

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).

2015 IL App (4th) 150195-U

NO. 4-15-0195

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 7, 2015
Carla Bender
4th District Appellate
Court, IL

In re: the Adoption of Z.M.P., a Minor,)	Appeal from
KELLY A. PARKER and TERRY LEE PARKER,)	Circuit Court of
Petitioners-Appellants,)	Coles County
v.)	No. 12AD32
ROBERT V.E. HUGHES,)	
Respondent-Appellee.)	Honorable
)	James R. Glenn,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's order, denying petitioners' petition for adoption, is not against the manifest weight of the evidence.

¶ 2 In February 2015, the trial court entered an order granting petitioners' request to change the last name of the minor child, Z.H. (born August 15, 2003), but denying their petition to adopt. Petitioners appeal, arguing the court's decision denying the adoption is erroneous. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Petitioners, Kelly A. Parker and Terry Lee Parker, married in 2006. Z.H. is the biological child of Kelly and respondent, Robert E. Hughes. In August 2012, Robert petitioned to establish visitation. In November 2012, petitioners brought suit to terminate Robert's parental

rights and for Terry to adopt Z.H. Petitioners also sought to change Z.H.'s last name to Parker.

¶ 5 According to the allegations in the second amended petition, filed in April 2014, Kelly had been the custodial parent of Z.H. since his birth. Petitioners alleged Robert was an unfit parent in that he, in part, (1) abandoned Z.H.; (2) failed to maintain a reasonable degree of interest, concern, or responsibility as to Z.H.'s welfare; (3) neglected Z.H.; (4) was habitually drunk; and (5) failed to communicate with Z.H. for periods in excess of six months. Z.H. resided with both Terry and Kelly since 2006. Petitioners asserted Z.H. wanted to be adopted by Terry, and Terry acted as Z.H.'s father, serving as a coach on Z.H.'s teams and participating in extracurricular activities.

¶ 6 Seven children resided at least part of the time in petitioners' home. These included B.P., Z.H.'s gestational twin brother, whose biological father was not Robert. Terry adopted B.P. Z.H. had two other older half-brothers, Kelly's sons, who maintained a relationship with their biological father. Petitioners had two biological children, the younger of whom was five months old. Terry had a daughter who resided with the family every other weekend and one night each week.

¶ 7 The record contains a December 2013 report by the guardian *ad litem* for Z.H., Judy A. Baker. In preparing the report, Baker met with Robert and his wife, Lori Hughes. Robert last regularly visited with Z.H. and B.P. until 2009. The boys loved to spend the night at Robert's house, calling him "Daddy Rock Star," because Robert played in a band. The last time Robert had any contact with Z.H. was at his and Lori's 2011 wedding, at which Z.H. and B.P. were part of the wedding party. Robert also considered B.P. his son, despite the paternity-test results showing B.P. had another father. Robert attended several of the boys' ball games in 2012

and three in 2013. Robert reported Kelly blocked his attempts to have contact with Z.H. and, when he attended the ball games, Kelly and members of her family lined the fence to try to block Robert's view of Z.H. Robert further reported Kelly cut his support obligation by instructing the Illinois Department of Healthcare and Family Services to terminate the administrative child-support order. Robert had an older daughter, as well, with whom he had visitation.

¶ 8 Baker reported meeting with Kelly in December 2013. Kelly reported Z.H. began seeing Kathleen Hecksel, M.D., a psychiatrist, in August 2013. Z.H. had been prescribed antidepressants. Z.H. saw a counselor, and the family planned to begin family therapy. Kelly and Terry married in 2006, but Terry had been involved in their lives since Z.H. was six months old. Robert last asked for visitation at times inconvenient for the family, including after a death and while they were on vacation. Robert did not ask to reschedule. Robert last regularly saw Z.H. in 2009. In January 2012, Lori emailed Kelly, stating she wanted to get to know the boys. Kelly denied the request, telling Lori the counselor said it was wrong to allow Robert to see the boys on an inconsistent basis.

¶ 9 Baker also spoke with Z.H. At the time, Z.H. was in fourth grade, earning As. He liked school. Baker asked Z.H. if he wanted to see Robert. Z.H. reported he wanted to see Robert on Tuesdays and Thursdays after school but return to his mother's house. Z.H. wanted to be adopted and have his name changed to include Terry's last name after Robert's last name. When Baker said Z.H. would not be able to see Robert if he were adopted, Z.H. said he "would be sad if he couldn't see his Dad Robert." Z.H. was not afraid of Robert, telling Baker Robert made him stand in a corner once when he would not eat his eggs. Z.H. said Terry and Kelly "were the best cooks and the best parents."

¶ 10 Baker recommended Z.H. and Robert maintain contact. Baker stated Z.H. "expressed his wishes regarding visitation and contact with his Dad Robert very clearly." Baker recommended a regular visitation schedule and the reinstatement of the child-support order.

¶ 11 The fitness hearing was held in October 2014. A transcript of the hearing does not appear in the record. After the hearing, the trial court found Robert unfit on the grounds he failed to maintain a reasonable degree of interest, concern, or responsibility as to Z.H.'s welfare.

¶ 12 In February 2015, the hearing on Z.H.'s best interests was held. At the start of the hearing, the trial court summarized the *in camera* interview with Z.H. According to the court's summary, Z.H. wanted to be adopted, and he wanted the same name as his family. Z.H. volunteered he ran into Robert at Walmart and Robert opened his mouth wide and ignored him. Z.H. reported Robert had a new child and had been "bragging about him on Facebook." Z.H. and the court discussed a number of topics, but Z.H. said if he could have his way he would be adopted by Terry and Robert could see Z.H. on weekends at Z.H.'s house. Before that would happen, Z.H. said Robert would have to apologize.

¶ 13 At the hearing, Terry testified. At his home, he and Kelly resided with six children. Terry knew Z.H. since before Z.H.'s first birthday. Z.H. called Terry "dad." Z.H. wanted Terry's last name, like his family. The two played videogames and did chores together. Terry helped him with homework. Terry helped coach Z.H.'s baseball team. Terry was involved in all aspects of parenting Z.H.

¶ 14 Kelly testified it was in Z.H.'s best interests that he be adopted by Terry. Kelly explained Z.H. wanted to be adopted and Terry was the only father figure Z.H. knew. The adoption would help secure Z.H.'s place in the family. Kelly was concerned about Z.H.'s mental

well-being if he were not adopted. Kelly explained Z.H. knew Robert was seeking visitation and there were multiple instances when Z.H. asked if he had been adopted yet and acted out when told he had not. Z.H., as a result, underwent counseling.

¶ 15 According to Kelly, Robert paid no child support since he petitioned for visitation. He had not sent Z.H. a birthday or Christmas card. Robert had not called Z.H.

¶ 16 Terry's sister, Theresa McKinney, and mother, Priscilla Ann Hite Parker, testified regarding the closeness of Terry and Z.H.'s relationship. Priscilla described an instance when Robert came to one of Z.H.'s baseball games. This upset Z.H., who feared Robert would take him.

¶ 17 Robert testified. He had been employed at PetSmart for about nine months. Robert worked between 28 and 35 hours each week, earning \$9.50 per hour. Robert admitted not paying child support during that time. Since filing the petition for visitation in August 2012, Robert did not send Z.H. a gift or card. Robert testified he paid child support when he was working, but stopped "because it was shut off." Robert could not recall the date the child support "was shut off," and he had not calculated how much he owed. Robert estimated it was at least five years since he stopped paying child support. Robert did not buy Z.H. anything in the previous seven years, assuming his "parents" were taking care of feeding Z.H. In the previous five years, Robert participated in no scheduled visitation with Z.H.

¶ 18 When asked what ill consequences would occur if Z.H. was adopted by Terry, Robert testified Z.H. would be removed from him and Z.H.'s extended family, including "his sister, his other brother" and other family who loved him. Robert saw no benefit to Z.H.'s being adopted, testifying, "I don't see the benefit, when he has been led to believe this is what he has to

do to fit into his family." Regarding the psychologist report, Robert testified the opinion was based on what she was told. Robert did not believe he should be punished because the twins had two different fathers. Robert believed Z.H. was told there was something strange about him because he had a twin with a different last name and he would suffer by that happening.

¶ 19 The record contains an evidence deposition of Dr. Hecksel. Dr. Hecksel's practice involved the general psychiatry of adults and children. Z.H.'s primary-care physician recommended Z.H. see Dr. Hecksel. Z.H. had a history of attention deficit/hyperactivity disorder (ADHD) symptoms, for which he had been treated successfully. Beginning in 2012, however, Z.H. suffered increasing emotional difficulties. As part of the background, Kelly reported to Dr. Hecksel, from 2009 to 2011, Robert had no contact with Z.H., but at the urging of a new woman in Robert's life, Robert sought more contact. At this time, Z.H. "began exhibiting some pretty significant mood and behavioral issues." Dr. Hecksel knew Z.H. had a gestational twin, but not a biological twin.

¶ 20 Dr. Hecksel opined Terry's adoption of B.P. created issues for Z.H. Z.H. had a strong relationship with Terry, and he wanted the paternal connection to Terry.

¶ 21 According to Dr. Hecksel, Z.H. was frustrated when Robert had another child in August 2013. Robert posted photos on Facebook and failed to mention Z.H. or Z.H.'s birthday. Dr. Hecksel believed Z.H. either wanted Robert to be in his life fully or to relinquish parental rights and allow Terry to fill that role. Dr. Hecksel opined a risk of mental-health issues existed if the adoption were denied. Dr. Hecksel thought Z.H. would have increased mood and behavioral acting out. Z.H. had been looking forward to the adoption and had some compelling reasons for this desire. Dr. Hecksel believed the disappointment of that not happening "would

negatively affect his mood and behavior at least for some time."

¶ 22 The trial court concluded, if the case was a simple custody and visitation case, the evidence overwhelmingly favored Kelly. The court observed Z.H. was fortunate to be in a loving home with his mother and stepfather. Z.H. referred to him as dad, and Terry earned that title. The court found it in the child's best interest to be in Kelly's custody and to reside in the same household as Terry. The court opined on the evidence deposition of Dr. Hecksel. The court noted the opinion was based on six visits, and Robert did not cross-examine her. The court noted the opinions were not tested through cross-examination, "which is the best way to get the truth of facts and also the credibility of the opinions."

¶ 23 The trial court also opined on the credibility of Z.H.'s *in camera* interview. The court was troubled Z.H. volunteered the two incidents involving Robert and Z.H. without any question, sending up a red flag Z.H. had been prompted. Z.H. did not say petitioners prompted him, but the court found it odd. The court further observed Z.H. had been denied visitation with Robert by his mother, in part, because it had not been ordered, even while the case was pending.

¶ 24 The trial court stated the following: "There is a lot that goes into it when you terminate a parent's rights. It isn't just about what a great person or what a great father figure that Mr. Parker is. It's – it also has to do with the finality and the cessation or termination of the connection with the biological father, and the biological father's family, many of whom Z.H. hasn't met or doesn't really know well." The court found petitioners were successfully running their blended family. The court observed petitioners had shown by clear and convincing evidence the name change was in Z.H.'s best interest.

¶ 25 The trial court noted the statutory factors it must consider. The court stressed the

report by the guardian *ad litem*, prepared when Z.H. was 10 years old. The guardian interviewed K.H. and others and recommended it would be in Z.H.'s best interests to maintain contact with Robert. Z.H. had expressed his wishes regarding visitation and contact with Robert very clearly. Z.H. had a desire to maintain contact and visit with Robert. Z.H. wanted adoption, but he also wanted some contact with Robert. The court denied the petition to adopt and set a visitation schedule.

¶ 26 This appeal followed.

¶ 27 II. ANALYSIS

¶ 28 Petitioners argue the trial court's finding on best interests was against the manifest weight of the evidence. Petitioners maintain the court found nearly all of the factors weighed toward termination of Robert's parental rights, and the court improperly weighed Robert's interest in the parent-child relationship over those factors. Petitioners point to Z.H.'s desire to be adopted by Terry and the fact that Robert did not provide any care or support for Z.H. for over seven years.

¶ 29 After a finding of parental unfitness, the next stage is determining whether termination of parental rights is in the child's best interests. *In re Jaron Z.*, 348 Ill. App. 3d 239, 261, 810 N.E.2d 108, 126 (2004). At this stage, the trial court determines, based on the preponderance-of-the-evidence standard, whether terminating parental rights is in the best interests of the child. *In re Adoption of Syck*, 138 Ill. 2d 255, 277, 562 N.E.2d 174, 184 (1990). The focus at the hearing is on the child's interests, not the interests of the parent. 705 ILCS 405/1-3(4.05) (West 2012). The following factors should be considered by the trial court in making its decision:

"(a) the physical safety and welfare of the child, including food, shelter, health and clothing;

(b) the development of the child's identity;

(c) the child's background and ties, including familial, cultural, and religious;

(d) the child's sense of attachments ***;

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parental figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2012).

We will overturn a decision on best interests only if that decision is against the manifest weight of the evidence. *Jaron Z.*, 348 Ill. App. 3d at 261, 810 N.E.2d at 126-27.

¶ 30 Before we review the trial court's decision, we address the procedural problems with this case. First, Robert failed to file an appellee brief. If the record is simple and this court can readily resolve them without the assistance of the appellee brief, we should decide the

appeal. *First Capital Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976). In this case, the record is simple and the issues easily decided, so the absence of an appellee brief does not preclude our resolving the appeal on the merits.

¶ 31 Second, the record is incomplete. The record does not contain the transcript from the fitness hearing. " 'Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.' " *In re Estate of Mercier*, 2011 IL App (4th) 110205, ¶ 15, 961 N.E.2d 958 (quoting *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392, 459 N.E.2d 958, 959 (1984)).

¶ 32 Third, petitioners' brief does not comply with Supreme Court Rule 341 (eff. Feb. 6, 2013). Rule 341(h)(6) mandates each appellant brief include a statement of facts that "contain[s] the facts necessary to an understanding of the case, * * * with appropriate reference to the pages of the record on appeal." Ill. S. Ct. Rule 341(h)(6) (eff. Feb. 6, 2013). Petitioners' brief includes "facts" in its "Statement of the Case" but does not cite the record for support. Many of these "facts" do not appear in the record, probably as a result of the failure to include the transcript of the fitness hearing. These "facts," according to petitioners, include "testimony that he had gone years, maybe even a decade, with absolutely no contact with the minor child." Without record support, such facts are not properly before the court and will not be considered. We note, too, the record shows such statement untrue. In addition, Rule 341(h)(7) mandates the argument section of the brief contain "citation of the authorities and the pages of the record relied on." Ill. S. Ct. Rule 341(h)(7) (eff. Feb. 6, 2013). Supreme Court rules of procedure regarding appellate briefs are not mere suggestions; we may strike an appellant brief for failing to comply with Rule 341(h) alone. *Crull v. Sriratana*, 388 Ill. App. 3d 1036, 1045, 904 N.E.2d 1183, 1190 (2009). In this case, where Hughes did not seek to strike petitioners' brief, we

exercise our discretion not to strike the appeal. We turn to petitioners' argument.

¶ 33 Contrary to petitioners' argument, we find no evidence in the record the trial court considered Robert's interests over those of Z.H.'s or placed one factor above the others. The court referenced the proper factors to be considered and weighed those factors. The court emphasized Z.H.'s interest in maintaining a relationship with Robert. Z.H. articulated this desire to his guardian *ad litem*, and to the court *in camera*. While Z.H. desired to be adopted, he knew the adoption would terminate visits with Robert and did not want that. The guardian *ad litem*, upon interviewing the family, recommended denying the petition to adopt. While Dr. Hecksel's recommendation conflicts with the guardian *ad litem*'s, it was within the trial court's discretion to accept one over the other, and the record does not show the court abused its discretion by agreeing with Baker. By allowing the name change and denying the adoption, the court gave Z.H. the same last name as his twin brother and gave him security he sought, while also allowing Z.H. the opportunity to renew the contact he desired with Robert. Given the record before us, we cannot find this holding is against the manifest weight of the evidence.

¶ 34 III. CONCLUSION

¶ 35 We affirm the trial court's judgment.

¶ 36 Affirmed.