

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

IN RE: L.D. and D.D. : APPEAL NO. C-170229
 : TRIAL NO. 2016003842
 :
 : *JUDGMENT ENTRY.*

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

The biological father of the children L.D. and D.D. appeals the probate court's determination that his consent was not necessary for their adoption.

The record from the trial court discloses that father and the children's mother were never married and that their relationship ended in 2007. Mother married the appellee stepfather in 2011, and the children have lived with mother and stepfather since that time. Father was incarcerated beginning in 2012 and had limited contact with the children over the years. Stepfather filed a petition for adoption on September 27, 2016, asking the court to permit him to adopt the children without the biological father's consent.

R.C. 3107.07(A) defines two circumstances when consent by the parent to the adoption is unnecessary. Consent to adoption is not required of any of the following:

A parent of a minor, when it is alleged in the adoption petition and the court, after proper service of notice and hearing, 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

OHIO FIRST DISTRICT COURT OF APPEALS

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.

Father presents three assignments of error for our review. Father's first assignment of error alleges that the trial court erred by not holding a best-interest hearing. An adoption proceeding is a two-step process, which involves a "consent" phase and a "best interest" phase. *In re Adoption of S.J.M.H.*, 1st Dist. Hamilton No. C-130683, 2014-Ohio-3565, ¶ 15. Father filed his notice of appeal from the entry deciding the consent phase which is a final, appealable order. *In re Adoption of Greer*, 70 Ohio St.3d 293, 638 N.E.2d 999 (1994), syllabus. The best-interest hearing is not relevant to our examination of the consent issues in this appeal. We note, however, that the trial court's entry includes an order of reference to a magistrate for scheduling of a best-interest hearing. The first assignment of error is overruled.

Appellant's second assignment of error alleges the trial court erred when it allowed the adoption to proceed without the consent of a parent who has provided sufficient maintenance and support of his children. The stepfather's petition for adoption originally cited both a failure to provide more than de minimis contact and a failure to provide for maintenance and support. Prior to the consent hearing, however, stepfather asked the court for permission to withdraw his allegation that the birth father failed to provide support, and the court granted the motion. The hearing proceeded solely on the issue of more than de minimis contact. Consequently, the second assignment of error is overruled.

Appellant's third assignment of error contends that his failure to communicate with his children was justifiable because his efforts to contact his children were thwarted by their mother. It should be noted that father failed to file a

OHIO FIRST DISTRICT COURT OF APPEALS

transcript of the proceedings with the trial court or with this court. Consequently, in resolving any questions about evidence or testimony in the hearings below, we must presume the validity of the lower court's proceedings. *In re Adoption of Z.A.*, 5th Dist. Licking No. 16-CA-05, 2016-Ohio-3159, ¶ 24; *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 400 N.E.2d 384 (1980). We can only examine if the trial court abused its discretion in applying the applicable law to the magistrate's findings of fact. *In re Adoption of S.J.M.H.*, 1st Dist. Hamilton No. C-130683, 2014-Ohio-3565, ¶ 33; *In re Adoption of Christopher M. Vest*, 10th Dist. Franklin No. 00AP-1150, 2001 WL 242594 (Mar. 13, 2001); *Jones v. Davenport*, 2d Dist. Montgomery No. 18162, 2001 WL 62513 (Jan. 26, 2001); *State ex rel. Duncan v. Chippewa Twp. Trustees*, 73 Ohio St.3d 728, 730, 654 N.E.2d 1254 (1995).

Based upon our review of the proceedings below, we cannot say that the probate court's decision was against the weight of the evidence or that the probate court abused its discretion in adopting the decision of the magistrate. The third assignment of error is overruled.

Therefore, the judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27.

MOCK, P.J., CUNNINGHAM and ZAYAS, JJ.

To the clerk:

Enter upon the journal of the court on February 28, 2018
per order of the court _____.
Presiding Judge