

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

In re Adoption of C.B.

Court of Appeals No. L-12-1153

Trial Court No. 2011 ADP 000029

DECISION AND JUDGMENT

Decided: April 5, 2013

* * * * *

Stewart W. Jones, for appellant.

Dan Nathan, for appellee.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, Probate Division, which denied appellant A.B.'s petition to adopt minor child C.B. For the reasons set forth below, the judgment of the trial court is affirmed.

{¶ 2} Appellant sets forth a single assignment of error:

The trial court abused its discretion by failing to determine that the finalization of the adoption is in the best interest of the child.

{¶ 3} C.B.'s birth parents have litigated issues related to the child's care and custody for a majority of the child's ten years of life. The extensive history of litigation is set forth below only to the extent necessary for consideration of the issues on appeal.

{¶ 4} C.B. was born in 2002 to appellee S.R. ("mother") and B.B ("father"). C.B.'s parents were never married, although father has established paternity of the child. Father is currently married to appellant A.B. Sometime shortly after C.B.'s birth, father moved out of state and mother cared for their child. In December 2006, father returned to the area and requested visitation, which was granted. Also that year, the Lucas County Court of Common Pleas, Juvenile Division, designated mother residential and custodial parent. In January 2007, father filed the first of several motions to show cause asserting that mother had failed to comply with the trial court's parenting orders. In September 2007, the juvenile court filed an interim judgment entry granting father unsupervised parenting time with C.B. Following a December 2007 hearing on father's motions to show cause, mother was found in contempt of the trial court's previous parenting orders. Father was granted temporary custody and mother was allowed supervised visitation. Additionally, the juvenile court appointed a guardian ad litem for C.B. and ordered psychological evaluations for the parents.

{¶ 5} In March 2008, mother entered into a consent agreement giving legal custody to father which remains in effect at this time. Mother, however, subsequently filed various motions in an attempt to reallocate parental rights, all of which were denied. In a July 2009 hearing on mother's motion for custody, the juvenile court again granted mother supervised visitation beginning August 19, 2009.

{¶ 6} On February 28, 2011, appellant A.B. filed a petition to adopt C.B. Father consented to the adoption while mother did not. Accordingly, the matter was set for a hearing before the probate court pursuant to R.C. 3107.07 to determine whether mother's consent would be required for the adoption.

{¶ 7} A consent hearing was held on August 24, 2011. By judgment entry filed October 19, 2011, the trial court found that mother had failed, without justifiable cause, to have contact with the child for the one-year period prior to the filing of the petition, and that her consent therefore was not required for adoption. The matter was then set for a hearing to determine whether the finalization of the adoption was in the best interest of the child.

{¶ 8} During a two-day hearing conducted in March 2012, the trial court heard testimony from numerous witnesses. Appellant's mother and mother-in-law testified that appellant and C.B. have a loving relationship and that the child is being provided a loving and stable home. C.B.'s guardian ad litem testified in support of the adoption, as did mother's caseworker from Lucas County Children Services. Father and appellant both testified at length as to C.B.'s progress in school since father has had custody of the child

and stated that C.B. is very happy at home. Mother provided a witness from her church who testified that she attends and participates in church-sponsored support groups in order to work on her anger issues. Mother testified at length as to her positive relationship with C.B. during the first five years of the child's life when father lived out of state and as to her recent attempts to have contact with C.B.

{¶ 9} In support of her sole assignment of error, appellant asserts that, after finding mother's testimony unbelievable and not credible at the consent hearing, the trial court "did a total reversal" and disregarded the testimony of appellant, father, the guardian ad litem and the caseworker. Appellant asserts that the trial court's decision is contrary to the evidence and testimony provided by "unbiased" witnesses and is therefore an abuse of discretion.

{¶ 10} The primary purpose of the statutorily-created adoption proceeding is not to terminate the rights of the natural parent, but to provide a legal family relationship and home for a child. *In re Adoption of Lindsey B.*, 6th Dist. No. L-01-1197, 2001 WL 804035 (July 13, 2001), citing *In re Adoption of Kohorst*, 75 Ohio App.3d 813, 817, 600 N.E.2d 843 (3d Dist.1992). Because R.C. 3107.02(A) and (B) and 3107.03 set forth who "may" be adopted and who "may" adopt, the Ohio Supreme Court has held that adoption is not an absolute right. 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.*, 50 Ohio St.3d 88, 93, 552 N.E.2d 884 (1990), and *In re Adoption of*

Ridenour, 61 Ohio St.3d 319, 320, 574 N.E.2d 1055 (1991). 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. The term "abuse of discretion" connotes more than an error of law or judgment; it implies that the trial court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). The probate court alone weighs the testimony and determines the credibility of the witnesses. *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*, 49 Ohio St.3d 21, 23, 550 N.E.2d 178 (1990).

{¶ 11} R.C. 3107.161(B) provides that, in making a determination in a contested adoption concerning the best interest of a child, the probate court shall consider all relevant factors including, but 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.

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 * * *.

{¶ 12} In making its decision in this matter, the probate court acknowledged that it must consider all of the statutory factors set forth above, and specifically cited the consideration of "the least detrimental available alternative for safeguarding the child's

growth and development.” The court made clear it had considered the significance of a total severance of parental rights to both the child and parent if the petition were granted. The probate court acknowledged that, while there have been times in the past when mother’s involvement with C.B. may have had a negative effect, mother has worked hard in the past two years through counseling and training sessions to improve her ability to be a positive influence in C.B.’s life. However, noting that C.B. has made positive adjustments to her current home and that her current living situation has provided stability in her life, the court stated it did not support an interruption of that process. The trial court stressed that the issue before it was not whether mother should regain custody of her child, but whether C.B.’s best interest would be promoted by retention of some parental rights so that “an appropriate court” might provide her with visitation in the future if warranted.

{¶ 13} The probate court’s analysis in this case was thorough and thoughtful and in accordance with the statutory and case law. We note that before rendering its decision, the court interviewed C.B., then nine years old, in camera regarding the child’s wishes. The court noted that C.B. “did not express any negative feelings toward the birth mother and did not seem to object to further contact between her and her birth mother.”

Upon our review, we cannot say that the trial court abused its discretion when it found that petitioner had not proved by clear and convincing evidence that finalization of this adoption would be in C.B.’s best interest. Accordingly, appellant’s sole assignment of error is not well-taken.

{¶ 14} On consideration whereof, the judgment of the Lucas County Court of Common Pleas, Probate Division, is affirmed. Costs of this appeal are assessed to appellant pursuant to App.R. 24.

Judgment affirmed.

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

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.