

THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY, OHIO

IN THE MATTER OF: ADOPTION OF	:	OPINION
JEWELS MARIE HAYLETT	:	
	:	
	:	CASE NOS. 2003-P-0093
	:	and 2003-P-0103
	:	
	:	

Civil appeals from the Court of Common Pleas, Probate Division, Case No. 2002 AD 0056.

Judgment: Affirmed in part, reversed in part, and remanded.

Benito C.R. Antognoli, 11 South River Street, P.O. Box 396, Kent, OH 44240 (For Appellant).

Frank J. Cimino, 250 South Chestnut Street, Suite 18, Ravenna, OH 44266 (For Appellee).

WILLIAM M. O'NEILL, J.

{¶1} Appellant, Jennifer Stuntz (“Jennifer”), appeals the judgments entered by the Portage County Court of Common Pleas, Probate Division. Initially, the trial court determined that Jennifer’s consent was not necessary for the adoption of her daughter, Jewels Marie Haylett (“Jewels”). Thereafter, the trial court granted the petition for adoption filed by Lisa Haylett (“Lisa”), Jewels’ stepmother.

{¶2} Jewels is the daughter of Jennifer and Shawn A. Haylett (“Shawn”). Shawn and Jennifer were never married. Jewels was born in 1995. Shortly after her birth, Jewels and Jennifer moved to Georgia. Shawn visited Jewels and provided support during this time. After a year-and-a-half in Georgia, Jewels and Jennifer returned to Northeast Ohio. Jewels remained with Jennifer until she was four-and-a-half years old. Shawn continued to visit and provide support for Jewels during this time.

{¶3} In April 2000, Jewels was visiting Shawn for the weekend. During this weekend, Jennifer dropped off bags of Jewels’ clothes and toys at Shawn’s residence and informed Shawn that she was leaving the state and could not take care of Jewels. Shortly after Jennifer left, Shawn was granted custody of Jewels. There was no child support order filed requiring Jennifer to pay support. In April 2001, Shawn filed a motion to change Jewels’ name from Jewels Marie Stuntz to Jewels Marie Haylett. This motion was granted.

{¶4} From April to October 2001, Shawn and Jewels lived with Patty Stuntz, Jennifer’s stepmother, in her home. In the summer of 2001, Shawn married Lisa. In October 2001, Shawn, Lisa, and Jewels moved into a residence together.

{¶5} After Jennifer’s departure, she testified that she attempted to contact Jewels every night. However, Shawn would not let her speak to Jewels until the end of May 2000. Jennifer maintained contact with Shawn and Jewels from the end of May 2000 until October 2000. During this time, she sent a care package to Jewels. After October 2000, Jennifer ceased contact with Jewels and Shawn. Jennifer was in Miami, Florida at this time.

{¶6} By her own admission, drugs and alcohol have played a major role in Jennifer's life. Jennifer indicates that drugs were the reason she failed to contact Jewels from October 2000 to April 2001. In April 2001, Jennifer sent a letter to Jewels. This letter was admitted as petitioner's exhibit #1 at the consent hearing. In the letter, Jennifer stated:

{¶7} "I do not want to open the doors of talking as of yet. (I do want to talk to her but it would be selfish of me to do so now). I need to get to a place so when I open those doors again, I won't break her heart by stopping."

{¶8} Beginning with this letter, Jennifer sent money orders to Shawn for support of Jewels. These money orders totaled approximately \$300. Jennifer continued to write Shawn from April 2001 through September 2001. She also spoke with Shawn on the telephone. However, Shawn did not let her speak to Jewels. At the consent hearing, Shawn testified that the language in the letter was indicative of an agreement he had with Jennifer that she would not speak to Jewels until she was sober. He testified that he told her she would be allowed to speak to Jewels in October 2001 if she maintained progress in her drug rehabilitation. Shawn admitted that he denied Jennifer the opportunity to talk to Jewels. Jennifer testified that she did write the letter. However, she denied there was an agreement that she could not talk to Jewels until October. She testified that she attempted to call Jewels every Sunday morning from April to September 2001, and was never permitted to speak with Jewels.

{¶9} After September 2001, Jennifer did not have contact with Jewels or support her. In these months Jennifer was heavily involved in drugs and was living in Florida and Atlanta, Georgia. Jennifer stated she had no regular source of income

during this time, was living with various friends, and would exchange sexual acts for money or drugs.

{¶10} In April 2002, Jennifer called her cousin Bridget for help with her drug addiction. Bridget convinced her to return to Ohio for rehabilitation. Jennifer returned to Ohio and went to the Access Women's Shelter for three or four weeks. Then, she stayed with a friend for a few weeks. Thereafter, on June 7, 2002, Jennifer entered the Edwin Shaw Hospital Women's Halfway House ("Edwin Shaw"). She stayed at Edwin Shaw through December 2002. At the time of the June 2003 hearing, she was still participating in a continued care program at Edwin Shaw. Jennifer testified that she was not permitted to work while she was a patient at Edwin Shaw.

{¶11} During the time Jennifer was away from Jewels, Jennifer's family members played a significant role in Jewels' life. Jennifer's mother, Mary Stuntz ("Mary"), regularly kept in contact with Jewels. Her cousin Bridget babysat Jewels. In May 2002, Mary paid for Jewels, Lisa, Bridget, and Bridget's daughter to fly to Florida to go to Disney World.

{¶12} Cheryl Shuttleworth is a clinical counselor at Edwin Shaw. She testified regarding her treatment of Jennifer. Mary McCray also works at Edwin Shaw. At the time of the June 2003 hearing, Ms. McCray was Jennifer's sponsor. Ms. McCray, Ms. Shuttleworth, and Jennifer all testified that part of her recovery plan was to "focus on herself." She was advised not to attempt to contact Jewels, because the denials of these requests would only cause her more stress.

{¶13} In addition, Ms. Shuttleworth testified that Jennifer believed additional attempts to contact Jewels would result in Shawn denying her family members access

to Jewels. Jennifer testified that she would keep up on Jewels' activities through conversations with her mother, Mary, and her cousin, Bridget. The trial court prohibited Jennifer's counsel from questioning Shawn regarding Jewels' contact with members of Jennifer's family.

{¶14} In November 2002, Jennifer filed a motion seeking visitation with Jewels. Shawn testified that he received a copy of the motion on November 24, 2002. On December 5, 2002, Lisa filed a petition to adopt Jewels. Shawn consented to this adoption. Jennifer did not consent to the adoption.

{¶15} The trial court held separate hearings. On June 11, 2003, a hearing was held to determine if Jennifer's consent was necessary for the adoption. On July 29, 2003, a hearing was held to determine if the adoption was in Jewels' best interests. In a judgment entry filed July 15, 2003, the trial court found that Jennifer's consent to the adoption was not required. This entry was a final appealable order.¹ Jennifer appealed this judgment entry on August 12, 2003, and the appeal was assigned case No. 2003-P-0093. In a judgment entry dated August 12, 2003, the trial court found that it was in Jewels' best interests for the adoption petition to be granted, and it granted Lisa's petition for adoption. In September 2003, Jennifer timely appealed this judgment entry, and the appeal was assigned case No. 2003-P-0103. On appeal, these cases have been consolidated for all purposes.

{¶16} Jennifer raises two assignments of error. Jennifer's first assignment of error is:

{¶17} "The trial court erred in determining that the consent of Appellant Jennifer Stuntz was not necessary in the adoption proceedings."

{¶18} R.C. 3107.07 governs when the consent of a parent to an adoption is unnecessary and provides, in pertinent part:

{¶19} “Consent to adoption is not required of any of the following:

{¶20} “(A) A parent of a minor, when it is alleged in the adoption petition and the court finds after proper service of notice and hearing, that the parent has failed without justifiable cause to communicate 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.”

{¶21} The Supreme Court of Ohio has held that consent of a natural parent is not required due to *either* (1) the failure to provide support and maintenance of a minor or (2) the failure to communicate with the minor, within the year prior to the adoption petition being filed.² In the case sub judice, the trial court found that appellant’s failure to “communicate with and/or support her daughter” was not justified. Essentially, the trial court found that neither failure was justified. We will review the trial court’s determination with separate inquires, as either the failure to communicate without justifiable cause or the failure to provide support without justifiable cause would be sufficient to affirm the trial court’s determination that Jennifer’s consent was not required in this matter.

{¶22} At the June hearing, appellant admitted that she failed to communicate with Jewels and failed to support or provide maintenance for her for the year prior to the adoption petition being filed, from December 2001 through December 2002, (“the

1. See *In re Adoption of Greer* (1994), 70 Ohio St.3d 293, paragraph one of the syllabus.
2. *In re Adoption of McDermitt* (1980), 63 Ohio St.2d 301, 304.

statutory period”). Thus, the relevant issue is whether appellant had justifiable cause for these failures.

{¶23} “The question of whether justifiable cause has been proven by clear and convincing evidence in a particular case is a determination for the probate court and will not be disturbed on appeal unless such determination is against the manifest weight of the evidence.”³

{¶24} Jennifer claims Shawn interfered with her ability to contact Jewels. “Significant interference by a custodial parent with communication between the non-custodial parent and the child, or significant discouragement of such communication, is required to establish justifiable cause for the non-custodial parent’s failure to communicate with the child. ***.”⁴

{¶25} Shawn admitted that he had prevented Jennifer from talking to Jewels. However, the vast majority, if not all, of Shawn’s interference with Jennifer’s ability to talk to Jewels occurred prior to the statutory period in question. Jennifer indicated she did not attempt to contact Jewels during the statutory period. While Shawn’s repetitive behavior may have discouraged Jennifer from attempting to communicate with Jewels, we cannot say Shawn’s behavior justified Jennifer’s failure to even attempt to contact Jewels for more than one year.

{¶26} Jennifer testified she had to resort to filing a motion for visitation due to Shawn’s interference with her ability to communicate with Jewels. The Third Appellate District has held that the natural mother’s failure to file for visitation rights until after the adoption petition was filed weighed against her argument that she was prevented from

3. *In re Adoption of Masa* (1986), 23 Ohio St.3d 163, 166, citing *In re Adoption of McDermitt*, 63 Ohio St.2d at 306.

communicating with her child.⁵ Here, the opposite is true. Jennifer filed a motion for visitation *prior* to the petition for adoption being filed. This course of events is indicative of the adoption petition being filed in retaliation to Jennifer's motion for visitation. We are troubled by the seemingly retaliatory nature of these pleadings. However, since Jennifer did not attempt to contact Jewels during the period in question, she did not demonstrate that Shawn interfered with her ability to do so.

{¶27} Jennifer claims a significant factor in her failure to contact Jewels was the stress Shawn's interference caused her and the effect it had on her treatment. Ms. Shuttleworth advised Jennifer that she should focus on herself rather than continuing to put herself in a situation for rejection. Jennifer was not in treatment for the first four months of the statutory period, from December 2001 to April 2002. Thus, no one advised her to refrain from contacting Jewels during this time.

{¶28} Finally, the trial court did not permit Jennifer's trial counsel to cross-examine Shawn regarding his alleged threats that he would not permit members of Jennifer's family to see Jewels if Jennifer refused to cooperate with him. If such threats were made, such conduct may constitute "discouraging" Jennifer from communicating with Jewels. Significantly discouraging a non-parent from contacting their child is justifiable cause for the failure to communicate.⁶ Throughout the hearing, the trial court consistently focused the attorneys and witnesses on the relevant statutory period and Jennifer's failure to communicate or support her child. We cannot say the trial court abused its discretion by limiting the evidence to these issues. Shawn's alleged threats

4. *In re Adoption of Holcomb* (1985), 18 Ohio St.3d 361, paragraph three of the syllabus.

5. *In re Fetzer* (1997), 118 Ohio App.3d 156, 166.

6. See *In re Holcomb*, *supra*.

prohibiting members of Jennifer's family from visiting Jewels did not have a direct bearing on these proceedings.

{¶29} Jennifer failed to even attempt to communicate with Jewels for the statutory period. Her reasons for her failure all stem from her belief that Shawn would not permit her to have contact with Jewels. However, Jennifer failed to demonstrate that Shawn interfered with her communication during the statutory period. The trial court's finding that Jennifer failed, without justifiable cause, to communicate with her child for a year prior to the adoption petition being filed is not against the manifest weight of the evidence.

{¶30} The trial court also found appellant failed to provide support or maintenance for Jewels, without justification, for the year prior to the adoption petition being filed. Specifically, the trial court found that Jennifer's "substance abuse and rehabilitation" were not a legally justifiable reason for her failure to provide support.

{¶31} There are two distinct times during the statutory period. First, was the period from December 2001 through April 2002, when Jennifer was heavily involved with drugs. The second relevant period was from April through December 2002, when Jennifer was in rehabilitation. The majority of this time was spent at Edwin Shaw. Accordingly, we will address each of these periods individually, noting that Jennifer needed to show her failure to support Jewels for the entire statutory period was justified.

{¶32} The Second Appellate District has addressed the issue of whether voluntary commitment to a drug rehabilitation facility is a justifiable cause for failing to pay child support.⁷ The court held, "in many given situations, a sincere effort to cure an illness or improve a life-style through voluntary commitment might be viewed as a

justifiable cause for failing to pay child support.”⁸ In *Stidham*, the court concluded that the parent’s stay at a drug rehabilitation center was not sufficient to justify his failure to support his child. The court noted that he was only in a rehabilitation facility for about four months of the one-year statutory period. Also, he held a job for three months of the period, yet still failed to provide support.⁹

{¶33} Jennifer testified that she voluntarily committed herself to various facilities for her drug addiction from April 2002 through December 2002. Jennifer also testified that she was prohibited from working while she was in rehabilitation at Edwin Shaw from June through December 2002. Clearly, a parent’s commitment to a drug rehabilitation center can justify a failure to support a child. Based on the circumstances contained in the record, Jennifer’s commitment to Edwin Shaw justified her failure to support her child during that time. However, as was the case in *Stidham*, there were months of the statutory period that Jennifer was not in rehabilitation. She was not prohibited from working and supporting her child during this time.

{¶34} We will now address whether Jennifer’s drug addiction was justifiable cause for her failure to support her child. The Second Appellate District has held that drug addiction is not a justifiable cause for failing to provide support.¹⁰ In *Lassiter*, the parent held a variety of jobs, but claimed his drug addiction prevented him from supporting his child. The court disagreed, holding:

{¶35} “Drug addiction does not relieve one of [one’s] responsibility towards his family and society. A drug addict still must pay his rent, a drug addict still must pay his

7. *In re Adoption of Stidham* (Sept. 25, 1998), 2d Dist. No. 16930, 1998 Ohio App. LEXIS 4464.

8. *Id.* at *10.

9. *Id.*

10. *In re Adoption of Lassiter* (1995), 101 Ohio App.3d 367, 378-379.

bills and a drug addict still must pay his taxes. Appellant apparently had funds sufficient to support his drug habit; therefore, he should have had funds sufficient to pay support. A drug addict must still abide by the rules and laws of society.”¹¹

{¶36} For the period from December 2001 through April 2002, appellant testified that she was earning some money while she was in Atlanta, Georgia, by means of exchanging sexual acts for drugs or money. However, instead of using this money to support Jewels, she chose to use it to support her drug habit.

{¶37} The facts of this case present a close call on whether Jennifer demonstrated that she was justified in failing to support her child. However, we cannot say the trial court abused its discretion by determining that Jennifer’s failure was unjustifiable.

{¶38} We acknowledge that Jennifer’s drug addiction and subsequent rehabilitation present a stronger argument for her justification for failing to support her daughter than for her failure to communicate with her daughter. However, even if we were to determine that the trial court abused its discretion regarding support, we would still affirm the trial court’s judgment. Jennifer’s failure to communicate with her daughter for the statutory period without justification supports the trial court’s determination that her consent to the adoption was unnecessary.

{¶39} Jennifer’s first assignment of error is without merit.

{¶40} Jennifer’s second assignment of error is:

{¶41} “The trial court erred in determining that it is in the best interest of the child that the adoption petition be granted.”

11. Id. at 378.

{¶42} A trial court is required to consider the factors set forth in R.C. 3107.161(B) when making a determination in a contested adoption. R.C. 3107.161(B) provides a nonexclusive list of eleven factors, which the trial court is to consider when determining if an adoption is in the best interests of the child.

{¶43} In its August 2003 judgment entry, the trial court made no references to R.C. 3107.161(B) or any of the factors contained therein. The trial court is not required to individually list each factor.¹² However, the trial court must sufficiently indicate that it considered the requisite factors so a reviewing court can conduct a meaningful review of the substance of the court's decision.

{¶44} Since the trial court did not indicate that it considered the factors contained in R.C. 3107.161(B) or adequately state the basis of its decision, this court is unable to review the trial court's best-interests determination. Therefore, we are reversing the trial court's judgment granting the adoption. This matter is remanded to the trial court. On remand, the trial court is instructed to sufficiently indicate that it considered all the factors in R.C. 3107.161(B) and provide sufficient explanation of the application of those factors to the facts of this case. This will allow for meaningful appellate review.

{¶45} The judgment of the trial court finding that Jennifer's consent to the adoption is not necessary is affirmed. The judgment granting the adoption is reversed. This matter is remanded for further proceedings consistent with this opinion.

DONALD R. FORD, P.J., concurs.

DIANE V. GRENDALL, J., concurs with concurring opinion.

DIANE V. GRENDELL, J., concurring.

{¶46} I concur with the majority's ruling that Jennifer's first assignment of error is without merit, but by way of a different, less editorialized analysis.

{¶47} Contrary to the majority's sports metaphor, there is nothing "close" about the "call" in this case with respect to Jennifer's failure to support or to communicate with her daughter. Jennifer admitted that her use of drugs and alcohol were the reasons for her failure to support or to contact her daughter, Jewels. Indeed, Jennifer chose to leave her daughter with Shawn Haylett and pursue a life of drug use and other irresponsible behavior outside of Ohio. Choosing drugs over one's child does *not* constitute justifiable cause for failing to communicate with one's child or for failing to pay child support. Likewise, while abstinence from drug use and drug rehabilitation should always be encouraged, a person's stay at a drug rehabilitation center as a result of one's prior decision to engage in the unlawful use of drugs does *not* justify the failure to support his or her child. *In re Adoption of Lassiter* (1995), 101 Ohio App.3d. 367, 378 ("A drug addict still must abide by the rules and laws of society.").

{¶48} Under the facts in this case, neither drug use, nor subsequent rehabilitation, constitutes a valid justification for Jennifer's failure to support or to contact Jewels. Therefore, the trial court correctly ruled that Jennifer's consent to the adoption was unnecessary.

12. (Citation omitted.) *In re Adoption of Tucker*, 11th Dist. No. 2002-T-0154, 2003-Ohio-1212, at ¶14.

{¶49} I also reluctantly concur with the majority's ruling on appellant's second assignment of error, but solely on procedural grounds. In an adoption case, such as this one, the guiding principle is the best interest of the child. R.C. 3107.14(C); R.C. 3107.161. The trial court had the responsibility to decide if the adoption of Jewels by her stepmother, Lisa Haylett, is in Jewel's best interest. "[T]he best interests of the child is a legal determination that *must* be made by the trial court." *In re Adoption of Lindsey B.* (July 13, 2001), 6th Dist. No. L-01-1197, 2001 Ohio App. LEXIS 3136, at *5 (emphasis added).

{¶50} The trial court in this case determined that granting the adoption was in Jewels' best interest, apparently due to Jennifer's drug use history and her relationship with Jewel's stepmother. This panel has recently held that a trial court is not required to individually list the statutory factors enumerated in R.C. 3107.161(B) that the court considered in reaching its decision. *In re Adoption of Tucker*, 11th Dist. No. 2002-T-0154, 2003-Ohio-1212, at ¶¶13-14. That holding is consistent with the holdings from the Ninth Appellate District in *In re Adoption of Congrove* (Feb. 24, 1999), 9th Dist. No. 98CA007065, 1999 Ohio App. LEXIS 728, at *14, and the Fifth Appellate District in *In re Jones* (Nov. 15, 1999), 5th Dist. Nos. 99-CA-65, 99-CA-66, 99-CA-67, 99-CA-68, and 99-CA-69, 1999 Ohio App. LEXIS 5504, at *20.

{¶51} In *Tucker*, this panel concluded that "[a] reviewing court will not reverse a trial court's exercise of its considerable discretion in an adoption case unless the trial court acted in an unreasonable, arbitrary, or unconscionable manner." 2003-Ohio-1212, at ¶11. This panel further held that "[a]n appellate court should not substitute its judgment for that of the trial court when competent, credible evidence supports that

decision.” Id. (citation omitted); see, also, *Lindsey B.*, 2001 Ohio App. LEXIS 3136, at *7 (citations omitted).

{¶52} Unfortunately, in this case, there is a paucity of findings in the record supporting what otherwise appears to be a logical decision on the best interest issue. The only finding in the lower court’s judgment entry supporting its decision is that Jewels was “loved and respected” by the families. While the trial court is not required to list its analysis of the statutory factors under R.C. 3107.161(B), *Tucker*, 2003-Ohio-1212, at ¶¶13-14, I concur with the majority’s determination that the trial court, at a minimum, must adequately indicate in the record sufficient findings to support its best interest decision in an adoption case to allow the appellate court the opportunity to ensure that such ruling is not unreasonable, arbitrary, or unconscionable. The lack of such findings in the record of the lower court’s best interest hearing and the judgment entry preclude such review at this time. Therefore, I concur with the decision to reverse and remand for additional proceedings by the court below.