

IN THE APPELLATE COURT FOR THE CHOCTAW NATION OF OKLAHOMA

IN THE MATTER OF THE ADOPTION OF
C.K.S., DOB:02/05/2019, minor child.

CHELSEA SMITH, RESPONDENT/APPELLANT

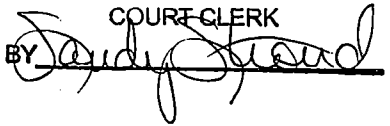
vs.

WILLARD WILSON and BEVERLY WILSON
PETITIONERS/APPELLEES

FILED
CHOCTAW NATION OF OKLAHOMA
APPELLATE COURT CLERK

JUN 06 2024

CASE NO. AC-23-9
APPEALS COURT CASE NUMBER
CASE NO. FA-2023-14
DISTRICT COURT CASE NUMBER

COURT CLERK
BY 

This is an appeal from the District Court of the Choctaw Nation of Oklahoma, the Honorable J. Mark Morrison, presiding. The Petitioners filed their petition for adoption without consent of C.K.S. Respondent/natural mother answered the petition and denied that Respondent had willfully failed to contribute to the support of the minor child for over twelve months of the previous fourteen months prior to the filing of the petition for adoption and denied that Respondent had failed to establish and/or maintain a substantial and positive relationship with the minor for twelve of the last fourteen months immediately preceding the filing of the petition for adoption. The court after a hearing ruled that by clear and convincing evidence the Petitioner had failed to prove that the Respondent had willfully failed to contribute to the support of the minor child, but did prove that the natural father had failed to contribute to the support of the minor child for twelve consecutive months of the last fourteen months. The trial court did rule that the Petitioners had shown that both parents had failed to establish and maintain a substantial and positive relationship with the minor child for twelve consecutive months of the last fourteen months, thus making the minor child eligible for adoption without consent of the natural parents. This instant appeal was commenced pursuant to the *Choctaw Nation Adoption Code, Section 5-4.1(I)*. We hold that the court's evidentiary ruling is supported by clear and convincing evidence. We further find no error in the interpretation of the applicable codes by the court. Accordingly this case is affirmed.

AFFIRMED

Gerald Gibbs, Idabel, Oklahoma, appearing for Petitioners/Appellees

Morgen Potts, Atoka, Oklahoma, appearing for Respondent/Appellant

Jackie Jo Perrin, Durant, Oklahoma, appearing for the minor child

OPINION BY GOTCHER, J.

This is an appeal of a determination by the District Court of the Choctaw Nation of Oklahoma that the minor, C.K.S. is eligible for adoption without consent. The minor child was born on February 5, 2019 to the respondent herein. The minor child was immediately placed into a guardianship with the Petitioners. Thereafter the mother pursuant to the guardianship was first allowed supervised visitation with C.K.S. This visitation was stopped by the court after several problems arose, some of which were fighting with the supervisor of the visits, drug problems, arrests and failure to comply with court orders. Ange Edwards reported to the court in great detail and always found that the Respondent had failed to follow court orders for corrective action. Some but not all of the required corrective action was to undergo a psychological evaluation, counseling, finding a supervisor to supervise the visitations, sign releases to allow the information from providers to go to Ange Edwards and the court, to find employment, and to undergo anger management. The ultimate plan was that supervised visitation could commence again after the Respondent had successfully completed the recommendations. When the petition for adoption without consent had been filed, the Respondent still had not undergone a mental evaluation even though it had been a part of the recommendations for the past year. The court held by clear and convincing evidence that the father had not supported the minor nor had a substantial and positive relationship for twelve of the last fourteen months. The court ruled by clear and convincing evidence that the Respondent had supported within the last twelve months of the previous fourteen months, but had not maintained a positive and substantial relationship with the minor child within the applicable time period. The court indicated in his ruling that since

willfully was not in the code provision concerning maintaining a substantial and positive relationship, even though there were court orders preventing visitation, her actions by clear and convincing evidence failed to show that she had maintained a positive and substantial relationship with her daughter, C.K.S.. Thus the child was found eligible for adoption without the consent of her parents, one of whom is the appealing party the respondent herein.

The care, custody and control of his or her child is a fundamental right protected by the Federal Constitution. Adoption statutes in derogation of biological parents' rights must be strictly construed in favor of the biological parent. The standard of proof necessary to establish any of the grounds to permit adoption without consent is clear and convincing evidence. Clear and convincing evidence is that measure of or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegation sought to be established. When making a determination of a child's eligibility for adoption without consent, this court will review issues of fact under a clear and convincing standard. The burden is on the party seeking to adopt without consent to prove such adoption is warranted by clear and convincing evidence. According, the decision of the trial court will not be disturbed unless it fails to rest on clear and convincing evidence.

This Court reviews statutory interpretation de novo. *In the Matter of J.D., a person under 18 years of age*, Choctaw Appellate Court, AC-20-1.

The Respondent, Beverly Wilson, at the hearing introduced evidence that the Petitioner had not since January 29th of 2022 supplied food, clothes , school supplies, money directly to the Petitioners, medical support, visited the child, sent birthday cards, Christmas gifts, letters, or any contact at all. Wilson even testified that C.K.S. does not even know who Respondent is. Wilson

further understood that the Respondent could have supervised visits if she found somebody to supervise, which to Wilson's understanding had not been done by Respondent. Wilson testified that there is no relationship between the Respondent and C.K.S..

Ms. Edwards testified that she had been appointed by the guardianship court to assess the Respondent. During the years of the guardianship¹, the court had ordered many things for the Respondent to do in order to get visitation. These things included a mental evaluation and an addiction severity test. That the respondent had never done those things. That the respondent failed to follow court orders during the guardianship. That because of past history, Edwards recommended that visitation be stopped until the mental evaluation was done. Even as late as this hearing, her recommendation was the same.

The Petitioner, Beverly Wilson, was recalled and testified that the father had never supported C.K.S. The father had never had any contact with C.K.S. since her birth. C.K.S. would not know who the father was.

The respondent testified that she had paid support.² The respondent has had no visits with C.K.S.. This no visit status was by Respondent's own admission due to court orders and her behavior and things she had not done. The respondent further admitted that she could not find a supervisor because she could not find anybody that she could get along with. The Respondent

¹The guardianship had originally three children of Respondent, then the after the birth of C.K.S. increased the guardianship to four children, then the oldest child, due to safety issues, was removed from the guardianship leaving three children of respondent in the guardianship. The guardianship had started in 2017, PGM 2017-13.

²The support was started to be paid because as she testified, "I've been paying child support ever since I had to come meet a child support judge. . . . and I'm just paying since. They said have a job or come to jail. . ."

admitted to beating her kids with clothes hangars. The Respondent has not sent any letters, Christmas presents, birthday presents or had any telephone calls during the last fourteen months preceding the filing of the adoption petition. The Respondent admitted that the Psychological evaluation was not done until a week before the hearing, long after the adoption petition had been filed. The record reveals that the Respondent had sent letters to the guardianship court requesting visitation, and motions to modify/dismiss the guardianship, however, the reports of Edwards indicate that when she was sending the letters, she had not complied with the court orders.

The *Choctaw Nation Adoption Code* provides;

“Section 1-1.2. Purpose of the Code

A. The Tribal Code of the Choctaw Nation of Oklahoma believes that every child should be raised in a secure, loving home and finds that adoption is the best way to provide a permanent family for a child whose biological parents are not able or willing to provide for the child’s care or whose parents believe that child’s best interest will best be served through adoption. The purpose of the Choctaw Nation Adoption Code is to:

1. To ensure and promote the best interests of the child; . . .”

Having said this, the Federal Constitution protects the rights of biological parents. *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L. Ed 2d 551 (1972). Under our Constitution, we are bound to protect fundamental rights guaranteed under the U.S. Constitution. *Choctaw Nation of Oklahoma v. Morrison*, Case No. CC-2023-02 (2023). Adoptions without the consent of the biological parents can not be done, except strictly by statute. The Choctaw Nation Adoption Code allows adoption without consent if a parent has willfully failed, refused, or neglected to contribute to support of the minor for twelve consecutive months of the last fourteen months.

Choctaw Nation Adoption Code, section 5-4.2(B). Though there are other provisions that may allow adoption without consent, there is just one other provision that is pertinent for this appeal.

The Choctaw Nation Adoption Code (Section 5-4.2(h)) provides;

“H. 1. Consent to adoption is not required from a parent who fails to establish and/or maintain a substantial and positive relationship with a minor for a period of twelve (12) consecutive months out of the last fourteen (14) months immediately preceding the filing of a petition for adoption of a child.

2. In any case where a parent of a minor claims that prior to the receipt of notice of the hearing provided for in Sections 5-2.1 and 5-4.1 of this Title, such parent had been denied the opportunity to establish and/or maintain a substantial and positive relationship with the minor by the custodian of the minor, such parent shall prove to the satisfaction of the court that he or she has taken sufficient legal action to establish and/or maintain a substantial and positive relationship with the minor prior to receipt of such notice.

3. For purpose of this subsection, “fails to establish and/or maintain a substantial and positive relationship” means the parent:

a. has not maintained frequent and regular contact with minor through frequent and regular visitation or frequent and regular communication to or with the minor, or

b. has not exercised parental rights and responsibilities.”

The Respondent admits that her visits were stopped by the court due to her behavior and not complying with court orders. The Respondent further admits that Ange Edwards was trying to establish visitation for her but the Respondent could not get anyone to supervise the visitation. There was a safety issue due to the Respondent hitting her children with coat hangars. But more

importantly, the Respondent admits that she has not been communicating with C.K.S. Our code provision allows several ways to establish a positive and substantial relationship. Those ways are visitation, regular communication with your child or exercising parental rights and responsibilities. See 5-4.2(h)(3) above. The petitioner produced no evidence under any of these methods to show that she had established a substantial and positive relationship with C.K.S. except asking the court for visitation when she had not complied with previous court orders that would have provided some sort of visitation. The court's finding that the Respondent has failed to maintain a substantial and positive relationship with C.K.S. is supported by clear and convincing evidence.

The trial court's interpretation that the failure to establish positive and substantial relationship with your child does not have to be done willfully is supported by the facts that the Respondent did not visit due to the fact that the court ordered no visitation pending compliance with the court orders in the guardianship. The Respondent did not for whatever reason comply with the court's orders that could have led to visits. The court orders did not stop the Respondent from communicating with the child, albeit an infant child. The court's order did not stop the Respondent from communicating with the guardians as to the health and growth of the minor. The court's order did not prevent the Petitioner from exercising some parental responsibilities, such as supporting the child, helping with arranging medical care or any other activity that is associated with a child's development other than visiting with the child. Instead the Respondent did nothing, not even getting a psychological evaluation until after being given notice of the adoption proceedings. The evaluation was done finally within a week of the hearing to determine eligibility to adopt without consent in the trial court. It would be noted that the

guardians/petitioners/Appellees did not do anything to prevent the visits. The court orders prevented the visits. While it is not being appealed and this court agrees that there was not sufficient evidence under a clear and convincing standard to find the minor eligible for adoption on the issue of Respondent supporting the children, it is telling that she is only paying support so she would not go to jail. Even paying support without the threat of jail could be some indication that Petitioner was attempting to exercise parental responsibilities.

The decision of the trial court is affirmed.

CONCUR: PHELPS, C. J. , JONES, J. .

CERTIFICATE OF DELIVERY

I hereby certify that on the 6TH day of June, 2024, a true and correct copy of the above pleading was emailed to:

Morgen Potts: morgen@morgenpottslaw.com

Gerald Gibbs: geraldgibbs@live.com

Jackie Jo Perrin: jjp@jackiejoperrin.com


Sandy Stroud, Appellate Court Clerk