[Cite as *In re Adoption of I.C.*, 2011-Ohio-1145.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

In the Matter of: The Adoption of I.C.

Court of Appeals No. L-10-1157

Trial Court No. 2009 ADP 000143

DECISION AND JUDGMENT

Decided: March 11, 2011

* * * * *

E. Yvonne Harris, for appellants.

Terrance K. Davis and Nicholas T. Stack, for appellees.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Appellants, V.C. and W.C., appeal the May 6, 2010 judgments of the Lucas County Court of Common Pleas, Probate Division, which dismissed their petition to

adopt I.R.[1] and granted appellees D.B. and R.B.'s petition for adoption. Because we find that the trial court did not abuse its discretion in finding that the Lucas County Children's Services Board did not unreasonably withhold its consent to appellants' petition or in finding that granting appellees' petition for adoption was in I.R.'s best interest, we affirm the trial court's judgments.

{¶ 2} The relevant facts of this case are as follows. I.R. was born in 2001. In 2005, Lucas County Children's Services ("LCCS") filed a complaint in dependency and neglect based upon I.R.'s mother's mental illness. LCCS was awarded temporary custody and I.R. was placed with her maternal grandmother. In 2007, I.R. was removed from the grandmother's home because I.R. was having unsupervised visits with her mother, in violation of the safety plan.

{¶ 3} I.R. was briefly in foster care while LCCS looked for another relative placement. I.R. was placed in a relative's home and legal custody was to be transferred to the relatives; however, prior to the transfer, the relatives stated that they were no longer willing to care for I.R. While still seeking relative placement, LCCS filed a motion for permanent custody of I.R. In 2007, a third relative took I.R. and indicated her interest in a permanent placement. In 2009, the relative changed her mind.

[1]The case caption reflects the adoption petition filed first by appellants; however, throughout the proceedings, the minor child was referred to as "I.R." which is her natural mother's surname.

{¶ 4} LCCS then began looking for additional relatives willing to adopt I.R; no relative placements were identified so LCCS expanded its search to include non-relatives. In March 2009, I.R. began pre-placement visits with appellees, D.B. and R.B., who live in the Dayton, Ohio area. I.R. moved into their home in April 2009.

{¶ 5} In the interim, in late March 2009, appellants contacted LCCS and expressed their desire to adopt I.R. It appears that appellant, V.C., is I.R.'s third half-cousin. A home study was conducted on April 2, 2009, and the placement was approved on May 28, 2009. Appellants filed their petition for adoption on August 6, 2009. On August 17, 2009, LCCS filed an objection to the petition arguing that I.R. is doing very well in her adoptive placement and that the petitioners were "virtual strangers."

{¶ 6} Appellees filed their petition for adoption on October 5, 2009, following the mandatory six-month placement period. LCCS filed a consent to the adoption by appellees.

{¶ 7} Over February 8, 9, 10, 17, and 25, 2010, an extensive hearing was held on the adoption petitions. Appellants testified as did several of I.R.'s family members. The testimony focused on I.R.'s close relationship with appellants and other family members. Appellant, V.C., testified that I.R. attended church with her every Sunday for years. V.C. stated that she and her husband, W.C., have a long and stable marriage and that they are debt free. V.C. testified that she wants to adopt I.R. because she loves her and wants to

be with her. V.C. stated that she and I.R. are bonded and that she needs to be with her relatives.

{¶ 8} When questioned, V.C. denied any knowledge of why I.R. had been in LCCS' custody for approximately five years. V.C. also denied knowledge that I.R. was available for adoption. V.C. did acknowledge later learning that LCCS contacted several relatives for a potential adoptive placement. V.C. stated that on March 22, 2009, she learned from I.R. that she was going to be adopted by appellees.

{¶ 9} Appellant, W.C., testified regarding the home study report and various inconsistencies regarding his work and criminal histories (which included only a few minor incidents) and the injury/incident that preceded his social security disability status. W.C. was also questioned about a reference he listed in the home study; the reference questioned W.C.'s mental stability.

{¶ 10} Several of the family members expressed the opinion that I.R. should not have been removed from her mother, despite her severe mental illness, because I.R. was not being abused. The family further felt that I.R. should not have been removed from her grandmother's home despite her unsupervised contact with her mother, in violation of the safety plan.

{¶ 11} LCCS social worker, Joy Shakur, conducted appellants' home study. Shakur testified that they evaluate potential adoptive families based on 12 criteria including personal histories, relationships, motivation to adopt, parenting skills, and

emotional maturity. Shakur stated that appellants were approved as potential adoptive parents. Shakur did testify that her understanding was that appellants had accepted that I.R. was going to be adopted by appellees but that if the placement fell through they would take her.

{¶ 12} Appellees testified regarding the bond they have developed with I.R. Appellee, R.B., testified that she and her husband met in high school and have been married since 2000. They have an eight-year old son. R.B. testified that she and her husband always wanted to adopt because she was adopted and her husband's step-father adopted him. R.B. stated that she is multi-racial, African-American, Caucasian, and Native American.

{¶ 13} R.B. testified that I.R. blended very well into the family. I.R. considers them her parents and their son her brother. She is involved in extra-curricular activities and has many close friends. R.B. testified that it would devastate them if I.R. was taken away. R.B. testified that she occasionally smokes but not around the children. R.B. admitted that she took away a cell phone that was sent with I.R. The phone had, inter alia, her biological mother's and father's telephone numbers. R.B. testified that I.R.'s aunt had their home telephone number and could contact I.R.

{¶ 14} Appellee D.B.'s testimony mirrored R.B.'s regarding how well I.R. integrated into the family. D.B. stated that I.R. is really attached to his mother.

{¶ 15} LCCS adoption assessor, Lynette Ludwig, testified that I.R. was referred to her in June 2007. Ludwig was told that I.R.'s aunt was going to adopt her. According to Ludwig, from December 2007 through early 2009, the aunt kept changing her mind and ultimately decided not to adopt I.R. No relative placement was found.

{¶ 16} Ludwig stated that appellees were already involved in pre-placement visits when appellants contacted her. Ludwig stated that I.R. was very excited to go and live with appellees; her main concern was what would happen if they changed their minds. Ludwig testified that LCCS ultimately decided to continue with I.R.'s placement with appellees because her need for a permanent placement and because many of the relatives that had expressed interest failed to follow through. Ludwig was also unsure of whether appellants would be an approved placement. Ludwig testified that I.R.'s placement with appellees has been very good; she ranked it a ten on a scale from one to ten.

{¶ 17} Patricia Hill, an independent social worker, testified that appellees came to her agency to have a home study completed. Hill testified that appellees live in a beautiful home in a friendly neighborhood. According to Hill, I.R. is very happy in the home, has lots of friends and participates in activities. She refers to appellees as mom and dad. Hill stated that I.R. and appellees and their biological son have bonded. A separation would be devastating.

{¶ 18} LCCS' caseworker, Barbara Cummins, became involved with I.R. in October 2008. At that time, LCCS had permanent custody and I.R. was living with her

aunt. Cummins also testified that I.R.'s aunt kept vacillating on whether or not she would adopt I.R.

{¶ 19} Cummins testified that ultimately they expanded the adoptive family search to non-relatives and discovered appellees. Cummins observed the interaction between I.R. and appellees; she stated that I.R. fit in with the family from the moment she moved in. Cummins testified that she believed that it was in I.R.'s best interest to be adopted by appellees.

{¶ 20} Similarly, guardian ad litem, Veronica Szozda, testified that the fact that appellants were family members was a consideration in arriving at her recommendation but that other factors weighed more heavily. Such factors included how well I.R. was doing with appellees and the fact that when she was living with relatives she was having serious behavior problems. Szozda stated that appellees unconditionally love I.R. and that she is well cared for and accepted into that family. Szozda testified that she believed that LCCS made a good effort to locate family members willing to adopt I.R.

{¶ 21} Dean Sparks, the executive director of LCCS, testified that he signs all the consent for adoption forms. Sparks stated that he was familiar with the case and spoke with appellant, V.C., on the telephone. Sparks indicated that he passed the information on to the LCCS staff to conduct a review. Thereafter, Sparks had a telephone conversation with V.C. indicating that LCCS would complete the home study and that, if the arrangement with appellees fell through, appellants would be considered.

{¶ 22} Appellants' counsel then attempted to question Sparks about a letter to caregivers he has authored which was published on the inside cover of the "Northwest Ohio Regional Training Center" training calendar. The letter discussed "disproportionalety" regarding the placement of African American children in foster care versus Caucasian children. After LCCS filed a motion in limine, the court determined that Sparks' testimony would be limited to questions relating to I.R. The objections regarding the line of questioning were sustained.

{¶ 23} An in camera interview of I.R. was conducted by the court. This aided the court in making its determination.

{¶ 24} On May 6, 2010, as to appellants' petition, the court noted that while a blood relationship is a factor in determining a child's best interest, it is not the sole determinative factor. The court noted that "the child's stability, continuity of care, bond with the foster family, her own clearly expressed desires along with concerns related to the petitioners home study are some of the factors considered that outweigh the significance of the blood tie." The court then concluded that LCCS had not unreasonably withheld its consent from appellants' adoption petition.

{¶ 25} In a separate judgment entry also dated May 6, the trial court found that since LCCS had already filed its consent, the only issue that remained was whether the finalization of appellees' petition was in I.R.'s best interest. The court answered the question affirmatively. This appeal followed.

{¶ 26} Appellants now raise the following three assignments of error for our review:

{¶ 27} "I. The trial court abused its discretion and committed a reversible and prejudicial error in not finding that the Lucas County Children Services Board was unreasonably withholding its consent of appellants' petition to adopt the minor child.

{¶ 28} "II. The trial court abused its discretion and committed a reversible and prejudicial error when it determined that it was in the best interest of the minor child to grant the appellees' petition for adoption.

{¶ 29} "III. The trial court abused its discretion and committed a reversible and prejudicial error when it granted Lucas County Children Services motion in limine."

{¶ 30} In appellants' first assignment of error, they contend that the court erred by not finding that LCCS had unreasonably withheld its consent to appellants' adoption petition. Relevant to this case, consent to an adoption petition is not required where:

{¶ 31} "Any legal guardian or lawful custodian of the person to be adopted, other than a parent, who has failed to respond in writing to a request for consent, for a period of thirty days, or who, after examination of the written reasons for withholding consent, is found by the court to be withholding consent unreasonably." R.C. 3107.07(H).

{¶ 32} "It must be shown by clear and convincing evidence that the lawful custodian unreasonably withheld consent to adoption." *Matter of Jeffrey A.*, 6th Dist. No. L-08-1006, 2008-Ohio-5135, ¶ 9. "Clear and convincing evidence" has been defined as:

"[T]hat measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more that a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt as in criminal cases." *Cross v. Ledford* (1954), 161 Ohio St. 469, 477.

{¶ 33} In this assignment of error, appellants essentially argue that LCCS misrepresented the nature of the blood relationship and the interaction between appellant, V.C., and I.R. Appellants assert that based on these misrepresentations, the court erroneously concluded that the blood tie between the parties was "unclear and somewhat remote."

{¶ 34} Upon review of the extensive, multi-day testimony, we find that there was genuine confusion over the exact nature of the relationship between V.C. and I.R. Even V.C. erroneously testified that because her mother and uncle had the same mother only, they were full-blooded siblings. Reviewing the court's judgment we conclude that it did not hinge on the nature of the parties' relationship. The court clearly acknowledged a blood relationship but determined that I.R.'s bond with appellees, certain concerns with appellants' home study report, the recommendations of the GAL and caseworker, and I.R.'s desires, weighed in favor of its determination that LCCS did not unreasonably withhold its consent to appellants' adoption petition. Based on the foregoing, we find that appellants' first assignment of error is not well-taken.

{¶ 35} In their second assignment or error, appellants argue that the trial court erred when it determined that it was in I.R.'s best interest to be adopted by appellees. In determining whether the probate court should allow the adoption it must consider (1) whether the petitioner is qualified to care for and raise the child, and (2) whether the adoption is in the child's best interests. *In re Adoption of Ridenour* (1991), 61 Ohio St.3d 319, 320. This court reviews a probate court's determination under the abuse of discretion standard. Id. An abuse of discretion is found only when it is determined that a trial court's attitude in reaching its judgment was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶ 36} In considering I.R.'s best interest, the trial court was required to consider, at minimum, the factors under R.C. 3107.161(B) which provide:

{¶ 37} "(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:

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

{¶ 39} "(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;

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

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

{¶ 42} "(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;

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

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

{¶ 45} "(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;

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

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

{¶ 48} "(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; * * *. "

{¶ 49} Appellants first argue that the court erred by not acknowledging that LCCS failed to give preferential order to relatives as required under O.A.C. 5101:2-48-16(V). Appellants are correct in that relatives are given preferential adoption order, unless the agency determines that "the placement is not in the best interest of the child." Id.

{¶ 50} In the present case, LCCS attempted to place I.R. with relatives from her removal from her mother in 2005, until March 2009, when the agency began pre-placement visits with appellees. In its objection to appellants' adoption petition, LCCS clearly indicated that appellants did not participate in the matching process and had not been approved to adopt through the matching conference process. Further, LCCS indicated that it believed that it was in I.R.'s best interest to remain with appellees because she was doing well, happy and thriving. Reviewing the evidence, the court did acknowledge that relative placement is a factor to consider in determining a child's best interest; however, the court clearly found that other factors outweighed any blood tie that I.R. has with appellants.

{¶ 51} Appellants next argue that the court erred in assessing the character and credibility of appellees. Appellants first argue that appellee, R.B., lied in her home study document when she said that she does not smoke. This is an important consideration because I.R., at minimum, has asthma triggered by seasonal allergies. R.B. testified that she occasionally smokes when she is out with friends and does not smoke around the children.

{¶ 52} Appellants also contend that a posting by R.B. on the social networking website "MySpace" is indicative of appellees' "true nature." The posting at issue is a picture of appellees with the caption "Just me n my bitch." R.B. testified that the caption was just a joke.

{¶ 53} In reaching its decision, the court clearly stated that it considered the factors under R.C. 3107.161 and the testimony presented by the parties. It is the probate court's function to weigh the testimony and assess the credibility of the witnesses. *Matter of Jeffrey A.*, supra, ¶ 13. Upon our review, we cannot say that the trial court abused its discretion when it determined that it was in I.R.'s best interest to be adopted by appellees. Appellants' second assignment of error is not well-taken.

{¶ 54} In appellants' third and final assignment of error, they challenge the trial court's ruling on LCCS' motion in limine. As stated above, during the course of the proceedings, appellants expressed their intent to subpoena and question LCCS Executive Director Dean Sparks regarding an open letter to "caregivers" on the inside cover of a caregiver training schedule brochure. The gist of the letter was Sparks' desire to determine the reason that a disproportionate number of African American children are placed in foster care.

{¶ 55} We first note that a decision to admit or exclude evidence is a matter left to the discretion of the trial court. *Tracy v. Merrell Dow Pharmaceuticals, Inc.* (1991), 58 Ohio St.3d 147, 152.

{¶ 56} Upon review of the letter, we conclude that it had little value under the facts of this case. The letter was referring to the placement of African American children in foster care, not in adoptive homes. Further, the relevant consideration in this case was whether adoption by either of the parties was in I.R.'s best interest. Based upon these facts, we cannot find that the trial court's ruling was unreasonable or unconscionable. Appellants' third assignment of error is not well-taken.

{¶ 57} On consideration whereof, we find that substantial justice was done the parties complaining and the judgments of the Lucas County Court of Common Pleas, Probate Division, are affirmed. Pursuant to App.R. 24, appellants are ordered to pay the costs of this appeal.

JUDGMENT AFFIRMED.

In the Matter of:
The Adoption of I.C.
L-10-1157

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J. _____
JUDGE

Mark L. Pietrykowski, J. _____
JUDGE

Thomas J. Osowik, P.J. _____
CONCUR.
JUDGE