

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (3d) 120372-U

Order filed August 21, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

| | |
|--------------------------------|---------------------------------|
| In re MATTER OF C.G., a Minor, |) Appeal from the Circuit Court |
| (Amber F. and Amon F., |) of the 21st Judicial Circuit, |
| |) Kankakee County, Illinois, |
| |) |
| Petitioners-Appellants, |) Appeal No. 3-12-0372 |
| |) Circuit No. 10-AD-29 |
| v. |) |
| |) Honorable |
| Randy W., |) Michael J. Kick, |
| |) Judge, Presiding. |
| Respondent-Appellee). | |

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Schmidt and Justice Carter concurred in the judgment.

ORDER

¶ 1 *Held:* The finding that a minor child's father was not shown to be unfit by clear and convincing evidence, and the resulting denial of the adoption petition filed by the minor's mother and her new husband, was not against the manifest weight of the evidence where all of the father's efforts to visit with the child were thwarted by the actions of the mother.

¶ 2 The petitioners, Amber F. And Amon F., filed a petition to adopt the minor, C.G., who was Amber's biological child. Amon was Amber's husband. The petition alleged that C.G.'s

biological father, the respondent, Randy W., was unfit under the Adoption Act (750 ILCS 50/1 *et seq.* (West 2008)) because he failed to maintain a reasonable degree of interest, concern, or responsibility for C.G.'s welfare. The trial court denied the petition, and the petitioners appealed.

¶ 3

FACTS

¶ 4 Amber and Randy were never married, but they had a child together, C.G., who was born on October 13, 2005. With respect to C.G., there was an order entered in the county where both parents resided that allowed Randy regular visitation with C.G. While C.G. remained in the same city as Randy, and even after Amber and C.G. initially moved to Missouri in 2008, Randy regularly exercised his visitation with C.G., including two weeks in the summer of 2008. The last time Randy had visitation with C.G. occurred in late September or early October 2008.

Randy testified that Amber's brother agreed to drive Randy to C.G. for his next visit, but Amber called while they were *en route* and said that she would not allow the visit if Randy rode with her brother. After that, according to Randy's testimony, he would call every couple of months but Amber would not allow him to talk to or see C.G.

¶ 5 In March 2009, Amber and C.G. moved back to Illinois, but four hours away from Randy. Randy testified that he set aside money and gifts for C.G.'s birthday and for Christmas, but he did not mail them to C.G. because Amber would not accept them. Randy testified that he did not pay his court-ordered child support of \$10 per month, but Amber was paid approximately \$700 in back child support in the form of a tax intercept in 2009 or 2010. He claimed that Amber would not let him visit C.G. until he paid child support. After a year or so had gone by with no visits, Amber also said that she would only let Randy visit C.G. in her own home with herself and Amon present.

¶ 6 Amber testified that she always let Randy and the court know whenever she had a change of address or telephone number. Amber testified that she still had family in the same town as Randy, and she and C.G. would visit there occasionally. However, Amber never notified Randy when she was going to be in town, contending that there was not enough time to allow C.G. to visit with Randy.

¶ 7 The trial court denied the petition, finding that the petitioners did not prove by clear and convincing evidence that Randy was an unfit parent. The trial court found that Randy had regular visitation and a relationship with C.G. until September 2008. The trial court found that the evidence was uncontradicted that Amber denied Randy visitation after that date, conditioning his visitation on the payment of child support. In fact, the trial court concluded that Randy's relationship with C.G. was thwarted by Amber's actions, including denials of visitation, disregard for the court-ordered visitation, and visiting relatives in the same town where Randy resided without ever notifying him that C.G. was in town. It also found that Randy could not afford to hire an attorney to enforce visitation. But for Amber's actions to interfere with Randy's visitation with C.G., the trial court found that Randy would still have a relationship with his daughter.

¶ 8 ANALYSIS

¶ 9 The petitioners argue that the trial court's finding that Randy was not an unfit parent was against the manifest weight of the evidence because Randy had not visited or communicated with C.G. for two years prior to the filing of the petition. Randy argues that the trial court's conclusion was not against the manifest weight of the evidence because his efforts to see C.G. were thwarted by Amber.

¶ 10 Generally, consent of both parents is required for the adoption of a minor child. 750 ILCS 50/8 (West 2008). However, as an exception, no consent is necessary if the parent has been found to be unfit, as defined in section 1 the Adoption Act (750 ILCS 50/1 (West 2008)), by clear and convincing evidence. 750 ILCS 50/8(a)(1) (West 2008). The burden on presenting the evidence of unfitness is on the party petitioning for adoption. *In re L.T.M.*, 214 Ill. 2d 60 (2005). Our review of a trial court's finding on fitness is to determine if that finding is against the manifest weight of the evidence. *In re L.T.M.*, 214 Ill. 2d at 226.

¶ 11 The petitioners contend that Randy was unfit on the grounds that he failed to maintain a reasonable degree of interest, concern, or responsibility as to C.G.'s welfare. See 750 ILCS 50/1(D)(b) (West 2008). When determining whether a parent maintained a reasonable degree of interest, concern, or responsibility as to his child's welfare, courts examine the parent's efforts to communicate with and show interest in the child, not the success of those efforts. *In re Adoption of Syck*, 138 Ill. 2d 255 (1990). It is also necessary to consider the parent's conduct in the context of the individual circumstances. *In re Adoption of Syck*, 138 Ill. 2d at 278. Whether the custodial parent hindered or discouraged visitation is also a consideration. *Id.* at 279.

¶ 12 In this case, there was no dispute that, at the time the petition was filed, C.G. was almost five years old and Randy had not seen her in two years. It is also clear that, while C.G. still lived in the same town as Randy, he regularly exercised his visitation. He continued to do so even after Amber and C.G. moved to Missouri, a three hour drive from Randy's home. The evidence supports the trial court's conclusion that, after a visit in September 2008, Amber did not allow Randy to see or talk to C.G. Amber not only refused to allow Randy to take C.G. for court-ordered visitation, she also failed to inform Randy when she brought C.G. into town to visit her

relatives. Considering Randy's efforts to contact C.G., and Amber's response to those efforts, we cannot say that the trial court's finding that Randy was not unfit was against the manifest weight of the evidence.

¶ 13

CONCLUSION

¶ 14 The judgment of the circuit court of Kankakee County is affirmed.

¶ 15 Affirmed.