

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

In re the Adoption of S.A.C.,
M.M.,
Appellant-Petitioner,

v.

Indiana Department of Child
Services,
Appellee-Respondent.

December 29, 2021

Court of Appeals Case No.
21A-AD-720

Appeal from the Allen Superior
Court

The Honorable Charles F. Pratt,
Judge

Trial Court Cause No.
02D08-1508-AD-101

Brown, Judge.

[1] M.M. appeals the trial court's order denying his petition to adopt S.A.C. We affirm.

Facts and Procedural History

[2] On August 17, 2015, M.M. filed a petition for adoption of S.A.C., who was born on September 2, 2005, under cause number 02D08-1508-AD-101 ("Cause No. 101"). On September 9, 2016, the Indiana Department of Child Services ("DCS") filed a Motion to Intervene alleging that on February 24, 2015, the Allen Superior Court had adjudicated S.A.C. as a child in need of services ("CHINS") under cause number 02D08-1411-JC-551 ("Cause No. 551"), and that DCS had an interest in the adoption of S.A.C. who was a ward of the State.

[3] On February 7, 2017, the court entered an order terminating the parental rights of T.M., S.A.C.'s biological mother ("Mother"), and L.B., S.A.C.'s biological father, under cause numbers 02D08-1510-JT-124 and 02D08-1510-JT-125. The order stated in part that: Mother struggled with mental health and substance abuse and had engaged in domestic altercations in S.A.C.'s presence with her husband, M.M., at the time of S.A.C.'s removal; the child's behaviors had become increasingly more extreme in M.M.'s home; and S.A.C. was removed from M.M. because he admitted to stopping her medications without the advice of her physician, he was planning to homeschool her without DCS's permission, and the guardian ad litem was concerned with M.M.'s ability to control S.A.C.'s erratic behaviors.

[4] On April 20, 2017, the court entered an Order on Detention Hearing under Cause No. 551. It ordered M.M. not to have any contact or visitation with S.A.C. and ordered DCS to file a petition for a no contact order. On November 15, 2017, the court entered an order finding that DCS moved to dismiss the petition for a no contact order and dismissing the petition without prejudice. On September 11, 2018, the court entered an order in Cause No. 551 finding that M.M. was not the legal stepfather of S.A.C., had not been a caregiver for more than two years, and had no standing to request visitation.

[5] On August 24, 2018, and November 14, 2018, the court held hearings under Cause No. 101. M.M. testified and also presented the testimony of multiple witnesses including a friend, his aunt, his brother, a friend of his family, and his sister-in-law. Guardian ad Litem Catherine Christoff (“GAL Christoff”) testified that she had been appointed in 2014, she was in favor of DCS withholding consent to M.M.’s petition to adopt, and it was her opinion that S.A.C. should be adopted by the foster parents because she was very happy in their home. She stated that she did not believe M.M. was capable of parenting S.A.C. in a healthy way and “wasn’t meeting her needs in the underlying CHINS case a couple years ago which is why she was removed.” Appellant’s Appendix Volume IV at 15. She indicated she had “a lot of concerns about [M.M.’s] stability and fitness to parent” S.A.C. *Id.*

[6] Family Case Manager Anna Ennis (“FCM Ennis”) testified that she was S.A.C.’s case manager in July 2015 until April 2018 and M.M. did not demonstrate improvement with the offered services. When asked if she had any

concerns for S.A.C.'s safety if she were placed in M.M.'s home, she answered in part: "My concerns would be her overall stability," S.A.C. "really struggled at the constant stability and constant expectations," and "overall that M.M. would have the ability to provide to ensure that her safety, stability, well-being, and the main areas that all those needs are being met would be [her] main concern." *Id.* at 42. She also testified that she did not believe that it was in S.A.C.'s best interests to be raised by M.M.

[7] Court Appointed Special Advocate Suzanne Lange ("CASA Lange") testified that it was in S.A.C.'s best interest to remain in her current foster home and that she agreed with DCS's position to withhold consent from M.M.'s petition to adopt S.A.C.

[8] On December 11, 2018, the court entered an order finding that DCS's consent to M.M.'s petition for adoption was required. Specifically, the court found that S.A.C. had special needs and behavioral issues; she had improved behaviorally in her current placement; FCM Ennis¹ cited issues of stability, safety and well-being should the child be placed with M.M.; FCM Ennis asserted that the best interests of the child were served by continued placement with the child's foster parents; the court appointed special advocate concluded that adoption by the child's foster parents was in the child's best interests; DCS was acting in the

¹ The court's order referred to FCM Ennis's last name as Ellis.

child's best interests in withholding its consent; and the refusal to consent to M.M.'s adoption petition was not unreasonably withheld.

[9] On January 10, 2019, M.M. filed a motion to correct error, which the court denied. In August 2019, M.M. filed a notice of appeal. On March 9, 2020, this Court dismissed the appeal, specifically finding that, while the December 11, 2018 order found DCS's consent to M.M.'s adoption was necessary and that DCS had not unreasonably withheld its consent to that adoption, the court did not resolve fully the contested adoption of Child. *In re Adoption of S.A.C.*, No. 19A-AD-1923, slip op. at 5 (Ind. Ct. App. March 9, 2020), *reh'g denied*. We also observed that, while M.M. filed a January 11, 2019 motion titled "Motion to Correct Error," the motion was more accurately characterized as a motion to reconsider. *Id.* at 5-6. We concluded that the December 11, 2018 judgment was not a final judgment and was not a properly appealed interlocutory order. *Id.* at 6-7.

[10] On June 2, 2020, M.M. filed a Motion for Final Hearing. On January 11, 2021, the court scheduled a hearing for February 3, 2021. On February 2, 2021, M.M. filed a motion for a continuance. M.M.'s counsel asserted that he had been unable to adequately prepare for the trial due to the unexpected death of his father on January 16, 2021, and subsequent procurement of funeral arrangements.

[11] On February 3, 2021, the court held a hearing under cause number 02D08-1704-AD-72 ("Cause No. 72"), in which S.A.C.'s foster parents had filed a

petition to adopt S.A.C., and Cause No. 101. The court and parties discussed the motion for continuance. Foster parents' counsel argued that M.M. did not have a path to win an adoption at trial. The court stated:

I have to balance any delay with the child. The real – there's been some request for discovery but we have today the child, the Department of Child[ren], the CASA and the Guardian Ad Litem. And since the concern is an expression of what the child really wants is part of that best interest formula that can all be procured and secured today through direct and cross-examination and that would only [] (inaudible) if the Court were to then finalize the adoption to do that which the appellate court suggests it should be done. And that is reach a final, appealable order. So I find too that the best interest issue may preclude the Petitioners who have been given the consent by the Department from adopting the child but it does not open the door for [M.M.], former stepfather of the child to adopt particularly since the Court has ruled that there is no consent to his adoption. So I don't see any significant prejudice to his case by going forward so I'm going to deny the continuance and we'll go forward with the presentation of best interest and final hearing.

February 3, 2021 Transcript at 8-9.

[12] S.A.C.'s foster father testified that S.A.C. had been his and his wife's foster daughter for about four and one-half years, the rights of S.A.C.'s parents had been terminated, and that he wished to adopt S.A.C. He stated she had blossomed since she had been with him and his wife and S.A.C. wished to change her last name to his last name.

[13] On cross-examination by M.M.'s counsel, the foster father testified that S.A.C. was fifteen years old, he had spent a lot of time with her, and he had watched

her grow up. When asked if he had any contact with M.M., he answered that M.M. became confrontational and very threatening at one of the hearings and he obtained a protective order against M.M. He also testified that M.M. threatened that he knew where the foster family lived.

[14] The foster mother testified that her family was the only family S.A.C. knew, they continue to ensure she has everything she needs, and S.A.C. was more confident and consented to being adopted by her and her husband.

[15] CASA Lange testified that she had been assigned to the case for the prior three years, had been present at the CHINS hearing, and believed it was in S.A.C.'s best interest to be adopted by the foster parents. When CASA Lange testified that S.A.C. said that she wanted to be adopted and that S.A.C. was loved and had family, M.M.'s counsel objected on the basis of hearsay, and the court sustained the objection but allowed CASA Lange's other observations to stand. On cross-examination, she indicated that she had spoken to S.A.C. on the phone, had meaningful conversations with S.A.C., and had spoken with the foster parents. She also testified that S.A.C. was happy, "wants this to be done," loves her foster parents, and refers to them as mom and dad. *Id.* at 27. She also testified that S.A.C. said at the May 23, 2019 hearing that she "wanted this to be done and move forward." *Id.*

[16] S.A.C. testified that she wanted to be adopted by the foster parents and she wanted to change her name as well as her last name to that of her foster parents. When asked why she wanted to be adopted by the foster parents, she answered:

Because it's been five (5) years and they've just been there for me and nothing has changed and because I just feel like [M.M.] has not – is not legal – like he cannot take care of me. He doesn't have like the responsibilities for anything. [The foster parents] just feel like family to me and everyone else feels more than – they feel more like my family than [M.M.'s] side.

Id. at 30. On cross-examination, she indicated that she does not talk to M.M. and could not remember the exact date she last spoke with Mother or M.M.

[17] After the presentation of the evidence, the court stated:

[M.M.'s counsel] had a compelling, I think an important reason and I want to make sure that the record is clear that he was completely transparent with this Court about the need for resetting. The real basis for my denying the Motion for Continuance and I did so with some concern because of what he set forth in his ability to be fully prepared but I did so because I felt that the greater argument was that the issue of best interest would not clear a path for conclusion in someone's favor for the adoption and it would only forestall this one. So I did not see that going forward created any substantial due process prejudice associated with the denial of the Motion for Continuance. And I wanted to commend [M.M.'s counsel] on his response and presentation. It occurred to me as I was listening to the evidence in a way it would be nice for every adoption to have someone challenging the question of best interest so that there could be a deeper consideration by the Court rather than just going through some boilerplate questions. This adoption has given me the opportunity today to dig deeper into the question of best interest and it's unique in that we have a fifteen (15) year old that can speak for herself unlike many adoptions. But it is clear in my mind that the child's best interest are served by finalizing the adoption today

Id. at 35.

[18] On February 3, 2021, the court entered an order under Cause No. 101 denying M.M.'s petition for adoption and noting that adoption by the foster parents had been granted in Cause No. 72. M.M. filed a motion to correct error, and the court denied the motion.

Discussion

[19] M.M. argues that: (A) the trial court abused its discretion by failing to continue the February 3, 2021 hearing; (B) the trial court abused its discretion in admitting certain testimony; and (C) DCS's refusal to consent to his adoption of the child was unreasonable.

A. Motion for Continuance

[20] M.M. argues that the death of his counsel's father "necessitated counsel to essentially drop things in office and direct all attention and faculties towards burial/funeral ceremonies." Appellant's Brief at 14. He also asserts that he actively pursued the matter, the hearing was set for only thirty minutes, and a time slot could have been available that February.

[21] "Generally speaking, a trial court's decision to grant or deny a motion to continue is subject to abuse of discretion review." *In re K.W.*, 12 N.E.3d 241, 244 (Ind. 2014). An abuse of discretion may be found in the denial of a motion for a continuance when the moving party has shown good cause for granting the motion, but no abuse of discretion will be found when the moving party has

not demonstrated that he or she was prejudiced by the denial. *Id.* Ind. Trial Rule 53.5 provides that a court may grant a continuance upon a showing of “good cause.”

[22] Generally, courts must consider the cost a delay in termination proceedings places on the children. *See In re E.E.*, 853 N.E.2d 1037, 1043 (Ind. Ct. App. 2006) (noting that delays in termination proceedings often exact “an intangible cost to the life of the children involved”), *trans. denied*. While continuances may certainly be necessary to ensure the protection of a parent’s due process rights, courts must also be cognizant of the strain these delays place on a child. *In re C.C.*, 788 N.E.2d 847, 852 (Ind. Ct. App. 2003), *trans. denied*.

[23] In light of M.M.’s presence and testimony at the February 3, 2021 hearing, his presentation of evidence at earlier hearings, and DCS’s indication that it would not consent to M.M.’s adoption of S.A.C., which we find below to be reasonable, we cannot say that the court abused its discretion when it denied M.M.’s request for a continuance.

B. *Admission of Evidence*

[24] A trial court has discretionary power when ruling on the admissibility of evidence, and we review its decisions for an abuse of that discretion. *In re Adoption of M.A.S.*, 815 N.E.2d 216, 222 (Ind. Ct. App. 2004). An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and the circumstances. *Id.* If a juvenile court abuses its discretion by admitting challenged evidence, we will reverse for that error only if it is inconsistent with

substantial justice or if a substantial right of the party is affected. *Matter of A.F.*, 69 N.E.3d 932, 942 (Ind. Ct. App. 2017), *trans. denied*.

[25] Under the heading “Hearsay Not Admissible Evidence,” M.M. argues that the guardian ad litem

emphatically advocated for the need to corral Child’s extreme behaviors and opined [he] was not fit to raise Child, yet subsequently testified in this that [sic] case she did nothing more than talk with the DCS case manager and read the DCS reports, specifically she testified that it is likely that she had not attended any family case meetings (Tr. Vol. II, p. 71-73) and she had never met this near 13-year old Child (Tr. Vol. II, p. 71-73).

Appellant’s Brief at 19-20. He argues the trial court “erroneously permitted the testimony of DCS Case Manager (Tr. Vol. II, pgs. 98-104, 106).” *Id.* at 20. He also contends that “the CASA coordinator’s testimony of a volunteer’s first-hand experiences is hearsay not within an exception (Tr. Vol. II, pgs. 17-124).” *Id.*

[26] With respect to M.M.’s citation to Transcript Volume II, we note that two transcript volumes, both labeled as Volume 2, were filed on September 21, 2021, consisting of nine and thirty-eight pages respectively, and a forty-four page transcript consolidating the two transcripts was received on September 24, 2021. Appellant’s Appendix Volume IV also contains a transcript. *See* Appellant’s Appendix Volume IV at 2-133. To the extent M.M. cites pages 71-73 of the transcript, pages 8-11 of Appellant’s Appendix Volume IV appear to include these pages as they contain the direct examination and testimony of

GAL Christoff.² However, these pages do not include an objection by M.M.'s counsel.

[27] With respect to M.M.'s challenge to the admission of the testimony of the DCS Case Manager and his citation to "Tr. Vol. II, pgs. 98-104, 106," Appellant's Brief at 20, we note that the pages in Appellant's Appendix Volume IV, which appear to correspond to the page numbers referenced in M.M.'s brief, contain the testimony of FCM Ennis. *See* Appellant's Appendix Volume IV at 30, 35-43. During direct examination, M.M.'s counsel objected on the basis of hearsay, and the court instructed FCM Ennis to "[j]ust testify to what you observed at this point in time please." *Id.* at 35. During FCM Ennis's testimony, DCS's counsel indicated that the testimony was not being offered for the truth of the matter asserted "but why she took the action she took as far as the child having been removed from [M.M.'s] home." *Id.* M.M.'s counsel objected to FCM Ennis "commenting on what happened." *Id.* at 36. The court noted that "this doesn't go to the truth of the matter she's asserting but that which was reported to her will serve as her basis for taking the step which is an exception so I'll allow it." *Id.* Later during direct examination, M.M.'s counsel objected on the basis of hearsay, and the court sustained the objection. In light

² Page 4 of Appellant's Appendix Volume IV includes a table of contents for a transcript, and page 5 of the Appendix begins the transcript numbered at page 68. The table of contents for the Appellant's Appendices indicates that "Transcript Volume II of II, Part 2, Pages 68-129 August 24, 2018 and November 14, 2018 Hearings," are found at pages 5-66 of Appellant's Appendix Volume IV. Appellant's Appendix Volume I at 6. The table of contents indicates that "Transcript Volume II of II, Part 1, Pages 1 to 67 August 24, 2018 and November 14, 2018 Hearings" are found at pages 134-249 of Appellant's Appendix Volume IV. *Id.*

of the trial court's indication that a portion of FCM Ennis's testimony was not offered to prove the truth of the matter asserted, the trial court's sustaining of M.M.'s counsel's objection, as well as M.M.'s lack of a developed argument, we cannot say that the court abused its discretion with respect to FCM Ennis's testimony.

[28] To the extent M.M. contends that “the CASA coordinator’s testimony of a volunteer’s first-hand experiences is hearsay not within an exception (Tr. Vol. II, pgs. 17-124),” Appellant’s Brief at 20, M.M. cites over 100 pages. Accordingly, M.M.’s argument is waived. *See Vandenburg v. Vandenburg*, 916 N.E.2d 723, 727 (Ind. Ct. App. 2009) (“As explained above, we are not obliged to undertake the burden of searching the record and stating [the father’s] case for him. We accordingly decline to scour the nearly two hundred pages of transcript . . . in an attempt to find the evidence on which [the father] relies, and we therefore cannot address that allegation of error.”).

[29] Waiver notwithstanding and to the extent M.M. intended to cite pages 117-124 of Transcript Volume II, which are found in Appellant’s Appendix Volume IV, we note that portions of those pages contain the testimony of CASA Lange. During direct examination, CASA Lange testified that Katie Tunis was the CASA volunteer assigned to the case and that she supervised Tunis. When CASA Lange testified that Tunis was going to the home multiple times during the week to see S.A.C., M.M.’s counsel objected on the basis of hearsay, and the court stated: “Well, I think she can testify to the number of times the volunteer has reported and she is charged with the responsibility of reporting to

the Court on behalf of volunteers so I'll allow it." Appellant's Appendix Volume IV at 55. M.M.'s counsel later objected on the basis of hearsay, and the court stated: "I think at this in [sic] point we're wanting to look at what CASA's position is with regard to these matters without going through the CHINS case so I concur with [M.M.'s counsel]." *Id.* at 56. M.M. has not developed a cogent argument that the trial court abused its discretion with respect to the admission of CASA Lange's testimony. Even assuming the trial court abused its discretion, we conclude that any error is harmless in light of the other evidence in the record.

C. *DCS's Consent*

[30] M.M. contends that DCS's refusal to consent to his adoption of S.A.C. was unreasonable. He contends he was with S.A.C. at birth and had taken care of her for the majority of her life, he was the only individual she knew as a parental figure, and the GAL "inexplicably pulled this rug out from under" him in August 2016. Appellant's Brief at 19.

[31] Ind. Code § 31-19-9-1 provides that, "[e]xcept as otherwise provided in this chapter, a petition to adopt . . . may be granted only if written consent to adoption has been executed" by "[e]ach person, agency, or local office having lawful custody of the child whose adoption is being sought." Ind. Code § 31-19-9-8(a)(10) provides that "[c]onsent to adoption, which may be required under section 1 of this chapter, is not required from . . . [a] legal guardian or lawful custodian of the person to be adopted who has failed to consent to the

adoption for reasons found by the court not to be in the best interests of the child.” See *In re Adoption of L.M.R.*, 884 N.E.2d 931, 936 (Ind. Ct. App. 2008) (citing Ind. Code § 31-19-9-8(a)(10) and holding that, “if the DCS refuses to consent to the adoption, the trial court must determine whether the DCS is acting in the best interests of the child in withholding its consent”). Ind. Code § 31-19-10-1.2 provides that, if a petition for adoption alleges that a legal guardian or lawful custodian’s consent to adoption is unnecessary under Ind. Code § 31-19-9-8(a)(10) and the legal guardian or lawful custodian files a motion to contest the adoption under section 1 of this chapter, the legal guardian or lawful custodian has the burden of proving that the withholding of the consent to adoption is in the best interests of the person sought to be adopted. Ind. Code § 31-19-10-0.5 provides that “[t]he party bearing the burden of proof in a proceeding under this chapter must prove the party’s case by clear and convincing evidence.”

[32] In its December 11, 2018 order, the trial court found:

18. The child has special needs and is diagnosed with ADHD. She had behavioral issues that included emotional outbursts. She is under an individual education plan (IEP) to address her academic needs.

19. From the testimony of Anna Ennis, the Department of Child Services case manager, the court finds that the child has been in therapy. She has improved behaviorally in her current placement. By the end of the school year (Spring 2018) the child had made significant improvement academically.

* * * * *

22. Department case manager Anna [Ennis], cited issues of stability, safety and well-being should the child be placed with [M.M.]. She asserts that the best interests of the child are served by continued placement with the child's foster parents.

23. The child's Court Appointed Special Advocate (CASA) appointed [i]n the CHINS case, has concluded that the adoption by the child's foster parents is in the child's best interests and supports the position of the Department.

Appellant's Appendix Volume II at 19. The court also found and concluded:

2. [M.M.] has not had contact with the child since April 10, 2017. In a CHINS hearing, the child was removed from his care following a finding by the court that she was not progressing in his care.

3. From the testimony of one family member, [M.M.] would need the support of his family to meet the child's on-going needs. However, he resides a significant distance from his siblings and has not maintain[ed] regular consistent contact with them.

4. The child's Court Appointed Special Advocate and her Guardian ad Litem support the Department's decision not to consent to [M.M.'s] adoption.

5. The Department is acting in the child's best interests in withholding its consent. The refusal to consent to [M.M.'s] adoption petition is not unreasonably withheld.

Id. at 20.

[33] While M.M. asserts that "there was insufficient evidence to support the trial judge's findings and orders," he cites only to the record in support of his argument that he was the only individual who the child knew as her parental

figure. Appellant's Brief at 17. The court heard the testimony of S.A.C.'s foster parents who had cared for her for about four and one-half years, how she blossomed in that time, and their family was the only one S.A.C. knew. CASA Lange testified that she believed it was in S.A.C.'s best interest to be adopted by the foster parents. She testified that S.A.C. was happy, "wants this to be done," loves her foster parents, and refers to them as mom and dad. February 3, 2021 Transcript at 27. S.A.C. testified that she wanted to be adopted by the foster parents. We cannot say that the trial court erred by concluding that DCS did not unreasonably withhold its consent to M.M.'s petition for adoption.

[34] For the foregoing reasons, we affirm the trial court's order.

[35] Affirmed.

May, J., and Pyle, J., concur.