counseling nor parenting and family assessments following her home study assessment.

{¶8} Werstler felt with the limited time in which she had to evaluate the situation and with the limited knowledge she gained, she did not feel comfortable recommending the adoption. Werstler has been performing adoption assessments for five years, having completed 50 to 100 assessments. In the couple of cases in which Werstler has not recommended an adoption, the petitioners have either dropped their requests and/or provided her with sufficient additional information from which she could change her recommendation. When Grandfather discussed his criminal history with Werstler,

he emphasized the roles and responsibilities of the other parties involved versus his own. The information gathered by Werstler revealed a great deal of instability throughout Grandparents' past. Werstler believed further assessment would assist in determining whether there had been positive changes in Grandparents' lives.

{¶9} Via Judgment Entry filed July 20, 2010, the trial court denied Grandparents' petition. The trial court found Grandparents had not demonstrated they were suitably qualified to care for and rear J.N.G. The trial court indicated it would reconsider the petition in one year if Grandparents provided further information to the assessor including character references, attendance at counseling, and/or parenting and family assessment.

{¶10} It is from this judgment entry Grandparents appeal, raising the following assignments of error:

{¶11} "I. THE TRIAL COURT'S DECISION DENYING APPELLANTS' PETITION TO ADOPT THE MINOR CHILD WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶12} This case comes to us on the expedited calendar and shall be considered in compliance with App.R. 11.1(C).

I

{¶13} In their sole assignment of error, Grandparents contend the trial court's decision denying their petition to adopt J.N.G. was against the manifest weight of the evidence.

{¶14} The standard for determining whether the probate court should allow the adoption is whether (1) the petitioner is suitably qualified to care for and rear the child,

and (2) the adoption is in the best interest of the child. *In re Adoption of Charles B.* (1990), 50 Ohio St.3d 88, 93, 552 N.E.2d 884, and *In re Adoption of Ridenour* (1991), 61 Ohio St.3d 319, 320, 574 N.E.2d 1055. Therefore, each case must be determined on its own facts. *Charles B.*, supra, at paragraph three of the syllabus. The probate court's determination is reviewed on appeal under an abuse of discretion standard. *Id.* at 94, 552 N.E.2d 884. An abuse of discretion "implies that the trial court's attitude is unreasonable, arbitrary, or unconscionable." *Ridenour*, supra. The probate court alone weighs the testimony and determines the credibility of the witnesses. *In re Lindsey B.*, supra, and *In re Adoption of Lauren Marie Tucker*, 11th Dist. No.2002-T-0154, 2003-Ohio-1212, ¶ 11, both citing *Bechtol v. Bechtol* (1990), 49 Ohio St.3d 21, 23, 550 N.E.2d 178.

{¶15} Although we would not have found the trial court would have abused its discretion in granting the petition, we, likewise, do not find the trial court abused its discretion in denying such. Grandparents both described their marriage as good. However, one of their character references had concerns of the stability of their marriage and there was evidence grandparents had been in at least two arguments loud enough for neighbors to hear. Additionally, Grandfather was not forthcoming with his criminal history and tended to blame someone else rather than take responsibility for his actions. Alcohol consumption appeared to be a concern although Grandparents both stated they had stopped drinking within the last year. Despite the fact J.N.G. had asthma, Grandfather had only stopped smoking two months prior to the hearing. We find the trial court's continued concerns in light of the evidence presented was not unreasonable, arbitrary or capricious.

{¶16} Grandparents' sole assignment of error is overruled.

{¶17} The judgment of the Stark County Court of Common Pleas, Probate Division, is affirmed.

By: Hoffman, J.

Edwards, P.J. and

Gwin, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ W. Scott Gwin
HON. W. SCOTT GWIN

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

IN RE: THE ADOPTION OF
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JUDGMENT ENTRY

Case No. 2010CA00225

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

s/ William B. Hoffman _____
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards _____
HON. JULIE A. EDWARDS

s/ W. Scott Gwin _____
HON. W. SCOTT GWIN