**[Cite as *In re Adoption of F.A.*, 2015-Ohio-2249.]**

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| STATE OF OHIO | ) | IN THE COURT OF APPEALS |
| | )ss: | NINTH JUDICIAL DISTRICT |
| COUNTY OF SUMMIT | ) | |

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| IN RE: ADOPTION OF F.A. | C.A. No. 27275 |
| | APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. 2013-AD-126 |

DECISION AND JOURNAL ENTRY

Dated: June 10, 2015

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MOORE, Judge.

**{¶1}** Abdulrahaman A. ("Father"), appeals from the judgment of the Summit County Court of Common Pleas, Probate Division, which concluded that Father's consent to the adoption of his biological son, F.A., was not necessary. We affirm.

I.

**{¶2}** F.A. was born on May 27, 2009 to Danya S. ("Mother") and Father, who were married. Mother and Father divorced in 2012. The divorce decree named Mother as the custodial parent and provided Father parenting time with F.A. through Skype. Father resides in Saudi Arabia with the parties' three other children.

**{¶3}** Mother remarried, and on September 17, 2013, F.A.'s stepfather ("Stepfather") filed a petition to adopt F.A. The petition alleged that Father's consent to the adoption was not necessary because he had not supported or had more than de minimis contact with F.A. for at least one year prior to filing the petition. Father filed an objection to the petition.

**{¶4}** In a journal entry dated February 19, 2014, the trial court found that Father's consent to the adoption was not necessary. Father appealed from the February 19, 2014 journal entry, and he now presents one assignment of error for our review.

II.

**ASSIGNMENT OF ERROR**

> THE TRIAL COURT ERRED IN DETERMINING THAT FATHER'S CONSENT TO THE ADOPTION OF HIS SON WAS UNNECESSARY[.]

**{¶5}** In his sole assignment of error, Father maintains that the trial court erred in determining that his consent to the adoption of F.A. was unnecessary. We disagree.

**{¶6}** "In regard to the permanent termination of parental rights specific to the context of adoptions, as a general rule, the biological parent must consent and may withhold consent to adoption." *In re Adoption of M.F.*, 9th Dist. Summit No. 27166, 2014-Ohio-3801, ¶ 11, citing R.C. 3107.06; *see also In re Adoption of G.V.*, 126 Ohio St.3d 249, 2010-Ohio-3349, ¶ 6 (stating that "[b]ecause adoption terminates fundamental rights of the natural parents, * * * [a]ny exception to the requirement of parental consent [to adoption] must be strictly construed so as to protect the right of natural parents to raise and nurture their children."). However, R.C. 3107.07(A) provides that a parent's consent to adoption is not required if it is alleged in the adoption petition and the court finds by clear and convincing evidence that:

> the parent has failed without justifiable cause to provide more than de minimis contact 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.

**{¶7}** "[A] party filing a petition for adoption who relies upon R.C. 3107.07(A) bears the burden of establishing by clear and convincing evidence that the exception to the consent requirement contained therein has been satisfied." (Alterations sic.) *In re N.L.T.*, 9th Dist.

Lorain No. 14CA010567, 2015-Ohio-433, ¶ 18, quoting *In re Adoption of Pushcar*, 110 Ohio St.3d 332, 2006-Ohio-4572, ¶ 13.

**{¶8}** Because R.C. 3107.07(A) is written in the disjunctive, an unjustifiable failure during the one-year look back period either (1) to have more than de minimis contact, *or* (2) to provide support, "is sufficient to obviate the need for a parent's consent." *In re Adoption of A.H.*, 9th Dist. Lorain No. 12CA010312, 2013-Ohio-1600, ¶ 9, citing *In re Adoption of McDermitt*, 63 Ohio St.2d 301, 304 (1980). We will begin by reviewing the trial court's finding that Father failed, without justifiable cause, to have more than de minimis contact with F.A. for at least one year prior to the filing of the petition.

**{¶9}** The probate court's determination as to whether the parent had more than de minimis contact with the child for purposes of R.C. 3107.07(A) is reviewed for an abuse of discretion. *In re N.L.T.* at ¶ 17, citing *In re Adoption of M.B.*, 131 Ohio St.3d 186, 2012-Ohio-236, paragraph two of the syllabus. *See also In re Adoption of J.R.H.*, 2d Dist. Clark No. 2013-CA-29, 2013-Ohio-3385, ¶ 25-28 (discussing the application of the standard in *In re Adoption of M.B.* to de minimis contact situations as well as failure to support cases). "Whether justifiable cause has been proven by clear and convincing evidence is a separate issue the determination of which will only be reversed on appeal if it is against the manifest weight of the evidence." *In re N.L.T.* at ¶ 17, citing *In re Adoption of M.B.* at paragraph two of the syllabus. *See also In re Adoption of J.R.H.* at ¶ 25-28.

**{¶10}** Here, at the hearing on Father's objection to the adoption, Mother testified as to Father's visitation as set forth in the divorce decree, and a copy of the decree was admitted as an exhibit. The decree provides, in relevant part:

> [Father] shall be entitled to supervised parenting time with [F.A.] whenever he can arrange to be in Summit County, Ohio and upon at least 14 days advance

> written notice to [Mother]. * * * Additional parenting time between [Father] and [F.A.] shall occur by Skype. Each party shall maintain a computer and the Skype software in his or her home for this purpose. Skype contact shall occur at least weekly, or as otherwise agreed by the parties, and shall be scheduled at a time [F.A.] is normally awake.

**{¶11}** Mother testified that she attempted to arrange Skype visits through emails she sent to Father on July 23, 2012, August 10, 2012, and August 28, 2012. Copies of those emails were admitted into evidence. Father did not reply until August 28, 2013, one year after her last email. Thereafter, the parties exchanged emails and arranged for Father to exercise a Skype visit with F.A. on September 16, 2013. However, aside from this one Skype visit, Father had no other contact with the child for more than a year prior to the filing of the petition.

**{¶12}** Father attended the hearing through video conferencing. During Father's testimony, he did not dispute that the only email that he sent to arrange a Skype visit with F.A. during the look back period was in August 2013, and his only contact with F.A. during this period was the September 16, 2013 Skype visit.

**{¶13}** On appeal, Father argues that his Skype visit on September 16, 2013, precluded the trial court from ruling that his consent was not required for lack of contact. In support, Father relies on a previous version of R.C. 3107.07(A) and the Ohio Supreme Court's decision *In re Adoption of Holcomb*, 18 Ohio St.3d 361 (1985), paragraph two of the syllabus, for the proposition that, "[p]ursuant to the explicit language of R.C. 3107.07(A), failure by a parent to communicate with his or her child is sufficient to authorize adoption without the parent's consent only if there is a complete absence of communication for the statutorily defined one-year period." However, that "version of the statute required a finding that the parent failed to 'communicate' with the minor child for a period of one year." *In re N.L.T.*, 2015-Ohio-433, at ¶ 15, fn. 2. "By changing the standard from 'communicate,' which could imply a single contact, to

'more than de minimis contact,' which seems to imply more than a single contact, the Legislature indicated its intent to require more effort from the parent to have contact and communication with the child." *In re J.D.T.*, 7th Dist. Harrison No. 11 HA 10, 2012-Ohio-4537, ¶ 9; *see also In re N.L.T.* at ¶ 15, fn. 2. In his merit brief, Father presents no discernible challenge to the trial court's determination that one Skype visit was de minimis, and we are not inclined to create an argument on his behalf. *See* App.R. 16(A)(7).

**{¶14}** Next, Father seems to argue that he had justifiable cause for not having additional contact with the child for the year prior to the filing of the petition. At the hearing, Father testified that he had difficulty in securing his visitor visa. However, he acknowledged that he did obtain his visitor visa in 2012, which would have permitted him to visit the child in the United States in 2013, but he did not do so. In his merit brief, Father maintains that travel to the United States to see F.A. would have been expensive and that the flight would have taken more than twenty-four hours. However, Father does not cite any portion of the transcript where testimony as to the cost and time associated with travel can be found. *See* App.R. 16(A)(7). Further, as previously discussed, Mother testified that she attempted to arrange Skype visits through her three emails to Father, and he did not respond to these emails until a year after the last email was sent. Father produced no evidence as to why a year passed prior to responding to Mother's attempts to arrange the Skype visit. *In re K.K.*, 9th Dist. Lorain Nos. 05CA008849, 05CA008850, 2006-Ohio-1488, ¶ 7, quoting *In re Adoption of Bovett*, 33 Ohio St.3d 102, (1987), paragraph two of the syllabus (where the petitioner has established a lack of communication, the burden of going forward with evidence shifts to parent to demonstrate "some facially justifiable cause" for his failure to communicate).

**{¶15}** Moreover, "In addressing the prior version of the statute, the Supreme Court has stated that '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."' *In re N.L.T.* at ¶ 31, quoting *In re Adoption of Holcomb* at 367-368. Father has not advanced an argument in his brief that Mother significantly interfered with Father's attempts to contact the child. *See* App.R. 16(A)(7).

**{¶16}** Therefore, we cannot say that the trial court's ruling that Father lacked justifiable cause for his failure to have more than de minimis contact with the child during the look back period was against the weight of the evidence.

**{¶17}** Based upon the foregoing, Father's failure to have more than de minimis contact with F.A. from September 2012 through September 2013, without justification, supported the trial court's finding under R.C. 3107.07(A) that his consent to the adoption of F.A. was not necessary. Consequently, we need not address whether the evidence supported the trial court's alternate finding that Father's failure to provide financial support for F.A. was also without justification. *See In re Adoption of A.H.*, 9th Dist. Lorain No. 12CA010312, 2013-Ohio-1600, ¶ 18. Accordingly, Father's sole assignment of error is overruled.

III.

**{¶18}** Father's sole assignment of error is overruled. The judgment of the trial court is affirmed.

Judgment affirmed.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

CARLA MOORE
FOR THE COURT

WHITMORE, J.
CONCURS.

CARR, P. J.
CONCURRING IN JUDGMENT ONLY.

**{¶19}** I concur in the majority's opinion because I agree that Father's consent to the adoption of F.A. was not necessary. I would affirm the probate court's judgment, however, on the basis that Father failed to provide for the child's maintenance and support during the year prior to the filing of the adoption petition.

**{¶20}** Father was obligated pursuant to the parties' divorce decree to pay child support. Mother presented evidence, including verification from the Child Support Enforcement Agency, that Father had not paid anything towards the child's support for a period of one year. Father, on

the other hand, did not meet his burden to demonstrate justifiable cause for his failure to provide for the maintenance and support of F.A. during the one year period prior to the filing of the adoption petition. Accordingly, I would affirm the probate court's judgment concluding that Father's consent to the adoption of F.A. was not necessary.

APPEARANCES:

BARBARA ROGACHEFSKY, Attorney at Law, for Appellant.

SUSAN K. PRITCHARD, Attorney at Law, for Appellee.