

NOT DESIGNATED FOR PUBLICATION

No, 100,554

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE ADOPTION OF: BBM

MEMORANDUM OPINION

Appeal from Johnson District Court; LAWRENCE E. SHEPPARD, judge. Opinion filed May 1, 2009. Reversed,

Aaron C. McKee and Kirnberly Ireland, of McKee & Ireland, L.L.C., of Lenexa, for appellant.

Martin W. Bauer and Teresa L. Mali., of Martin, Pringle, Oliver, Wallace & Bauer, L.L.P., of Wichita, for appellee.

Before McANANY, P.J., PIERRON and STANDRIDGE, U.

Per Curiam: K.E.A, (Father) appeals the district court's order terminating his parental rights to B.B.M, (the child). For the reasons stated below, we reverse.

In August 2006, the child's mother (Mother), while married but temporarily separated from her husband, became romantically involved with Father, who was also married but separated from his wife. Mother and her *two* children began living with Father in August 2006.

In September 2006, Mother learned she was pregnant with Father's child. Because Mother "didn't want any other kids," she decided that she would place the child up for adoption. Later that month, Mother contacted the adoptive parents through a New Jersey attorney.

In November 2006, Mother moved out of Fathers apartment and back into her original apartment. Her husband was living with his brother at the time. After a few weeks, Mother left the original apartment and moved in with a friend.

In January 2007, Mother's husband, a cage fighter, suffered several injuries to his face. Mother moved back in with her husband, at his brother's house, so that she could take care of him. Mother and her husband moved out of the brother's house in March. At this point, Mother refused to tell Father where she was living.

The child was born on June 13, 2007, at which time Mother relinquished her parental rights. Because Father refused to relinquish his parental rights, the adoptive parents filed a petition for adoption and for termination of Father's parental rights. The petition was filed on June 14, 2007, the day after the child was born. In the petition, the adoptive parents claimed Father was an unfit parent and that he failed to provide support for Mother during the 6 months prior to the child's birth, as required by K.S.A. 2008 Supp. 59-3136(h)(i)(D).

On June 15, 2007, 2 days after the child was born, the district court entered an order of temporary custody granting custody of the child to the adoptive parents and authorizing the hospital to release the child directly to them.

On December 12, 2007, the district court held an evidentiary hearing on the petition for termination of parental rights and petition for adoption. In a memorandum decision filed on January 8, 2008, the district court found that Father failed to provide Mother with "any significant or consistent support during the relevant six (6) month period preceding the birth of [the child]." The district court determined that the food and items Father purchased for Mother "had no significant value or utility" and

“were social and incidental and not focused on [Mother]’s pregnancy!”

Notably, however, the district court went on to find that Mother significantly interfered with Father’s attempts to provide her with support. The district court stated that “[Father]’s un rebutted testimony was that he offered her support and she refused it.... [Mother] simply did not need or want [Father]’s support.” Based on this finding, the district court concluded that although Father failed to support Mother during the last 6 months of her pregnancy, Mother’s significant interference established *reasonable cause* for such failure. Because the applicable statute permits termination of parental rights only upon a finding by the court that failure to support during the relevant time period was without reasonable cause, the court denied the petition for termination of parental rights.

The adoptive parents filed a motion on January 22, 2008, to alter or amend the district court’s January 8 decision. The adoptive parents claimed the district court erroneously failed to address the best interests of the child, improperly construed Mother’s consent to adoption, and incorrectly found Mother’s conduct rose to the level of significant interference.

At a hearing on March 6, 2008, the district court orally rejected the adoptive parents’ arguments. The district court relied on its previous rationale, emphasizing the “hostile atmosphere” between Mother’s husband and Father in finding interference. The district court suggested that Father’s *ability* to provide support was far less important than his *opportunity* to provide support. The district court noted that Mother’s husband would take the phone with him when he left, cutting-off communication between Father and Mother. The district court concluded that for most of Mother’s pregnancy, Father was denied the opportunity to provide support to Mother, regardless of his ability to do so.

Notwithstanding this prior ruling, the district court filed a supplemental memorandum decision on March 11, 2008. Without explanation, the district court claimed that its emphasis on interference was “misplaced” and concluded that “[b]efore interference with or refusal of [Father]’s payment of support to [Mother] is a defense under K.S.A. 59-2136(h)(i)(D), it seems reasonable that [Father] demonstrate his financial ability to do so.” As a result, the district court terminated Father’s parental rights for failing “to timely act to protect his claim of paternity for [the child].”

Father appeals, claiming (1) the district court lacked authority to issue the March 11, 2008, memorandum decision supplementing the January 8, 2008, written memorandum decision and the March 6, 2008, oral decision; (2) there was insufficient evidence to support the district Court’s decision to terminate his parental rights; and (3) the district court misinterpreted and misapplied the applicable statute in making its decision.

The District Court’s Authority to Issue the March 11, 2008, Memorandum Decision

Before analyzing Father’s substantive arguments, we first must determine whether the district court had the authority to *sua sponte* reconsider its March 6, 2008, oral denial of the prospective adoptive parents’ motion to reconsider.

The district court, in all Chapter 59 cases, “shall have control of its orders, judgments, and decrees for 30 days after the date of the rendition thereof” K.S.A. 59-22 13. Here, the district court held a hearing on March 6, 2008, to reconsider its January 8, 2008, decision. At the end of the hearing, the district court orally denied the adoptive parents’ motion to reconsider. Five days later, the district court issued a written memorandum explaining that its prior legal analysis was “erroneous” and “misplaced” and ruled that the adoptive parents had proven, by clear and convincing evidence, that Father failed without reasonable cause to support Mother. Based on this undisputed chronology, we find the district court was well within the 30-day time frame to modify its March 6, 2008, oral decision. See *In re Estate of Newland*, 240 Kin. 249, Syl. ¶ 1, 730 P.2d 351 (1986).

Analysis

The standard of proof for termination of parental rights is clear and convincing evidence. *In re*

B.D.Y., 286 Kan. 686, Syl. ¶ 2, 187 P.3d 594 (2008). In *B.D.Y.*, the Supreme Court held that the “clear and convincing evidence” standard is an intermediate standard of proof between preponderance of the evidence and proof beyond a reasonable doubt. The court also set forth the following standard of review:

“When an appellate court reviews a trial court’s determination which is required to be based upon clear and convincing evidence, it considers whether, after review of all the evidence, viewed in the light most favorable to the State, it is convinced that a rational fact finder could have found the determination to be highly probable.” 286 Kan. 686, Syl. 4.

On review, we do not reweigh the evidence, substitute our evaluation of evidence for that of the trial court, or decide the credibility of the witnesses. *In re Adoption of MD.K.*, 30 Kan. App. 2d 1176, 1177-78, 58 P.3d 745 (2002).

Here, then, in reviewing the district court’s decision to terminate Father’s parental rights, we consider whether, after review of all the evidence, viewed in the light most favorable to the State, a rational fact finder could have found it highly probable that Father failed without reasonable cause to provide financial support for Mother during the 6 months prior to the child’s birth. We first will consider whether there is sufficient evidence to support each of the relevant factual Findings made by the district court. We then will consider whether the district court correctly interpreted the statute in applying the facts to the law.

A. Sufficiency of the Evidence

1. Failure to Provide Support

The district court found Father failed to provide financial support for Mother during the 6 months prior to the child’s birth. As contemplated by K.S.A. 2008 Supp. 59-21 3611(i)(1)(D), the term “support” does not include a requirement that “the father provide total support for the mother; however, support that is incidental or inconsequential in nature is not sufficient.” *In re Adoption of Baby Girl S’.*, 29 Kan. App. 2d 664, 667, 29 P.3d 466 (2001), *aff’d* 273 Kan. 71, 41 P.3d 287 (2002).

Mother testified that Father did not provide her with any checks, money orders, cash, or material goods. She further testified that he did not take her shopping during the last 6 months of the pregnancy and never took her to dinner.

Although conceding that he did not provide Mother any checks, money orders, or cash, Father testified that he presented cash to Mother on numerous occasions but she refused to take it. Father further testified that after they stopped living together and while Mother briefly occupied her own apartment across the hall, he provided meals and transportation to her. After Mother moved out of the apartment across the hall, Father stated that he bought her at least three meals, a bouquet of flowers, and some inexpensive items at a thrift store. Further, he stated that he gave Mother an IPO and a sweater, and relinquished a portion of his personal property to her including DVDs, a hammock, a pottery set, and some paintings or prints.

Based on the evidence presented, we conclude a rational factfinder could have found it highly probable that Father failed to provide financial support for Mother during the 6 months prior to the child’s birth.

2 Significant Interference As Reasonable Cause for Failing to Support

Although the district court specifically determined—as a matter of fact—that Mother interfered with Father’s attempts to provide her with support, the court ultimately decided to disregard this factual determination in its legal conclusion. For purposes of our discussion in this subsection of our opinion, we consider only whether there is sufficient evidence to support the district court’s finding of interference.

On or around the beginning of January 2007, Mother moved back in with her husband, who was

living with his brother at the time. Although Father knew Mother was living with her husband at his brother's house during this period, Father testified Mother had instructed him not to call or visit her. In addition to Mother's admonitions, Father further testified that, given Mother's affair and resulting pregnancy, as well as her husband's job as a cage fighter, Father did not attempt to contact Mother because he was afraid her husband might physically harm him.

Mother and her husband moved in March 2007. Mother testified that at this point she affirmatively decided not to provide Father with her new address. She readily acknowledged that Father had no way to directly contact her after March 2007.

Notwithstanding Mother's pronounced efforts to keep Father from directly contacting her, she did, on occasion, contact him by telephone, sometimes requesting him to secretly meet with her. It was on those occasions that Father met Mother at thrift stores and garage sales and took her out for dinner. There is no evidence that he declined any of these sporadic opportunities—over which he had absolutely no control—to speak or meet with Mother. Father testified that he presented Mother with cash that he actually had in his pocket on more than one of these occasions but that she “flat out” refused to take it and informed him that she did not need his money. Significantly, Father's testimony in this regard is undisputed.

Based on the evidence presented, we conclude a rational factfinder could have found it highly probable that Mother interfered with Father's attempts to provide her with support.

B. The District Court's Application of the Facts Under K.S.14. 2008 Supp. 59-2136(h)(J)(L)

Father asserts the district court misinterpreted and misapplied this statute by considering his lack of financial resources as the overriding factor in determining that he failed without reasonable cause to provide the requisite financial support. To that end, Father argues that the statute does not require the court to consider the various factors in sequential order, but instead~ requires consideration of all of the evidence together to determine whether there was reasonable cause for a failure to support.

Statutory interpretation is a question of law over which we have unlimited review. We are not bound by the district court's interpretation of a statute. *In re Adoption of S.J.R.*, 37 Kan. App. 2d 28, 32-33, 149 P.3d 12 (2006).

We begin with the applicable statute, which permits termination of parental rights if the court determines by clear and convincing evidence that “the father, after having knowledge of the pregnancy, failed without reasonable cause to provide support for the mother during the six months prior to the child's birth.” K.S.A. 2008 Supp. 59-21 36(h)(1)(D). Relevant to our analysis here, the statute required the district court to determine (1) whether Father failed to provide support; (2) if so, the cause for such failure; and (3) whether the cause for such failure was reasonable.

With regard to the first factor, the district court found Father failed to provide meaningful financial support to Mother during the relevant time period. As we conclude in the preceding section, this finding is supported by the evidence.

With regard to the second factor, the district court acknowledged Mother interfered with Father's attempts to provide support, but the court rejected Father's assertion that his failure to provide support was caused by such interference. Instead, the court determined Father's failure to provide financial support was caused solely by Father's financial inability to do so. We find this determination is not supported by the evidence. More specifically, we find no evidence to support the factual finding upon which the court's determination regarding causation is based that Father was unable to provide financial support to Mother for the 6-month time period from December 16, 2006, through June 13, 2007. The adoptive parents argue the following evidence sufficiently establishes Father did not have the financial ability to support Mother during this time period:

- In the Fall of 2006, Mother obtained a \$2,600 loan in order to pay Father's past due rent

for July, August, and September 2006;

- While living with Father in 2006, Mother contributed \$200 per month toward household expenses;
- Father's 2006 tax return reflects income of less than \$1,000 for 2006.

Although the financial information cited by the adoptive parents is from 2006, we note that more than 90% of the 6-month time period at issue was during 2001. The adoptive parents cite, and our comprehensive review of the record finds, absolutely no evidence pertaining to Father's financial circumstances in 2007. There is no evidence regarding whether Father was employed. There is no evidence of other income sources, or a lack thereof. There is no evidence of Father's 2007 tax information. Given the absence of any evidence regarding Father's financial circumstances in 2007, we find the district court abused its discretion in making the underlying factual finding that Father was unable to provide financial support to Mother for the 6-month time period from December 16, 2006, through June 13, 2007.

Even if there had been evidence to establish that Father lacked the financial resources to provide the requisite support, we find further error in the court's failure to contemplate the third factor required for termination: whether Father's alleged financial situation was reasonable under the circumstances. Notwithstanding the court's failure to make such a determination, the district court went on to summarily conclude that Father's alleged indigency and resulting failure to provide financial support was *without reasonable cause*. The statute does not authorize the court to terminate Father's parental rights based solely on a finding that he did not provide the requisite support. Neither does the statute authorize the court to terminate Father's parental rights based solely on a finding that he was financially unable to provide the requisite support during the 6 months prior to the child's birth. Rather, the statutory language specifically requires the district court to make a finding based on clear and convincing evidence that his financial, inability to provide support, and thus the resulting failure to actually provide support, was without reasonable cause.

With no evidence in the record regarding the cause for alleged unemployment and resulting poverty, the district court was not in a position to determine whether such cause was reasonable, as required by the statute. In fact, the district court affirmatively noted it was unclear from the record why Father lacked financial resources during the 6 months prior to the child's birth. Although the court further noted it did not necessarily perceive

Father to be a laggard, the court failed to make any determination regarding whether there was—or was not—a reasonable cause for his lack of financial resources during the relevant time period. Again, there simply was no evidence from which the court could have made such a determination. As such, there is insufficient evidence to support the court's determination that Father failed, *without reasonable cause*, to provide financial support.

In addition to insufficient evidence, we also find the court erred in declining to consider Father's assertion that the reason he failed to provide meaningful financial support was because Mother interfered with his attempts to do so. More specifically, the court found any claim of interference was immaterial, because Father failed to establish—in the first instance—that he had the financial ability to support Mother during the relevant time period. In other words, the court construed Father's claim of interference as a defense that can be asserted if, and only if, he can first establish he had the ability to pay the financial support. We find such a prerequisite is contrary to the statutory language and is not supported by Kansas case law interpreting the statute.

As a preliminary matter, nothing in the statute itself requires a putative father to demonstrate the

“ability” to provide support *before* he can raise interference as a reasonable cause for failing to provide such support. See K.S.A., 2008 Supp. 59-21 36(h)(1)(D). Imposing such a requirement improperly shifts the burden of proof from the petitioners to Father. As the petitioners, it is the adoptive parents who have the burden to prove by clear and convincing evidence that Father failed without reasonable cause to support Mother the last 6 months of her pregnancy. See *In re Adoption of D.D.H.*, 39 Kan. App. 2d 831, 837, 184 P.3d 967 (2008). In Kansas, adoption statutes generally are strictly construed in favor of maintaining the rights of natural parents in those cases where it is claimed that~ by reason of a parent’s failure to fulfill] parental obligations as prescribed by statute; consent to the adoption is not required. *In re Adoption of KM*, 268 Kan. 871, 881-82, 2 P.3d 159 (2000).

In addition to the statute itself, relevant case law interpreting the statute lends no support to a burden-shifting process that would require a putative father to demonstrate the “ability” to provide support before he can raise interference as a reasonable cause for failing to provide such support. In determining whether a father has reasonable cause for failing to provide support to the mother for the statutory period, this court specifically has stated that “all relevant circumstances must be considered.” *In re Adoption of Baby Girl S.*, 29 Kan. App. 2d 664, 667, 29 P.3d 466 (2001), *aff’d* 273 Kan. 71, 41 P.3d 287 (2002) (adopting Court of Appeals opinion). “[W]here a trial court finds that a father’s reasonable efforts to provide for his child’s welfare failed because of interference by the mother, adoption agency, or adoptive parents, the statute should not operate to terminate his parental rights.” [Citation omitted *In re Adoption of Baby Boy S.*, 22 Kan. App. 2d 119, 130, 912 P.2d 761, *rev. denied* 260 Kan. 993, *cert. denied* 519 U.S. 870 (1996).

Consistent with the plain language of the statute and relevant case law interpreting the statutory language, we decline to interpret K.S.A. 2008 Supp. 59-21 36(b)(1)(D) in a manner that requires a putative father to prove his ability to provide support as a prerequisite to the court’s consideration of a reasonable cause for failing to provide the required support. Instead, we find K. S. A. 2008 Supp. 59-213 6(h)(1)(D) requires consideration of all of the relevant circumstances *collectively* before deciding whether a putative father has failed without reasonable cause to provide support for the mother during the 6 months prior to the child’s birth.

Here, the district court improperly disregarded evidence of significant interference by Mother *as a reasonable cause* for Father’s failure to provide support. Significantly, however, the district court found clear and convincing evidence from which it concluded that Mother and her husband significantly interfered with Father’s opportunity to provide support~ Mother moved in March 2007 but affirmatively decided not to provide Father with her new address. In fact, she readily acknowledged that Father had no way to directly contact her after March 2007, Notwithstanding these circumstances, Father physically presented her with cash on more than one occasion, but Mother “flat out” refused to take the cash and informed Father that she did not need his money.

A mother’s refusal of assistance offered by the natural father is to be considered a factor in determining if the father provided support to the mother, *In re Adoption of Baby Girl S.*, 29 Kan. App. 2d at 667. And, when “a father’s reasonable efforts to provide support for the mother during the six months prior to the child’s birth have failed because of interference by the mother,... [KIS.A. 2008 Supp. 59-2136(h)(1)(D)] should not operate to terminate his parental rights.” *In re KD.O.*, 20 Kan. App. 2d 559, 562, 889 IP.2d 1158 (1995),

Again, proper interpretation of the applicable statute requires consideration of all of the relevant circumstances *collectively* before deciding whether a putative father has failed without reasonable cause to provide support for the mother during the 6 months prior to the child’s birth. In reviewing the facts presented here in a light most favorable to the adoptive parents, we find absolutely no evidence to support

the district court's determination that Father was indigent and, unable to provide financial support to Mother during the relevant time period. Even if there were evidence of Father's indigency, we further find absolutely no evidence to establish that Father's indigency, and thus his failure to provide financial support~ was without reasonable cause. In other words, we conclude a rational fact finder simply *could not have* found it highly probable from the evidence presented that Father failed—without reasonable cause—to provide the requisite financial support. See *In re RTY*, 286 Kan. 686, Syl. ¶ 4. In coming to this conclusion,, we acknowledge K.S.A. 59-2i36(h)(1)(D) imposes an onerous burden on adoptive parents by requiring them to establish by clear and, convincing evidence not only that a birth father failed to provide the requisite support, but that there was no reasonable cause for such failure. With, that said, the legislature has spoken to this issue, arid, in the absence of ambiguity, its intent should be carried out. Accordingly, and for the reasons stated above, we reverse the decision of the district court to terminate Father's parental rights and the decision of the district court to grant the petition for adoption

Reversed.

McANANY,J. dissenting: While I agree with the majority that it would be error to shift the “burden of proof from the prospective adoptive parents to Father to show that he had good cause for his failure to provide support to Mother during the final 6 months of her pregnancy, and while the district court used some unfortunate language in its supplemental ruling of March 11, 2008,” I do not believe that improper burden-shifting actually occurred here. To the contrary, I believe the district courts decision was based on the totality of the evidence presented on the issue of support and substantial evidence supports the district court's decision to terminate Father's parental rights.

The district court's ruling was made after the testimony of Mother, Father, and Father's nephew. With respect to the issue of Mother's claimed interference, the district court found:

“After further consideration of the factual background of the relationship of [Father] and [Mother] and his below poverty level financial situation in 2006 and the relevant period of 2007 during [Mothers] pregnancy, [Father] did not have the financial ability to support her regardless of how intimidating her cage fighter husband was. Before interference with or refusal of [Fathers payment of support to [Mother is a defense under K.S.A. 59-2i36(h)(4), it seems reasonable that he demonstrate his financial ability to do so.”

Courts do no terminate the rights of parents simply because they are poor. In this case, Father contended that he did provide substantial support to Mother during the relevant time period. In the alternative, he contended that if his support was not deemed sufficient, the deficiency was due to interference from Mother and her husband. In the course of his extensive testimony, he never stated that his failure to provide support was due to any other factor, such as physical disability or unemployment. This is because the evidence would suggest otherwise.

A brief factual recap is in order. Before the relevant support period that began on December 13, 2006, Mother and her husband moved into an apartment across the hail from Father. Father was in the moving business and helped Mother move her family's household goods into her new apartment. Father was separated from his wife at the time. Mother and Father struck up a friendship that led to an extramarital, affair and conception of the child, Mother essentially moved across the hail to Father's apartment for a period of time until she decided to leave because “[t]here was no support ... financial strain]’

In November 2006, Father went to work for UPS. He testified that he hurt his back within the first 30 days so he quit. FIJI no -- I was -- pretty much I quit slash was going to be fired.” This does not mean that Father was unable to work. In early December 2006, at about the commencement of the 6-month support period at issue here, Father helped Mother move into another apartment. Mother testified, “[H]e rode with us to the apartment and moved the physical things from the truck up.”

Father's lack of support during the 6 months preceding the child's birth apparently was not due to

being physically unfit and unable to work. Father testified that on Christmas 2006, he spoke with Mother's friend, about threats from Mother's husband. Father testified that Mother's friend said "us both being former military, we can take him. And I'm like, no, I'm not doing that his kids are there. I don't want to get into an altercation with him. I don't feel like being hurt because if I get hurt, I can't work." Father obviously could work at the time and no altercation occurred that would have affected his ability to work. Also, Father testified that during the last 6 months of Mother's pregnancy there were occasions when he offered Mother money "that I actually had in my pocket, yes. I just got paid; I can give you some money." Father's nephew, who lived with Father over the winter of 2006-2007, testified that he worked with Father delivering furniture for Nebraska Furniture Mart until late February 2007.

In his summation, Father's counsel argued that the evidence established that Father provided substantial support to Mother. In the alternative~ he argued that if Father's support was not substantial, it was due to Mother's interference with his efforts to do so. Father never suggested that any failure to provide support was due to an inability to work and earn money to do so.

The district court found that Father's support for Mother was insubstantial. Further, as the majority points out, the district court specifically found that Father's failure to provide financial support was without reasonable cause~. I believe there is substantial evidence to support these findings. But, as noted earlier, with respect to the issue of interference, the district court also concluded: "Before interference with or refusal of [Father's] payment of support to [Mother] is a defense under K.I.S.A. 2008 Supp. 59. 211 36(h)(l)(D), it seems reasonable that he demonstrate his financial ability to do so."

As the majority skillfully reasons, under the laws of this state there is no shifting to Father of the burden to establish that his failure to provide support was without reasonable cause. However, K.S.A. 59-2136(h)(I)(D) speaks to the issue of causation:

was the expectant father's failure to provide support without reasonable cause? Here, it appears to me that the district court was simply observing that Father's failure to provide support was not caused by Mother's interference but rather by his lack of financial resources; and it is apparent from the evidence that Father's lack of financial resources was not the result of any injury or physical limitation that prevented him from working. Thus, I would characterize the issue as one of causation, not improper burden-shifting. In other words, Mother's conduct did not cause Father's failure to provide support. Father had the ability to work and apparently did some work during the relevant time period, but simply chose not to take the steps necessary to assume the financial responsibilities of an expectant father. It was that choice, not Mother's, interference, that was the cause of his failure to provide support. And such a choice is not a "reasonable cause" for failing to provide support.

The majority argues that there was no evidence of Father's financial circumstances during the relevant time period. In a civil context, such as here, circumstantial evidence will support a factual finding if the fact at issue may reasonably be inferred from the circumstantial evidence. See *Yount v. Diebert*, 282 Kan. 619, 147 P.3d 1065 (2006). Though the burden is heavier here than in the typical civil case, circumstantial evidence can be sufficient even for the purpose of satisfying the beyond-a-reasonable-doubt standard in a criminal case in which a party's personal liberty is at stake. See *State v. Garcia*, 285 Kan. 1,22, 169 P2d 1069 (2007). While I do not base my analysis entirely upon Newton's First Law of Motion, there is certainly circumstantial evidence here, cited earlier by the majority, that supports the notion! that during the relevant time period Father suffered from an impecunious condition and~ that it was self-imposed.

Prospective adoptive parents in these cases are confronted with the problem of proving a negative: proving that the natural father's failure to provide support is without reasonable cause. Do they have to eliminate every possible reason why an expectant father might not support the expectant mother? Or can they rely on the expectant father's own explanation given at trial? If Father says his only reason for not supporting Mother was her interference, do the prospective adoptive parents nevertheless have, to negate every other possibility? I believe such a requirement is unreasonable and unrealistic.

In summary, Father failed to provide the requisite support to Mother. While Mother interfered with Father's attempts to provide support, her interference was not the cause of his failing to support her. His self-imposed financial circumstances were the cause. There is evidence, both direct and circumstantial, that he had the ability to work but apparently chose not to maintain the level of employment he was capable of, and which was necessary, to support Mother during the last 6 months of her pregnancy. I would find that there is sufficient evidence to support the district court's termination of Father's parental rights and would affirm the district court.