

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

IN THE MATTER OF THE
ADOPTION OF:

A.M.L.

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CASE NO. CA2015-01-004

OPINION
6/8/2015

APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
PROBATE DIVISION
Case No. 2014-5024

John C. Kaspar, 130 East Mulberry Street, Lebanon, Ohio 45036, for appellant, A.E.

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RINGLAND, J.

{¶ 1} Appellant, the biological mother of A.M.L., appeals a decision of the Warren County Probate Court granting an adoption petition filed by the child's stepmother.

{¶ 2} A.M.L. was born in October 2005 while the family was living in Connecticut. His parents began divorce proceedings in 2007, and shortly after, appellant relocated to Alabama. When the divorce was finalized in 2008, the child's father was granted custody. Appellant was ordered to pay child support of \$54 per week but has never made any

payments on this order. Since the time of the divorce, appellant has seen A.M.L. three times. She last saw the child on his birthday in October 2010 and last spoke with him on Easter 2011. In April 2011, she was in an accident which led to the loss of a leg. The father testified that he initiated a phone call that occurred around this time.

{¶ 3} Shortly after A.M.L. turned two years old, he began therapy for Reactive Attachment Disorder. This disorder occurs when there is an abrupt break between two people with a strong bond and the person suffers a mental or emotional breakdown. The child's father attributes the condition to appellant's departure from the family during divorce proceedings and her failure to maintain contact with the child. The child worked hard in therapy and is now off his medication and doing well.

{¶ 4} The father moved to Ohio and in 2011, and when A.M.L. was almost five years old, the father began a relationship with the stepmother. The father and stepmother were married in July 2013 and have a son together. The stepmother is a stay-at-home mom who takes care of the children, gets them ready for school, helps with homework, and prepares dinner, along with taking the children to medical appointments and extra-curricular activities. A.M.L. refers to his stepmother as "mom."

{¶ 5} On April 15, 2014, the stepmother filed a petition to adopt A.M.L. and alleged that appellant's consent to the adoption was not required because in the year preceding the petition, appellant both failed to support the child and failed to have contact with the child. On July 22, 2014, appellant stipulated to the allegation in the adoption petition that her consent was not required because she had failed to provide maintenance and support for the child in the one year prior to the petition and the court issued an order finding appellant's consent to the adoption was not required.

{¶ 6} A hearing was held to determine if adoption was in the best interest of the child. Appellant testified that after the divorce, she moved to Alabama, then to Texas, then back to

Alabama. She testified that she tried to contact the father, but he did not answer his phone and she did not know his address. She indicated that she is now remarried, working and has a stable life and that she decided to initiate proceedings to exercise her rights as a parent. Toward this end, on July 1, 2014 she filed a document to register the child custody determination in Warren County.

{¶ 7} The trial court issued a decision on December 3, 2014, granting the stepmother's petition to adopt. Appellant now appeals the trial court's decision and raises a single assignment of error arguing that the trial court's decision to grant the petition was an abuse of discretion.

{¶ 8} In Ohio, an adoption proceeding is a two-step process involving a "consent" phase and a "best-interest" phase. *In re Adoption of Jordan*, 72 Ohio App. 638, 645 (12th Dist.1991). As discussed above, appellant stipulated to a finding that her consent to the adoption was not necessary and her arguments on appeal concern the trial court's best interest finding.

{¶ 9} A trial court's determination of what is in the best interest of a child in an adoption proceeding must be made after consideration of the factors provided in R.C. 3107.161. *In re Adoption of Cotner*, 12th Dist. Fayette Nos. CA2002-02-004 and CA2002-02-005, 2002-Ohio-5145, ¶ 6. According to this provision:

the court shall consider all relevant factors, which include, but are not limited to, all of the following:

- (1) The least detrimental available alternative for safeguarding the child's growth and development;
- (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;
- (3) The wishes of the child in any case in which the child's age and maturity makes this feasible;

- (4) The duration of the separation of the child from a parent;
- (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;
- (6) The likelihood of safe reunification with a parent within a reasonable period of time;
- (7) The importance of providing permanency, stability, and continuity of relationships for the child;
- (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;
- (9) The child's adjustment to the child's current home, school, and community;
- (10) The mental and physical health of all persons involved in the situation;
- (11) Whether any person involved in the situation has been convicted of, pleaded guilty to, or accused of any criminal offense involving any act that resulted in a child being abused or neglected [or other specific crimes].

R.C. 3107.161(B).

{¶ 10} The person contesting an adoption petition has the burden of providing to the court "material evidence needed to determine what is in the best interest of the child" and the burden of establishing "that the child's current placement is not the least detrimental available alternative." R.C. 3107.161(C). For these purposes, "least detrimental available alternative" means "the alternative that would have the least long-term negative impact on the child." R.C. 3107.161(A). However, the petitioner retains the burden of proving that adoption is in the best interest of the child.

{¶ 11} This court will reverse a probate court's best-interest determination only if we find an abuse of the court's discretion. *Cotner* at ¶ 7. To determine the trial court committed an abuse of discretion, we must find the court's decision was unreasonable, arbitrary, or

unconscionable. *In re Adoption of Ridenour*, 61 Ohio St.3d 319, 320 (1991); *Cotner* at ¶ 7. The trial court does not have to enumerate its findings in regard to each factor, but the court's decision must clearly indicate that the court considered the statutory factors. *In re Adoption of Tucker*, 11th Dist. Trumbull No. 2002-T-0154, 2003-Ohio-1212, ¶ 14. Issues of credibility are for the trial court to determine because the trial judge is in the best position to view the witnesses and to observe the demeanor, gestures and voice inflection during testimony. *In re J.T.S.*, 12th Dist. Preble No. CA2014-09-009, 2015-Ohio-364, ¶ 21.

{¶ 12} Appellant argues that the trial court's best-interest finding was against the manifest weight of the evidence because she and her parents attempted to maintain contact with the child, but the father would not allow mother or her parents to contact the child. Appellant further argues that the stepmother's petition for adoption was a reaction to appellant's attempt to establish her rights to the child in court and the court failed to ascertain the child's wishes with respect to the adoption petition.

{¶ 13} In its decision, the trial court listed the R.C. 3107.161(B) factors and indicated that it had considered these factors in determining whether the adoption was in the child's best interest. The court reviewed the evidence and determined that granting the adoption petition was in the child's best interest.

{¶ 14} The court indicated in its decision that the last time appellant saw the child was October 31, 2010 and her last telephone contact was Easter 2011. The court further found that appellant has not requested to see the child since the last visit in 2010. This finding is supported by the record. Although appellant indicated that she tried to contact the father, there was testimony to the contrary, including the fact that while the mother testified that she was unable to contact the father, he testified that his cell phone number has not changed in ten years and she did not contact him. The trial court also heard evidence that after the divorce, the child has been in therapy and on medication for reactive attachment disorder.

The trial court indicated there were concerns that the child would relapse and require more therapy if appellant were reintroduced into his life. In addition, the court heard evidence that the stepmother is providing the stability and consistency the child needs.

{¶ 15} While appellant testified that she believes the adoption petition was filed because she filed a document to register the child custody agreement in Warren County, the trial court heard contrary evidence from the father and stepmother, who indicated that the adoption had always been part of the family's plan. The stepmother testified that the family met with an attorney a few years ago, who advised that it would be best for them to get married and wait a few years before pursuing adoption. The father also testified that the family wanted to do things the "right way" and date first, get married, live as a family, then seek adoption.

{¶ 16} Finally, although the record does not indicate that the court interviewed the child to ascertain his wishes, the child was not quite nine years old, and had been in therapy and on medication due to reactive detachment disorder. The court heard detailed evidence from the father and stepmother regarding the many ways in which the stepmother cares for the child, and how the child considers the stepmother to be his mother. The court heard evidence that on Mother's Day, the child brought the stepmother a card he made in school and has been calling her "mom" since that time. The evidence indicated the two have a strong bond.

{¶ 17} After careful consideration of the record in this case, we cannot say that the trial court's best interest determination was an abuse of discretion. There was conflicting evidence on the issue of whether appellant tried to contact the child and the timing of the petition to adopt. In addition, evidence was presented to establish the child considers his stepmother to be his mother and reintroduction of appellant into his life could be harmful to the progress the child has made in therapy. Accordingly, we find no merit to appellant's

arguments on appeal and the sole assignment of error is overruled.

{¶ 18} Judgment affirmed.

PIPER, P.J., and S. POWELL, J., concur.