

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs, October 15, 2007

IN RE: The Adoption of D.A.S., M.W.C. and R.L.C. v. W.P.S.

**Direct Appeal from the Chancery Court for Sullivan County
No. B0020782(L) Hon. E.G. Moody, Chancellor**

No. E2007-01142-COA-R3-PT - FILED NOVEMBER 16, 2007

Petitioners sought to adopt D.A.S. and terminate the parental rights of the biological father, W.P.S. Upon trial, the Trial Court terminated W.P.S.'s parental rights on statutory grounds of abandonment. We affirm.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Chancery Court Affirmed.

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., J., and D. MICHAEL SWINEY, J., joined.

Sonya Slaughter Helm, Bristol, Tennessee, for appellant.

L. Carter Massengill, Bristol, Tennessee, for appellees.

OPINION

Petitioners, M.W.C. and R.L.C., petitioned to adopt D.A.S., d.o.b. 8/25/93, and alleged that R.L.C. is the child's biological mother, and that the child has lived with the mother since his birth.

The Petition alleged that W.P.S. is the child's biological father, and had virtually no contact with the child since the child's birth, and that he has failed to visit and support the child.

Respondent, W.P.S. answered, asserting that his attempts to visit the child had been thwarted by the mother and that he paid child support while he was working, but that for the past several years he had been in and out of the hospital with a heart condition.

The Court allowed the respondent to proceed as an indigent person and ordered court-appointed counsel, and also appointed a guardian ad litem.

Following a lengthy evidentiary hearing, the Trial Court entered an Opinion on April 26, 2007, and found by clear and convincing evidence:

1. That Mrs. C. and Mr. S. were married in 1993, and had D. in August 1993;
2. That they were divorced on September 16, 1994, and the mother was given custody of the child, and the father was given reasonable visitation and ordered to pay child support of \$184 per month;
3. That C. completed Children's First as ordered by the court, but S. did not;
4. That S. had never voluntarily paid any child support, despite being gainfully employed for several years;
5. That S. had made some involuntary support payments through garnishment and social security;
6. That S. had only visited D. one time since the parties' divorce, i.e., Christmas of 1996 for an hour or two;
7. That Mr. C. moved in with the mother in 1996, and they were married in 2003;
8. That Mr. C. told S. he could visit D. anytime he wanted, and even called him several times after the Christmas 1996 visit, encouraging further visitation;
9. That Mrs. C. had also encouraged S. to visit D.;
10. That Mr. C. and S. had heated discussions about S.'s failure to visit and pay support;
11. That S. had failed to send cards, letters or gifts to D., and had not contacted Mrs. C. in many years, nor asked to visit D.;
12. That no one had thwarted S.'s attempts to visit D.;
13. That Mrs. C. had told D. that S. was his father when D. was younger;

14. That Mrs. C. lived at the same address where she lived when she and S. divorced for ten years following the divorce, and had a listed phone number for most of that time, and that S. knew how to contact her;
15. That respondent is a convicted felon;
16. That D. is an exemplary child with a good school record, that he is well-adjusted and happy, and that he has a close bond with Mr. C., called him “dad”, and wanted his last name;
17. That D. is not bitter toward respondent, but was ambivalent about visiting him because he is a total stranger;
18. That respondent testified he would not agree for Mr. C. to adopt D. even if he was convinced it was in D.’s best interest.

Further, the Court found that S. knew or could have easily learned how to contact Mrs. C. about visitation, but chose not to. Further, that the petitioners were credible witness, as well as other witnesses on their behalf, and that S.’s testimony was not credible. The Court specifically found that S.’s claims of his attempts at visitation being thwarted was not credible, and that S. had willfully failed to visit his son for four consecutive months immediately preceding the filing of the petition, and thus had abandoned the child as defined by Tenn. Code Ann. §36-1-102(1)(A)(I).

The Court found that Mr. C. had bonded with D., had helped rear him, had supported him in school and athletic activities, and desired to adopt D. The Court found by clear and convincing evidence that it was in D.’s best interests to terminate S.’s parental rights so that Mr. C. could adopt D.

The issues on appeal are:

1. Did the Trial Court err in finding by clear and convincing evidence that respondent’s failure to visit was willful?
2. Did the Trial Court err in finding by clear and convincing evidence that termination of respondent’s parental rights was in the child’s best interest?

Appellant argues the Trial Court erred in finding that the ground of abandonment existed, because the C.s had blocked his attempts to visit.

As the Court of Appeals has recognized:

On appeal, the trial court's factual findings are reviewed *de novo* on the record, subject to a presumption of correctness, unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d). The trial court's legal conclusions are reviewed *de novo* and are not entitled to any presumption of correctness. As to the trial court's findings on the credibility of the witnesses, the trial court is

specially qualified to evaluate the credibility of witnesses by virtue of its ability to observe the demeanor of the witnesses as they testify. As a consequence, trial courts are accorded significant deference in resolving factual disputes when the credibility of the witnesses is of paramount importance. "[A]ppellate courts will not re-evaluate a trial judge's assessment of witness credibility absent clear and convincing evidence to the contrary."

Davis v. Davis, 223 S.W.3d 233 (Tenn. Ct. App. 2006)(citations omitted).

The credibility of the witnesses was of paramount importance on this issue, and the Trial Court explicitly found that the petitioners and their witnesses were credible, and the evidence does not preponderate against this finding. Tenn. R. App. P. 13(d). Moreover, respondent admitted that he had not attempted to visit or contact D. since the late 90's, even though he knew how to get in touch with the mother's family. This issue is without merit.

The Court found that termination was in D.'s best interest, based upon the factors set forth in Tenn. Code Ann. §36-1-113(I). The evidence in this case revealed that D. had no relationship with his biological father, as his father had not visited nor contacted him in 11 years. The father had visited D. Only one time since the parties' divorce, i.e., in 1996. The father was virtually a stranger to D., and D. told the Court that while he had some curiosity about his father, he really did not want to talk to him, because he was a stranger.

Termination would not change anything in D.'s life except that he would be adopted by his stepfather, who loved him, and with whom he had a strong, healthy father/son relationship. There would be no change of caretakers or physical environment. The evidence established that the C.'s home was safe and healthy for D., and that D. was well-adjusted and happy. Further, the evidence established that the father had never voluntarily paid child support to Mrs. C. , even though he had been gainfully employed for a number of years.

From consideration of the statutory factors, the Trial Court was correct in finding that termination of respondent's parental rights was in D.'s best interests, but the father argues, however, that this case is akin to the case of *In re: CEP*, 2004 WL 2191040 (Tenn. Ct. App. Sept. 29, 2004), wherein this Court reversed termination of a biological father's parental right due to a lack of evidence that termination was in the child's best interests. The only similarity between this case and *CEP*, is the fact that the mother and stepfather sought to terminate the biological father's rights so that the stepfather could adopt the child. In that case, there was no evidence that the father's home was not suitable for visitation, nor that he had any mental/emotional problems that would make visitation improper. The evidence also showed that many of the other factors were inapplicable (including lack of visitation and child support) due to the father's incarceration. This Court stated:

. . . it seems that, in making its best interest determination, the trial court was more focused on the loving and supportive relationship the child had with Stepfather. While the nine aforementioned factors are not exhaustive and while the statute contemplates the consideration of other factors, the simple fact that the

child is bonded with the stepparent is not enough, without more, to justify the termination of her biological father's parental rights.

Id. at p. 6.

In this case, the respondent was not incarcerated for the last several years, was working and living in close proximity to the child, but chose not to have any contact with him. While the father gave many excuses to justify his lack of contact, it is clear from the evidence any attempts he made were very early on and were token at best. The father admitted that he had not made any attempt to contact or visit the child for almost ten years, because he “didn’t want to fight” and he was “afraid of being pulled over”. The father also said he had no money to hire an attorney to seek visitation, but the proof established that he had received \$16,000.00 in a lump sum back pay from social security, and had held many jobs. The cited case in apposite, and based upon all the evidence, we conclude the Trial Court correctly determined that termination was D.’s best interest, by clear and convincing evidence.

We affirm the Judgment of the Trial Court and assess the cost of the appeal to W.P.S.

HERSCHEL PICKENS FRANKS, P.J.