

NOT DESIGNATED FOR PUBLICATION

99,670

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE ADOPTION OF L.M.L.,
A Minor.

MEMORANDUM OPINION

Appeal from Seward District Court. TOM R. SMITH, judge. Opinion filed March 28, 2008. Affirmed.

Derek W. Miller, of Miller Law Firm, of Liberal, for appellant natural father.

Paul F. Kitzke, of Tate Law Office, L.L.C., of Hugoton, for appellee.

Before RULON, C.J., MARQUARDT and GREENE, JJ.

Per Curiam: A.M.L., natural father of L.M.L., appeals from the district court's order terminating his parental rights and granting a petition for adoption filed by L.M.L.'s stepfather under K.S.A. 2007 Supp. 59-2136. We affirm.

A.M.L. and T.L. ("Mother") were married in February 2002, and L.M.L. was born on August 28, 2002. During their brief marriage, A.M.L. and Mother lived with her parents on Washington Street in Liberal, Kansas. A.M.L. moved back to Puerto Rico to play for the national baseball team under a contract, but he returned to Liberal for visits through approximately December 2003. A.M.L. and Mother divorced in April 2004. A.M.L. made some sporadic child support payments on behalf of L.M.L. through the Kansas Payment Center prior to July 2005.

L.M.L. visited A.M.L. during a 2-week visit in February 2003. The last time L.M.L. and Mother saw A.M.L. was in December 2003. In December 2004, Mother received a package at her parents' home addressed to L.M.L. which included several items of clothing. According to Mother, this was the only package or letter sent by A.M.L. to L.M.L. after 2003.

Mother began dating J.L.S. in July 2004. Mother and J.L.S. moved into a home together in January 2005 and were married in January 2006. After moving in with J.L.S., mother continued to receive mail at her parents' home and stopped by regularly to pick up any mail.

During the 2 years between July 2005 and July 2007, Mother and J.L.S. were the

child's primary caregivers and financial support. A.M.L. provided no financial support for L.M.L. during those 2 years either by direct child support payments or by payments to the Kansas Payment Center.

During those same 2 years, neither Mother nor L.M.L. had any direct contact with A.M.L. In December 2006, A.M.L. sent a package addressed to Mother to her parents' address. Mother refused the package because the package was addressed to Mother, not L.M.L. Other than this package, A.M.L. sent no letters, cards or packages directly to L.M.L. A.M.L. claimed this package contained clothing, toys, and some cash for L.M.L. Mother was working at the same job for the City of Liberal as she had been when she was married to A.M.L., but Mother never received any calls at work from A.M.L.

Mother's father, Bill, testified that Mother, A.M.L., and L.M.L. lived with Bill in Liberal until 2003, and that Bill and his wife still resided at the same address at the time of the trial. Bill confirmed Mother still received mail at Bill's home on a regular basis and Mother would be called if she had any mail to pick up. Bill confirmed that between July 2005 and July 2007 the only package received during such period from A.M.L. was addressed to Mother. Bill further testified although Bill and his wife discontinued the landline phone into his home, Bill had the same cell phone number as he had in 2001. Bill testified that A.M.L. knew this cell phone number but did not call in the prior 2 years

asking about L.M.L.

Mother admitting never telling A.M.L. of her address after she moved in with J.L.S. and she never gave A.M.L. a current phone number to contact L.M.L. The record shows Mother never helped L.M.L. contact A.M.L.

On July 23, 2007, J.L.S. filed a petition for stepparent adoption under K.S.A. 2007 Supp. 59-2136 claiming A.M.L. had failed and refused to assume the duties of a parent for 2 consecutive years prior to the filing of the petition. Mother consented to the adoption. A.M.L. challenged the adoption, and a trial was held in November 2007.

A.M.L. testified at trial he and Mother lived with Mother's parents after they first married but he moved back to Puerto Rico to play for the national baseball team. Although he gave no specifics, A.M.L. testified he sent more than one package to Bill's address, but the packages were "always refused." According to A.M.L., he stopped sending packages after such were refused because he did not have a forwarding address. A.M.L. testified he tried to telephone L.M.L., but the phone numbers had been changed. Additionally, A.M.L. testified he paid some child support, but he had not sent any child support for the 2 years prior to the petition for adoption because he did not know where L.M.L. was located or where to forward payments. According to A.M.L. he did not have

sufficient information to contact L.M.L.

At the conclusion of the evidence, the district court found A.M.L. had failed to assume his parental responsibilities for the 2 years immediately preceding the adoption petition. The court further found A.M.L. knew how to make child support payments to the Kansas Payment Center and, therefore, A.M.L.'s lack of knowledge of L.M.L.'s residence did not justify his failure to pay support. Moreover, the court found A.M.L. failed to take any action to locate L.M.L. after the December 2006 package was refused. The court additionally found there was no credible evidence that A.M.L. performed any parental duties and A.M.L. sent no cards, letters, or any communication to L.M.L. during the 2 year period. Accordingly, the court severed A.M.L.'s parental rights and granted J.L.S.'s petition for adoption.

A.M.L. timely appealed.

On appeal, A.M.L. contends the district court erred in terminating his parental rights because his inability to assume his parental duties was due to the Mother's interference and lack of disclosure of their whereabouts.

K.S.A. 2007 Supp. 59-2136(d) sets forth the standards the district court must apply

in considering a stepparent adoption petition. That statute provides, in relevant part,

"[t]he consent of such father must be given to the adoption unless such father has failed or refused to assume the duties of a parent for two consecutive years next preceding the filing of the petition for adoption In determining whether a father's consent is required under this subsection, the court may disregard incidental visitations, contacts, communications or contributions. . . . The court may consider the best interests of the child and the fitness of the nonconsenting parent in determining whether a stepparent adoption should be granted."

Whether a parent has refused or failed to assume parental duties for the statutory 2 year period is a question of fact. Therefore, the appellate court will review the district court's decision to determine whether it is supported by substantial competent evidence. The appellate court will not reweigh the evidence or pass on the credibility of the witnesses. *In re Adoption of S.J.R.*, 37 Kan. App. 2d 28, 39, 149 P.3d 12 (2006).

The parental duties test under K.S.A. 2007 Supp. 59-2136(d) requires consideration of both the duty of financial support and the natural and moral duty to show affection, care, and interests toward the child. *In re Adoption of K.J.B.*, 265 Kan. 90, ¶ 3, 959 P.2d 853 (1998). To terminate parental rights under the statute, there must be a failure on both sides of this "ledger." *In re Adoption of B.M.W.*, 268 Kan. 871, 881, 2

P.3d 159 (2000); *K.J.B.*, 265 Kan. at 101-02.

In this case, A.L.M. failed on both sides of the duty ledger. Clearly A.L.M. failed to pay any child support between July 2005 and July 2007. Moreover, the district court found no credible evidence A.L.M. made any meaningful effort to stay in contact with L.M.L. through phone calls, correspondence, or gifts. There was undisputed evidence that A.L.M., during the period in question, sent one package to Mother which was refused because such was not addressed to L.M.L. In addition, there is no explanation how a package rejected by Mother in December 2006 justified A.L.M.'s failure to pay support or attempt contact during the months prior to that rejection.

Evidence the consenting parent interfered with a natural father's rights to maintain contact with his child can be a factor or consider in determining whether a father failed to assume his parental duties. See *In re Adoption of F.A.R.*, 242 Kan. 231, 237, 747 P.2d 145 (1987). However, here the district court found Mother's actions did not justify A.L.M.'s total failure to assume parental duties. Although A.L.M. claims he stopped paying support because he did not know where L.M.L. and Mother lived, A.M.L. knew how to make child support payments through the Kansas Payment Center as he had made occasional payments through that agency before. In addition, Mother worked for the same employer, but A.L.M. made no efforts to contact Mother at her place of

employment. Finally, A.L.M. made no effort to locate Mother through her parents, who had the same cell phone number and address as when A.L.M. lived with them.

A parent is obligated to pursue the opportunities and options which are available to carry out his or her duties to the best of his or her ability in order to protect his or her parental rights. See *In re Adoption of Baby Boy W.*, 20 Kan. App. 2d 295, 299, 891 P.2d 457 (1994). There is substantial competent evidence to support the district court's findings that A.L.M. failed to pursue reasonable options to carry out his parental obligations to L.M.L.

A.M.L. further argues in passing the adoption decree is void because J.L.S. failed to comply with K.S.A. 59-2121(b) by attaching an accounting to his adoption petition. The adoption petition did not have an accounting attached. However, A.M.L.'s answer failed to challenge the absence of the accounting. Likewise, A.M.L. made no inquiry during the trial regarding information required by an accounting. Finally, A.M.L. failed to raise the lack of an accounting until after the district court heard all the evidence and announced findings of fact and conclusions of law. The district court refused to consider the issue because such was not raised in a timely fashion. Generally, issues not raised before the trial court cannot be raised on appeal. *Miller v. Bartle*, 283 Kan. 108, 119, 150 P.3d 1282 (2007).

"Simply pressing a point without pertinent authority, or without showing why it is sound despite a lack of supporting authority, is akin to failing to brief an issue. 'Where the appellant fails to brief an issue, that issue is waived or abandoned. [Citation omitted.]" *McCain Foods USA, Inc. v. Central Processors, Inc.*, 275 Kan. 1, 15, 61 P.3d 68 (2002). We decline to address this issue.

Affirmed.