

[Cite as *In re T.L.S.*, 2012-Ohio-3129.]

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

IN THE MATTER OF THE
ADOPTION OF:

T.L.S.

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CASE NO. CA2012-02-004

OPINION
7/9/2012

APPEAL FROM FAYETTE COUNTY COURT OF COMMON PLEAS
PROBATE DIVISION
Case No. 11 OA 00177

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PIPER, J.

{¶ 1} Appellants, the potential adoptive parents of T.L.S., appeal a decision of the Probate Division of the Fayette County Court of Common Pleas dismissing their petition to

adopt the child.¹

{¶ 2} The child involved in this appeal, T.L.S., was born on June 28, 2011. His biological parents were unmarried and no father was listed on his birth certificate. The child was placed with appellants on his release from the hospital. An application for court approval of this placement was filed on September 1, 2011, and appellants filed a petition to adopt the child on September 21, 2011.

{¶ 3} In the petition to adopt, appellants alleged that the father was a putative father whose consent was not required. The biological father was given notice of the petition to adopt and the date of the adoption hearing. He failed to object in writing to the petition, but appeared at the hearing. The biological mother, the potential adoptive mother and the potential adoptive father all testified at the hearing. The biological father was given the opportunity to question witnesses and to present any evidence at the hearing, but failed to do so.

{¶ 4} Counsel for the potential adoptive parents argued that the biological father's consent was not required because he failed to object to the adoption petition within 14 days as required under the Revised Code. Counsel further argued that consent was not required because the evidence at the hearing established that the father failed to support the mother during pregnancy and also because the father failed to support the child after birth.

{¶ 5} In a written decision, the court found that the biological father's consent was required. The court made this finding on the basis that the petitioners failed to meet their burden to establish that the father failed to provide support for the mother during her pregnancy. The court dismissed the petition for adoption.

{¶ 6} Appellants now appeal the trial court's decision to dismiss their petition to adopt

1. Pursuant to Loc.R. 6(A), we sua sponte remove this case from the accelerated calendar and place it on the regular calendar for purposes of issuing this opinion.

the child. They raise three assignments of error challenging the court's decision. Appellants argue that the court erred in failing to determine that the father's consent was not necessary because he failed to object in writing to the adoption petition. They also argue that the court erred in failing to determine that the father failed to support the child. Finally, appellants argue that the court's determination regarding the father's support and abandonment of the mother during her pregnancy was against the weight of the evidence.

Consent Requirement

{¶ 7} The right of natural parents to the care and custody of their child is one of the most precious and fundamental in law. *In re A.N.L.*, 12th Dist. Nos. CA2004-11-131, CA2005-04-046, 2005-Ohio-4239. See also *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct 1388, 1394 (1982). That right, however, must be balanced against the state's interest in protecting the welfare of children. *A.N.L.* at ¶ 50; *In re adoption of Zschach*, 75 Ohio St.3d 648, 651 (1996).

{¶ 8} In Ohio, certain persons and entities must consent to the adoption. R.C. 3107.06. These persons include the mother, father and any putative father of the child. *Id.* However, exceptions to the consent requirement exist. R.C. 3107.07. As applicable to this case, these exceptions include a putative father who has abandoned the mother during pregnancy or who abandons or fails to support the child and a person whose consent is required who fails to file an objection to the petition within 14 days after service of the petition. R.C. 3107.07(A), (B), and (K).

{¶ 9} In this case, appellants argue that the biological father's consent was not required because he failed to file an objection to the adoption petition within 14 days. They also argue that consent is not required because the biological father is a putative father who abandoned the mother during pregnancy and who abandoned and failed to support the child. The biological father argues that he should be considered the parent of the child and

therefore his consent is required because the consent exception for parents does not apply. See R.C. 3107.07(A).

Failure to File An Objection

{¶ 10} As mentioned above, the Revised Code provides that consent is not required when a parent fails to file an objection to the adoption petition within 14 days of proof of service. R.C. 3107.07(K). The 14-day requirement was added in 1966 as part of revisions to the adoption statute. These revisions were designed to streamline the adoption process and to reduce the time needed to finalize an adoption. See *In re Adoption of P.A.C.*, 126 Ohio St.3d 236, 2010-Ohio-3351, ¶ 56, (Cupp, J., dissenting). This section applies to all persons and entities whose consent is required to the petition, regardless of their status as parent, putative father, agency, or juvenile court. The notice must clearly inform the recipient that he is required to file an objection within 14 days. See *In re Adoption of Baby F.*, 10th Dist. Nos. 03AP-1092, 03AP-1132, 2004-Ohio-1871.

{¶ 11} On October 11, 2011, the biological father in this case received notice of the petition to adopt by certified mail. This notice contained the following language, set apart in all capital letters, at the bottom of the notice: "If you wish to contest the adoption you must file an objection to the petition within fourteen days after proof of service of notice of the filing of the petition and of the time and place of hearing is given to you." The notice further stated, "If you wish to contest the adoption, you must also appear at the hearing." Therefore, the biological father was clearly informed that he needed to file an objection within 14 days of receiving the adoption notice. However, the father failed to object in any matter until he appeared at the hearing.

{¶ 12} This provision provides notice to the parties of the potential issues to be determined and whether those issues are contested. In this case, the potential adoptive parents did not know, until the day of the hearing, that the father was considering attending

the hearing. While at the hearing, father did not object to the proceeding moving forward, or to any of the testimony, and he did not give testimony himself. While strict adherence to the procedural requirement to object may appear harsh, in applying a previous version of the statute that required a putative father to object within a certain time frame, the Ohio Supreme Court determined that "the state's interest in facilitating the adoption of children and having the adoption proceeding completed expeditiously justifies such a rigid application." *In re Adoption of Zschach*, 75 Ohio St.3d at 653. Accordingly, we find that appellee's consent to the adoption was not required because he failed to object when given notice of the adoption petition.

Status as Putative Father or Parent

{¶ 13} The United States Supreme Court has determined that an unwed father's biological connection offers only the opportunity to possess fully-vested parental rights. See Rachel M. Gagnon, *Crossing the Line for Unwed Fathers' Rights: A State of Chaos in the State of Ohio*, 40 Cap. U.L. Rev. 561. (2012). The Court explained that a "mere existence of a biological link does not merit equivalent constitutional protection." *Lehr v. Robertson*, 463 U.S. 248, 261, 103 S.Ct. 2985, 2993 (1983). The "significance of the biological connection is that it offers the natural father an opportunity * * * to develop a relationship with his offspring." *Id.* If the father "grasps that opportunity and accepts some measure of responsibility for the child's future, he may enjoy the blessings of the parent-child relationship and make uniquely valuable contributions to the child's development." *Id.*

{¶ 14} In Ohio, the level of protections afforded to an unwed father differ depending on his status as "putative father" or "parent." The difference involves the biological father's level of commitment as shown by his completion of certain requirements in order to preserve his rights.

{¶ 15} Pursuant to R.C. 3107.01(H), a putative father is defined as:

[A] man * * * who may be the child's father and to whom all of the following apply:

(1) He is not married to the child's mother at the time of the child's conception or birth;

(2) He has not adopted the child;

(3) He has not been determined, prior to the date a petition to adopt the child is filed, to have a parent and child relationship with the child by a court proceeding pursuant to sections 3111.01 to 3111.18 of the Revised Code, a court proceeding in another state, an administrative agency proceeding pursuant to sections 3111.38 to 3111.54 of the Revised Code, or an administrative agency decision in another state;

(4) Has not acknowledged paternity pursuant to sections 3111.21 to 3111.35 of the Revised Code.

{¶ 16} There is no dispute that the biological father was not married to the mother, that he has not adopted the child, or that he has not acknowledged the child pursuant to R.C. 3111.21 to 3111.35 of the Revised Code. Instead, the dispute in this case centers on the requirement in subsection (H)(3) above, whether the biological father was determined to have a parent and child relationship.

{¶ 17} The trial court did not make a specific finding as to whether the biological father was a "putative father" or a "parent."² The biological father argues that the parent and child relationship was established on September 16, 2011, based on an "Administrative Determination of Establishment of Paternity" finding he is the biological father according to DNA results. This determination of paternity was pursuant to R.C. 3111.38, which provides an administrative procedure for establishing paternity. The determination was signed on September 16, 2011, but was not filed with the court until September 22, 2011. In addition,

2. The trial court found that appellee was the "biological father" and then determined that the potential adoptive parents failed to establish that appellee "willfully abandoned the mother during her pregnancy." As this language is taken from the section of the statute addressing when the consent of a putative father is required, it would appear that the court considered appellee as a putative father.

parties are given 30 days to object to an administrative action to establish paternity pursuant to R.C. 3111.38. The administrative determination in this case was adopted by the court on October 26, 2011.

{¶ 18} The parties in this case agree that the crucial time for determining appellee's status was the date the petition for adoption was filed. As discussed above, the petition was filed on September 21, 2011. As of this date, appellee had not been determined to be the biological father of the child. The administrative entry was not filed until September 22, 2011, and was not final until the objection period ended 30 days later. Accordingly, we find that appellee's status is that of putative father.

Consent as Putative Father

{¶ 19} As relevant to this case, R.C. 3107.07(B)(2) provides a putative father's consent is not required to the adoption if he willfully abandoned or failed to support the minor, or if he willfully abandoned the mother during her pregnancy and up to the time of her surrender of the minor.

{¶ 20} The mother testified at the hearing that the father has not supported her or the child after birth. She also testified that she told appellee that she was pregnant on the day she found out and that he did not at any time offer to support her or the child. She stated she never told appellee she did not need support. On questioning by the court, the mother stated that at one point for "maybe a month" she and appellee lived together until he "kicked [her] out, and we broke up." On further questioning, she stated that appellee's name was on the lease and he paid the rent and electric. She indicated she was going to help pay, but he kicked her out. She further stated that she paid for food, gas and cigarettes while they lived together.

{¶ 21} The potential adoptive father testified that appellee has never offered any resources to support the child and has never requested visitation. He indicated that appellee

contacted him at one point over the internet by requesting him as a friend on Facebook.

{¶ 22} The trial court did not address the issue of whether the putative father failed to support the child. The evidence on this issue from both the mother and potential adoptive father was that appellee did not support the child in any way, nor was there an offer of support for the child.

{¶ 23} As discussed above, the court made a finding that appellee provided "more than de minimus" support of the mother during her pregnancy based on evidence that he allowed her a brief period of shelter where he continued to pay his rent and utilities. Yet there was no testimony he incurred any extra rent or utilities because of the mother's presence for about one month.

Conclusion

{¶ 24} "Ultimately, the goal of adoption statutes is to protect the best interests of children." *Zschach*, 75 Ohio St.3d at 652. In cases where adoption is necessary, this is best accomplished by providing the child with a permanent and stable home, and ensuring that the adoption process is completed in an expeditious manner. *Id.* (Citation omitted.) Ohio's adoption laws were amended in 1996 to "streamline the adoption process." *In re Adoption of P.A.C.*, 126 Ohio St.3d at ¶ 56. Another objective of the amendments was to "prevent children from being forcibly removed from their adoptive families after a biological father belatedly exercised parental rights." *Id.* The right to a legal parent-child relationship carries with it attendant obligations and duties. *In re A.N.L.*, 2005-Ohio-4239. When a putative father fails to accept this responsibility, courts lack "any indication of the putative father's full commitment to the responsibilities of parenthood." *Zschach*, 75 Ohio St.3d at 651.

{¶ 25} In this case, the biological father failed to support the mother during her pregnancy. While the father filed a request for DNA testing, he failed to do anything displaying a level of commitment to the child after birth. He failed to support the child, and

failed to object in writing when given notice of the petition for adoption. The biological father appeared at the hearing and although given the opportunity to question witnesses, failed to do so. The court offered the father an opportunity to present testimony, but he declined, stating, "I mean, I would just like to get custody of my son. I haven't had a chance to see him." He failed to present any evidence, including any testimony or the results of DNA testing.³ These actions fail to evidence a level of commitment to the child on the part of the biological father.

{¶ 26} We acknowledge that the exceptions to the consent requirements are to be strictly construed to protect the rights of natural parents. *In re Adoption of Masa*, 23 Ohio St.3d 163 (1986). Nonetheless, we find that the biological father's consent to the adoption was not required in this case for several reasons. As discussed above, appellee failed to object to the adoption petition within 14 days as required by R.C. 3107.07(K). In addition, as a putative father, appellee failed to support both the mother during her pregnancy and the child once born. Therefore, we find appellee's consent to the adoption was not required.

{¶ 27} We sustain appellants' assignments of error and reverse the trial court's judgment dismissing appellants' petition for adoption.

POWELL, P.J., and RINGLAND, J., concur.

3. The court took notice of the administrative proceeding and on appeal, parties supplemented the record with these documents.