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2017 IL App (3d) 170266-U

Order filed August 31, 2017

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2017

|                                     |   |                               |
|-------------------------------------|---|-------------------------------|
| <i>In re</i> ADOPTION OF TORIAN C., | ) | Appeal from the Circuit Court |
|                                     | ) | of the 12th Judicial Circuit, |
| (Rachel S. Mann and Sean A. Ginger, | ) | Will County, Illinois,        |
|                                     | ) |                               |
| Petitioners-Appellees,              | ) |                               |
|                                     | ) | Appeal No. 3-17-0266          |
| v.                                  | ) | Circuit No. 16-AD-35          |
|                                     | ) |                               |
| Steven C.,                          | ) | Honorable                     |
|                                     | ) | James Jeffrey Allen,          |
| Respondent-Appellant).              | ) | Judge, Presiding.             |

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JUSTICE WRIGHT delivered the judgment of the court.  
Justices Carter and Schmidt concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court improperly granted summary judgment in favor of petitioners.

¶ 2 Petitioners filed a petition for adoption on May 27, 2016. Respondent filed a response to petitioners' petition, prompting petitioners to file a motion for summary judgment. The trial court granted petitioners' summary judgment motion. Respondent appeals.

¶ 3

## FACTS

¶ 4

In June 2014, the circuit court of LaSalle County entered a judgment for dissolution of the marriage of Rachel Mann (Mann) and Steven Christakes (respondent). The court awarded sole custody of their child, Torian C., to Mann. In November 2014, respondent filed a petition to increase his visitation. Subsequently, venue was transferred from LaSalle County to Kankakee County.

¶ 5

Mann then married Sean Ginger. Mann and Ginger (petitioners), filed a petition for adoption (the petition) pertaining to Torian C. on May 27, 2016.

¶ 6

The petition alleged respondent was an unfit parent and cited sections (b), (g), (i), and (o) of the Illinois Adoption Act as the grounds for unfitness. 750 ILCS 50/1 sections (D)(b), (D)(g), (D)(i), and (D)(o) (West 2016). The petition alleged in paragraph (a) that respondent failed to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare. The petition alleged in paragraph (b) that respondent failed to protect the child from conditions injurious to his welfare. The petition alleged depravity in paragraph (c). The petition alleged in paragraph (d) that respondent repeatedly and continuously failed to provide his child with adequate food, clothing or shelter as demonstrated by failing to pay child support, in spite of respondent's financial ability to do so.

¶ 7

On August 1, 2016, respondent filed a *pro se* response to the petition stating as follows:

“1. At no time has [respondent] not shown interest in his child's [sic] life and wellbeing[;]

2. At no time was any government or law enforcement agency contacted about the welfare of child [sic] while in the care of father[.]”

¶ 8 After respondent's response, petitioners filed a motion for summary judgment on the issue of fitness on September 20, 2016. In support of their request for summary judgment, petitioners argued that respondent did not deny the allegations of unfitness contained in paragraphs (b), (c), and (d) of the petition.

¶ 9 On March 2, 2017, after retaining counsel, respondent filed a response to the motion for summary judgment together with respondent's affidavit, and printouts of the case's docket history. Respondent argued his participation in the Kankakee County and LaSalle County court proceedings support his contention that respondent maintained a strong interest in preserving a relationship with his son, and that the documents he presented rebutted petitioners' claims and created genuine issues of material fact concerning counts (a), (b), (c), and (d) of the petition. Specifically, concerning depravity, respondent's affidavit stated: "I have not been in criminal trouble since I was released from prison in 2014. I am determined to devote my life to my son, as evidenced by my persistence in court to enforce and preserve my parenting rights."

¶ 10 On March 7, 2017, the trial court conducted a hearing on petitioners' motion for summary judgment. In front of the court during the hearing were the following documents: the petition, the motion for summary judgment, the response to the petition, and the response to the motion for summary judgment with supporting materials. Following the hearing, the trial court found material facts were disputed regarding whether respondent failed to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare. However, the court found that no genuine issue of fact existed concerning the factual allegations set forth in paragraphs (b), (c), and (d) of the petition because respondent's response to the petition failed to contest the factual allegations in those three counts. The trial court granted respondent permission to pursue

an interlocutory appeal of the court's ruling pursuant to Supreme Court Rule 304(a) in a court order dated March 7, 2017. Respondent filed a timely notice of appeal on April 6, 2017.

¶ 11

#### ANALYSIS

¶ 12

On appeal, respondent contends the trial court erred by granting summary judgment in favor of petitioners on the issue of fitness. Respondent argues the trial court ignored that respondent's answer to the motion to summary judgment and attached affidavit established respondent disputed the facts relevant to all grounds pertaining to his purported unfitness.

¶ 13

In the trial court, petitioners argued that respondent's response to the petition did not expressly deny every allegation in the petition. On this basis, petitioners persuaded the trial court to conclude respondent judicially admitted his parental unfitness by failing to expressly deny each and every allegation in the petition relating to his fitness. On appeal, petitioners have elected not to submit a brief opposing respondent's appeal for the stated purpose of expediting this court's decision.

¶ 14

In this case, the record on appeal is simple and the purported errors are clear and readily decidable. Under these circumstances, a court of review may properly decide the merits of the appeal without the aid of appellee's brief. *Lynn v. Brown*, 2017 IL App (3d) 160070, ¶ 7.

¶ 15

"On a motion for summary judgment, the trial court has a duty to construe the record strictly against the movant and liberally in favor of the nonmoving party." *Seymour v. Collins*, 2015 IL 118432, ¶42. "Where a plaintiff has moved for summary judgment, the materials relied upon must establish the validity of the plaintiff's factual position on *all* the contested elements of the cause of action." *Triple R Development, LLC v. Golfview Apartments I, L.P.*, 2012 IL App (4th) 100956, ¶ 7. Summary judgment "shall be rendered without delay if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no

genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2-1005(c) (West 2016); *Farrell by Scheel v. Farrell*, 2016 IL App (3d) 160220, ¶ 14. Our review of a trial court’s decision to grant summary judgment is *de novo*. *Id.*

¶ 16 As argued by petitioners in the trial court, it is well settled that every factual allegation that is not expressly denied is deemed to have been admitted by the other party. *Crawford County Oil, LLC v. Weger*, 2014 IL App (5th) 130382, ¶ 12; 735 ILCS 5/2-610(b) (West 2016). The effect of a judicial admission concerning alleged facts is to remove those facts from contention, thereby relieving the opposing party from presenting any evidence on the matter. *Jordan v. Knafel*, 355 Ill. App. 3d 534, 544 (2005). However, Illinois is a fact-pleading jurisdiction that requires a complaint to contain facts, not mere legal conclusions. *Filliung v. Adams*, 387 Ill. App. 3d 40, 52 (2008). A party is not bound by admissions regarding conclusions of law as the trial court is charged with determining the legal effect of the facts adduced. *Charter Bank and Trust of Illinois v. Edward Hines Lumber Co.*, 233 Ill. App. 3d 574, 579 (1992); *Village of Oak Lawn v. Faber*, 378 Ill. App. 3d 458, 475 (2007).

¶ 17 In this case, the petition included no allegations of fact pertaining to respondent’s parental disinterest, the nature of the alleged injurious environment, respondent’s purported delinquency in support payments, or respondent’s prior criminal record.<sup>1</sup> Instead, the allegations of the petition merely recited statutory grounds for unfitness that were wholly unsupported by any factual allegations. Based on our review of the petition, we conclude the petition was based

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<sup>1</sup>The record reveals that at some point, petitioners filed documentation of defendant’s criminal history. However, neither petitioners’ motion for summary judgment nor the trial court’s statements at the summary judgment hearing on March 7, 2017, indicate that defendant’s criminal history was presented as evidence.

solely on legal conclusions rather than factual allegations. Consequently, respondent's answer cannot be construed as a judicial admission by respondent that he was an unfit parent.

¶ 18 Further, as respondent contends, his response to petitioners' request for summary judgment included an affidavit and other documents disputing every purported ground for father's alleged unfitness. Therefore, we conclude the trial court erred by granting summary judgment in favor of petitioners on the issue of respondent's parental unfitness based solely on the pleadings.

¶ 19 CONCLUSION

¶ 20 The judgment of the circuit court of Will County is reversed.

¶ 21 Reversed.