

**NOT DESIGNATED FOR PUBLICATION**

**No. 100,617.**

**In the Matter of the ADOPTION OF H.E.H.**

**Court of Appeals of Kansas.**

**March 27, 2009**

MEMORANDUM OPINION

Appeal from Reno district court; Patricia Macke Dick, Judge.

*Edward M. Kumorowski*, of Hutchinson, for appellant natural father.

*Thomas D. Arnhold*, of Hutchinson, for appellee.

Before McANANY, P.J., MARQUARDT and MALONE, JJ.

*PER CURIAM.*

J.A.H., the natural father (Father) of H.E.H., appeals the district court's grant of J.N.T.'s stepparent adoption of H.E.H. We affirm.

J.N.T., the stepfather (Stepfather) of H.E.H., filed a petition to adopt H.E.H. on October 26, 2007. The petition requested that Father's parental rights be terminated because during the 2 years prior to the filing of the petition, Father had no meaningful contact with H.E.H. and did not pay a substantial amount of child support.

Father claimed that K.E.T., H.E.H.'s natural mother (Mother), had "repeatedly, consistently, and intentionally" interfered with his efforts to exercise his parenting time with H.E.H. Father pled guilty in July 2007 to multiple counts of felony possession of methamphetamine with the intent to sell and methamphetamine manufacturing. He was sentenced to 142 months in prison. Father argued that due to his incarceration, he was unable to

pay child support.

At the adoption hearing on January 31, 2008, the district court granted Stepfather's motion to restrict evidence to the 2 years prior to the filing of his adoption petition. The district court concluded that " a lot of times people want to go back forever, and that isn't productive, and it isn't relevant. So I will grant that." Father testified that he quit his job in January 2006 and was unemployed until he was arrested in February 2007. He also testified that he had not seen H.E.H. in 4 years.

In its adoption decree filed on February 15, 2008, the district court found that: (1) Pursuant to K.S.A.2008 Supp. 59-2136(h)(2)(B), Father had no significant contact with H.E.H.; (2) pursuant to K.S.A.2008 Supp. 59-2136(d), Father had failed to pay a substantial amount of child support during the 2 consecutive years prior to Stepfather filing the adoption petition; (3) from January 2006 to February 2007, Father was not in jail or prison with the exception of 30 days and failed to pay any substantial amount of child support; (4) Father is not a fit and proper person to have parental rights of H.E.H.; and (5) " it is in [H.E.H.'s] best interest that this adoption be granted." The district court granted Stepfather's adoption petition and terminated Father's parental rights to H.E.H.

Father appeals, claiming that he should have been allowed to present evidence beyond the 2-year limitation because the district court allowed Stepfather to testify regarding " his involvement with the child." Father also claims that the district court erred by not finding that Mother interfered with his attempts to provide support and by allowing evidence of events that occurred before October 2005.

Father states that the applicable standard of review " is after a review of all the

evidence, viewed in a light most favorable to the State, it is convinced that a rational fact finder could have found the determination to be highly probable." Father cites no authority for this assertion, and it is unclear why the evidence must be viewed in the light most favorable to the State when the State is not a party to this proceeding. Additionally, it is unclear why Father cites to *In re B.D.-Y.*, 286 Kan. 686, 187 P.3d 594 (2008), in his table of contents; however, the case is not referenced otherwise in his brief.

K.S.A.2008 Supp. 59-2136(d) states that in a stepparent adoption, the natural father's consent must be given unless the natural " 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 or is incapable of giving such consent." However, " there shall be a rebuttable presumption that if the father, after having knowledge of the child's birth, has knowingly failed to provide a substantial portion of the child support ... when financially able to do so, for a period of two years next preceding the filing of the petition for adoption, then such father has failed or refused to assume the duties of a parent. 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 failed to assume those parental duties is a question of fact. *In re Adoption of S.J.R.*, 37 Kan.App.2d 28, 39, 149 P.3d 12 (2006). This court will not reweigh the evidence or pass on the credibility of witnesses. Instead, this court reviews the facts in the light most favorable to the prevailing party to determine whether the district court's decision is supported by substantial competent evidence. *In re Adoption of A.J.P.*, 24 Kan.App.2d 891, 893, 953 P.2d 1387 (1998). Also, we consider the recent case of *In re B.D.-Y.*, 286 Kan. 686, 187 P.3d 594 (2008), where the Kansas Supreme Court applied the " clear and convincing" standard of review to the termination of parental rights. Even though the instant case is a stepparent

adoption, we believe that the "clear and convincing" standard of review applies because a parent's rights are being terminated.

Ordinarily, a parent has a duty of financial support, and the natural and moral duty to show affection, care, and interest toward his or her child. *In re Adoption of G.L.V.*, 286 Kan. 1034, 1050-51, 190 P.3d 245 (2008). The nonconsenting parent must fail in both "love and affection" and the "financial support" before his or her parental rights are terminated and the adoption is granted. *In re B.M.W.*, 268 Kan. 871, 881, 2 P.3d 159 (2000).

When the nonconsenting parent is incarcerated and cannot fulfill his or her customary parental duties, "the court must determine whether such parent has pursued the opportunities and options which may be available to carry out such duties to the best of his or her ability." *In re Adoption of F.A.R.*, 242 Kan. 231, 236, 747 P.2d 145 (1987).

The district court must determine "whether the [incarcerated] parent has made reasonable attempts, under all the circumstances, to maintain a close relationship with his or her child, and whether those attempts are sufficient to require the parent's consent be given to an adoption. [Citation omitted.]" *A.J.P.*, 24 Kan.App.2d at 893.

Father states that the district court erred by allowing Stepfather to testify about his relationship with H.E.H. but did not allow Father to testify about his relationship with H.E.H.:

"While the statute K.S.A. 59-2136 provides for a two year window prior to the date of filing the Petition for Adoption, it creates the opportunity for multiple filings for adoption and therefore can actually prevent a natural parent from showing their relationship with the child. Here there hadn't been two years even when this filing for adoption took place since the last Petition for

Adoption was heard."

Father also states that he should have been allowed to admit evidence outside of the 2-year period. Such an assertion is not sufficient to raise the issue on appeal and the argument is deemed abandoned. See *Canaan v. Bartee*, 276 Kan. 116, 133, 72 P.3d 911, *cert. denied* 540 U.S. 1090 (2003).

Father argues: " There was testimony that the natural mother never gave her telephone number to [Father] nor her address to him or his family. There was evidence that she didn't want child support collected and that she was intentionally keeping the child from having a relationship with [Father]." He also asserts that a journal entry filed during the 2 years preceding the filing of the petition for adoption stated that he had paid a substantial portion of his child support obligation.

All of Father's issues are asserted in passing without supporting argument or authority, and without any citations to the record on appeal. Therefore, these issues are deemed abandoned. See *State v. Holmes*, 278 Kan. 603, 622, 102 P.3d 406 (2004).

Under either a substantial competent evidence or a clear and compelling standard of review, the district court did not err when it made the findings required by K.S.A.2008 Supp. 59-2136(d) and granted Stepfather's petition for adoption of H.E.H.

Affirmed.