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2012 IL App (3d) 110806-U

Order filed November 27, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

<i>In re</i> ADOPTION OF S.A.,)	Appeal from the Circuit Court
(Bambi Ruth M. and Dell Duane M., Jr.,)	of the Ninth Judicial Circuit,
)	Knox County, Illinois,
Petitioners-Appellees,)	
)	Appeal No. 3-11-0806
v.)	Circuit No. 11-AD-4
)	
STEVEN A.,)	
)	Honorable Scott Shiplett,
Respondent-Appellant).)	Judge Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Lytton and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The putative father forfeited his right to participate in or withhold his consent to an adoption proceeding. The putative father registry provision of the Adoption Act does not violate a putative father's constitutional rights to due process and equal protection.

¶ 2 S.A. was born on April 19, 2005, to Bambi M. (petitioner). The birth certificate did not identify the name of the child's father. On March 8, 2011, petitioner and her husband, Dell M.,

filed a petition for the adoption of S.A. The petition identified Steven, the child's putative father, as a party respondent and requested the court to find Steven an unfit parent and allow Dell M. to adopt the minor.

¶ 3 The minor's court-appointed guardian *ad litem* (GAL) filed a motion to dismiss Steven as a party respondent. The trial court granted the GAL's motion and dismissed Steven as a party respondent over Steven's objection. Steven appeals. We affirm.

¶ 4 BACKGROUND

¶ 5 Petitioner gave birth to S.A. on April 19, 2005. On March 8, 2011, petitioner and her husband, Dell M., filed an adoption petition requesting the court to find Steven, the putative father of S.A., an unfit parent, and to allow Dell M. to adopt the minor. The adoption petition claimed Steven was unfit because he “abandoned and deserted the minor for a period in excess of three months immediately preceding the filing of the adoption petition” and “failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of his child.”

Additionally, the adoption petition alleged that no man, including Steven, registered with the Illinois putative father registry and there were no previous orders regarding the custody, parentage, or adoption of S.A. The court appointed a GAL to represent S.A.'s best interests during these proceedings.

¶ 6 Petitioner served Steven with a summons and a copy of the adoption petition on March 18, 2011, at the Jacksonville Correctional Center, where he was incarcerated. After petitioner filed for a default judgment, Steven filed his appearance and answer to the adoption petition, *pro se*, on April 20, 2011, along with a “Motion for Appointment of Counsel.”

¶ 7 On April 25, 2011, the GAL filed a “Motion to Dismiss Party Respondent,” pursuant to

section 12.1 of the Adoption Act (Act) relating to the Illinois putative father registry. 750 ILCS 50/12.1 (West 2010). The motion to dismiss requested the trial court find Steven was not a required party to the adoption proceedings and his consent to the adoption was unnecessary.

¶ 8 The court appointed an attorney to represent Steven and, on October 7, 2011, held a hearing on the GAL's petition to dismiss Steven as a party respondent. The parties stipulated to the admission of petitioner's Exhibits 1-6 and 9, but Steven did not stipulate to Exhibits 7 and 8.

¶ 9 Petitioner testified that she was never married to Steven, who was incarcerated on the day of S.A.'s birth, April 19, 2005. According to the petitioner, Steven did not sign the birth certificate, and he refused to sign an acknowledgment of paternity after his release from prison in 2005. Petitioner stated that Steven resided with S.A. and her, at Steven's mother's house, for a very short period time when S.A. was approximately one month old in 2005. Petitioner said she paid rent to Steven's mother during this time.

¶ 10 Shortly thereafter, while they lived with petitioner's father, petitioner and Steven signed a notarized document giving temporary custody of S.A. to petitioner's brother, James, due to a pending DCFS investigation regarding the condition of petitioner's father's house.¹ Thereafter, S.A. lived with James until June of 2006. During this period, petitioner visited S.A. a couple of times a month, but Steven did not interact with S.A. during these visits and sometimes remained in the car.

¶ 11 According to petitioner, even though Steven worked as a newspaper delivery person from November 2005 through February of 2006, and worked as a landscaper from March or April of 2007 through November of 2007, he did not use any of his income for S.A.'s support. Petitioner

¹ A copy of this document is not part of the trial or appellate record.

testified that she, Steven, and S.A. lived together with other people who supported them during this period. Petitioner said Steven's money was "his money for his fines and what not," and for buying his own personal items such as "speakers" and "subs." When Steven did purchase diapers, clothes, toys, or other items for S.A., petitioner had to reimburse him. Petitioner said her brother gave her clothes for S.A. or she obtained clothes for S.A. "from the mission."

¶ 12 Petitioner testified that she received Exhibit 4, a letter dated June 5, 2008, from Steven, in which he stated he was not S.A.'s daddy "no more," he did not want to see petitioner or S.A. again, and told petitioner to stay "the f___ away from him." Petitioner identified Exhibit 5 as another letter from Steven, dated June 6, 2008, informing petitioner that S.A. was not his "kid no more," refusing to pay any money to support S.A., and telling petitioner to let her "new man" be S.A.'s daddy and to tell S.A. that he (Steven) was not her daddy anymore.

¶ 13 Petitioner testified Exhibits 7 and 8 were similar letters she received from Steven, both dated May 10, 2008, sent from the correctional center. According to petitioner, Exhibit 7 was a letter addressed to S.A. and Exhibit 8 was a letter addressed to petitioner. Petitioner read from the May 10, 2008, letter addressed to S.A., saying Steven wrote, "I don't care about you or your mommy no more. *** I'm never come [*sic.*] home to you or – to you or your mommy. I'm going back to Peoria and you will never see me again. I'm not your daddy so don't call me that no more. I don't care what your mommy says to you, I'm not your daddy no more so good-bye forever." Petitioner also read from Exhibit 8, where Steven wrote, "I'm done with you and [S.A.]. I'm not her daddy no more. It is over with us, bitch, so go be a ho, and I'm not [S.A.]'s – [S.A.] daddy no more. I hope I die so I don't have to be with you or [S.A.] no more. I don't love [S.A.] – you or [S.A.] no more." Petitioner stated that the last time Steven saw S.A. in person

was in December of 2007.

¶ 14 In November in 2009, when Steven was living in Peoria while on work release from prison, he frequently contacted petitioner by telephone and text messaging. Consequently, petitioner obtained an order of protection prohibiting further contact. Petitioner also stated that Steven was in and out of jail “quite a few times throughout [S.A.’s] life.”

¶ 15 Next, Steven testified at the hearing on the motion to dismiss him as a party, on October 7, 2011. He said he was currently incarcerated in prison with a release date of December 27, 2011. Steven agreed he was incarcerated in the Peoria County jail when S.A. was born. He stated petitioner and the baby initially lived with his mother. He said he joined them at his mother's home following his release in May of 2005 and they lived there together until early 2007. During this time, he said he paid the rent to his mother, and used some of his income to help pay for diapers, baby formula, and clothes.

¶ 16 Steven testified that he interacted with S.A. by playing with her with toys and rattles and he “took her to the park and stuff just to sit outside, [and] get some fresh air.” Steven said, when he went to jail in 2007, he had a phone card and he would call petitioner and S.A. once a day to talk to both petitioner and S.A. Steven remembered discussions with petitioner about putting his name on S.A.’s birth certificate. Steven said he signed the paperwork but said petitioner did not have the money to file the paperwork.

¶ 17 Steven denied writing the letters that were labeled as Exhibits 7 and 8, stating he knew he did not write the letters because he would not have written that “stuff” to his daughter. He said he sent birthday cards to S.A. and "stuff like that.” Steven said, when he was incarcerated in Menard, he received a Father’s Day card signed by S.A., which he did not bring to court, and he

had a tattoo placed on his neck which said “[S.A.]” after his release from prison in 2009.

¶ 18 Steven recalled, when he and petitioner signed the paperwork to allow S.A. to reside with petitioner’s brother, DCFS became involved because the trailer they were living in, with petitioner’s father, was not fit for S.A. due to the floors caving in. Steven said he acknowledged being S.A.’s father in that paperwork given to petitioner’s brother, and he visited S.A. one to two times per week when S.A. lived with petitioner’s brother. Steven said he interacted with S.A. by sitting and talking to her, playing with her, and holding her. He said he did not pay money to petitioner’s brother for support, but Steven would bring S.A. diapers, toys, and clothes when he visited. Steven testified that the first time he heard about the putative father’s registry was when he received paperwork while in prison around the same time he received a copy of the petition for adoption.

¶ 19 After taking the matter under advisement, the court issued its decision on the GAL’s Motion to Dismiss Party Respondent by letter, on October 18, 2011. The court found that Steven and petitioner were paramours and Steven was incarcerated when S.A. was born on April 19, 2005. Further, the court determined that petitioner attempted to have Steven sign an acknowledgment of paternity, after he was released from prison, and Steven refused.

¶ 20 The court noted that when a DCFS investigation began, both Steven and petitioner executed some sort of guardianship document to petitioner’s brother, effective from June 2005 to June 2006. The court found that Steven and petitioner continued a relationship “of sorts” during the latter part of 2006 and into 2007 while residing with various relatives, but there appeared to be no relationship or bond formed between Steven and S.A. The court’s letter stated that his findings did not indicate Steven did not love S.A., but the court found that Steven provided no

real financial support for S.A. or “fostered any reciprocal psychological bond between S.A. and himself.” The court also found that Steven’s last face-to-face contact with S.A. was in December of 2007.

¶ 21 The court noted that petitioner entered into a relationship with a different man in 2008. As a result, Steven authored the several letters which, on their face, disavowed any interest in continuing a relationship with either petitioner or S.A. However, the court concluded that these letters appeared to be attempts to try to re-establish Steven’s relationship with petitioner.

¶ 22 The court found Steven continued to attempt to rekindle a relationship with petitioner in anticipation of being released from prison in November 2009, even after she married in 2008, and those contacts resulted in the entry of an order of protection. The court noted that Steven seemed to only attempt to re-establish a relationship with petitioner, but showed no interest in S.A. The court recited section 12.1 of the Act, detailing the terms of the putative father registry (750 ILCS 50/12.1 (West 2010)), and section 8 of the Act, providing for consents to and surrenders for adoptions (750 ILCS 50/8 (West 2010)). After citing these statutes, the court found Steven provided virtually no support for S.A. since her birth, even during periods when he was employed. The court also found Steven failed to maintain regular visits with S.A., noting that, when Steven had the opportunity to contact S.A. when not incarcerated, he chose to harass petitioner rather than inquire about, or attempt to have visits with, his daughter. The court found Steven did not attempt to have the 2009 order of protection modified to allow him visitation with S.A., and he failed to contact S.A. in any manner, other than one letter, before the order of protection was entered.

¶ 23 Consequently, the court found Steven forfeited his right to contest the adoption

proceedings by failing to: sign the putative father registry; establish legal parentage of S.A. through marriage; have his name placed on S.A.'s birth certificate; sign a voluntary acknowledgment of paternity; initiate or participate in legal proceedings to establish parentage; and provide any financial support or exercise regular visitation with S.A. Therefore, the court granted the GAL's motion to dismiss Steven as a party respondent to the adoption proceedings. Additionally, the trial court found that the statutes at issue were not unconstitutional. Subsequently, the court entered a written order, summarizing his findings, on November 10, 2011.

¶ 24 Steven filed a timely notice of appeal challenging the court's granting of the GAL's motion to dismiss him as a party respondent.

¶ 25 ANALYSIS

¶ 26 On appeal, Steven claims the trial court erred in granting the GAL's motion to dismiss Steven as a party respondent to the adoption proceedings because he maintained a substantial relationship with S.A. even though he did not register as a putative father. Steven further contends the putative father registry violates the equal protection and due process clauses of the United States Constitution.

¶ 27 I. Exceptions to the Putative Father Registry Requirement

¶ 28 In the case at bar, there is no dispute that Steven failed to register with the putative father registry in a timely manner under section 12.1(g) of the Act. 750 ILCS 50/12.1(g) (West 2010). Therefore, the GAL filed his motion to dismiss Steven as a party respondent, pursuant to section 12.1(g) of the Act. However, Steven contends he was excepted from the consequences of failing to register with the putative father registry for two reasons. First, he maintains he acknowledged

paternity in June 2005 when petitioner's brother cared for S.A. Second, he claims he has established a substantial and continuous relationship with the minor. On these grounds, Steven contends that the trial court should have denied the GAL's motion to dismiss him as a party respondent under the statutory exceptions to the registry requirements.

¶ 29 To resolve the issues raised in this appeal, the rules of statutory construction must be considered regarding section 12.1(g) of the Act, in conjunction with section 8(b) of the Act. Since statutory construction involves a question of law, we review the merits of the issues on appeal *de novo*. *J.S.A. v. M.H.*, 224 Ill. 2d 182, 196 (2007).

¶ 30 The relevant portion of Section 12.1(g) of the Act provides:

“Except as provided in subsections (b) or (c) of Section 8 of this Act, a putative father who fails to register with the Putative Father Registry as provided in this Section is barred from thereafter bringing or maintaining any action to assert any interest in the child.” 750 ILCS 50/12.1(g) (West 2010).

The portions of Section 8(b) of the Act, relevant to this appeal, provide:

“(b) Where consents are required in the case of an adoption of a minor child, the consents of the following persons shall be sufficient:

* * *

(B) The father of the minor child, if the father:

* * *

(ii) is the father of the child under a judgment for adoption, an order of parentage, or an acknowledgment of parentage or paternity pursuant to subsection (a) of Section 5 of the Illinois Parentage Act;

(v) *** has maintained substantial and continuous or repeated contact with the child as manifested by: (I) the payment by the father toward the support of the child of a fair and reasonable sum, according to the father's means, and either (II) the father's visiting the child at least monthly when physically and financially able to do so and not prevented from doing so by the person or authorized agency having lawful custody of the child, or (III) the father's regular communication with the child or with the person or agency having the care or custody of the child, when physically and financially unable to visit the child or prevented from doing so by the person or authorized agency having lawful custody of the child. The subjective intent of the father, whether expressed or otherwise unsupported by evidence of acts specified in this sub-paragraph as manifesting such intent, shall not preclude a determination that the father failed to maintain substantial and continuous or repeated contact with the child; or

vi) *** openly lived with the child for a period of six months within the one year period immediately preceding the placement of the child for adoption and openly held himself out to be the father of the child; or

(vii) has timely registered with Putative Father Registry, as provided in Section 12.1 of this Act, and prior to the expiration of 30 days from the date of such registration, commenced legal proceedings to establish paternity under the Illinois Parentage Act of 1984 or under the law of the jurisdiction of the child's birth.” 750 ILCS 50/8(b) (West 2010).

¶ 31 A. Acknowledgment of Parentage or Paternity

¶ 32 Steven argues the trial court failed to consider that he signed papers establishing an

informal temporary guardianship arrangement allowing petitioner's brother to care for S.A., when she was approximately two months old, in order to avoid DCFS involvement. Based on this document alone, Steven contends he is excused from the consequences of forfeiture arising from his failure to register with the putative father registry. We disagree.

¶ 33 First, the document regarding this informal guardianship was not produced in the trial court for the court's consideration. Although the parties testified the paperwork was handwritten and notarized, the plain language of section 8(b) of the Act (750 ILCS 50/8(b)(1)(B)(ii) (West 2010)) requires the acknowledgment of parentage or paternity must be in compliance with the provisions of "subsection (a) of Section 5 of the Illinois Parentage Act" (750 ILCS 45/5(a) (West 2010)). The relevant portions of subsection (a) require that the acknowledgment of paternity must be signed in accordance with either section 10-17.7 of the Illinois Public Aid Code (305 ILCS 5/10-17.7 (West 2010)) or Section 12 of the Vital Records Act (410 ILCS 535/12 (West 2010)). See 750 ILCS 45/5(a)(3);(4) (West 2010). Therefore, we reject Steven's contention that his informal acknowledgment of paternity was sufficient for purposes of the exception to the putative father registry. 750 ILCS 50/8(b)(1)(B)(ii) (West 2010).

¶ 34 B. Substantial and Continuous or Repeated Contact with the Child

¶ 35 Next, Steven maintains the trial court erroneously failed to find that he maintained substantial, continuous, or repeated contact with S.A. thereby preserving his right, as S.A.'s putative father, to remain a party to these adoption proceedings and to require either his consent to the adoption or a finding of unfitness to terminate his parental rights before the adoption. 750 ILCS 50/8(b)(1)(B)(v) (West 2010).

¶ 36 In this case, the trial court found that it was undisputed that Steven did not register with

the putative father registry, therefore, to have any rights to consent to S.A.'s adoption, Steven had to show he fell under one of the statutory exceptions that required his consent to S.A.'s adoption in spite of his failure to register. 750 ILCS 50/8 (West 2010). The court determined that the only exception applicable to the facts in this case involved resolving the question as to whether Steven maintained sufficient contact with S.A., under section 8(b)(1)(B)(v) "so as to require his consent to adoption and thus excuse his failure to register with the Putative Father Registry." 750 ILCS 50/8(b)(1)(B)(v) (West 2010).

¶ 37 Subsection (v) of the statute provides factors to be considered by the court when determining whether Steven maintained substantial and continuous or repeated contact with S.A. to qualify as an exception to the putative father registry requirements, including: (I) the payment toward the support of the child in a fair and reasonable sum according to the father's means; (II) the father's visiting with the child at least monthly when physically and financially able to do so and not prevented from doing so by the custodial parent; or (III) the father's regular communication with the child when father is unable to visit.

¶ 38 Here, the trial court found that Steven provided "virtually no financial support during the life of the child," including times when he was employed. The court accepted the testimony of petitioner that, "even when he was employed (which was rare), [Steven] spent his money on his speakers and gadgets instead of providing support for his daughter." The court also found that Steven was in and out of jail and prison for the majority of S.A.'s life, but he was not financially supportive of S.A. even when he was not in custody and employed.

¶ 39 Next, turning to the issue of whether Steven visited with S.A. at least monthly when physically and financially able to do so, the court found Steven failed to maintain regular visits or

contact with S.A., including periods when he was not incarcerated and when there were no orders of protection filed against him. The court further noted that the contacts made by Steven, at the time of the entry of the order of protection, involved the harassment of petitioner, rather than attempting to contact or inquire about S.A. Additionally, although Steven was not incarcerated at the time of the plenary order of protection hearing, the court found that Steven did not contest the order of protection or appear in that proceeding to request visitation with S.A. Finally, the court found that Steven's last personal contact with S.A. was in December of 2007.

¶ 40 As to the third method of maintaining contact with S.A., the court found that Steven failed to regularly mail or phone his daughter, or send her cards on her birthday or on Christmas, even during times when he was unable to visit. The court determined that the only letter Steven sent to S.A. was the one listed as Exhibit 7, which was dated May 10, 2008, wherein Steven wrote that he was not S.A.'s daddy anymore. Although, the court noted that the underlying language of letter appeared to be an attempt for Steven to manipulate petitioner to re-establish a relationship with him, the court found Exhibit 7 was the only written evidence of Steven contacting S.A. by letter. Based on the total facts of this case, the court found that Steven did not foster "any reciprocal psychological bond between him and his daughter." We agree.

¶ 41 While Steven claimed he saw the child regularly when SA was residing with petitioner's brother, from June 2006 through June 2007, petitioner indicated Steven would not attend the bi-monthly visits and sometimes remained in the car. Further, it is undisputed that Steven made no effort to contact S.A. by letter after May 10, 2008. Steven explained that, due to the 2009 order of protection, he was prohibited from contacting or visiting with S.A.

¶ 42 While we agree a valid order of protection prohibited Steven from interacting with the

petitioner and S.A. after November 2009, Steven did not appear at the plenary hearing or request any visitation with S.A. at any time throughout that legal proceeding. Additionally, this protective order did not impact Steven's ability to contact S.A. between his first letter of May 10, 2008, and the entry of the order of protection in November 2009. The only evidence in the record shows Steven's repeated attempts to contact petitioner were designed as attempts to reunite with petitioner. Here, the evidence demonstrates Steven did not inquire about S.A.'s well-being during those frequent attempts to contact petitioner. Therefore, based on our review of the record, the evidence supports the court's determination that Steven did not maintain substantial and continuous or repeated contact with S.A., as required by section 8(b)(1)(B)(v) of the Act. 750 ILCS 50/8(b)(1)(B)(v) (West 2010).

¶ 43 Accordingly, since Steven did not qualify under any exception to the putative father registry requirements provided in the Act, his failure to register as a putative father forfeited his right to be a party to the adoption proceedings and contest the adoption and his consent to the adoption was not necessary. See 750 ILCS 50/12.1(h) (West 2010).

¶ 44 II. Constitutional Equal Protection Argument

¶ 45 In this alternative, Steven contends that the putative father registry provision of the Act is unconstitutional because it violates his right to equal protection of the laws and due process. The United States Supreme Court and Illinois courts have previously upheld the constitutionality of the laws involving a putative father registry. See *Lehr v. Robertson*, 463 U.S. 248 (1983); *In re A.S.B.*, 293 Ill. App. 3d 836 (1997); *In re the Petition of K.J.R.*, 293 Ill. App. 3d 49 (1997). In *Lehr*, in 1983, the U.S. Supreme Court addressed these very issues and determined that a New York putative father registry statute, similar to the Illinois statute, did not violate the equal

protection or due process clauses of the Constitution. *Lehr*, 463 U.S. 248. The *Lehr* court held that the mother had the continuous custodial responsibility for the child and the putative father never established any custodial, personal, or financial relationship with the child, therefore, the equal protection clause did not prevent a state from according the two parents different legal rights under those circumstances. *Id.* Further, Illinois courts have also determined that the putative father registry provision of the Act does not violate the equal protection and due process rights of a putative father. See *A.S.B.*, 293 Ill. App. 3d 836; *K.J.R.*, 293 Ill. App. 3d 49. In *A.S.B.*, a putative father attempted to intervene in an adoption proceeding involving his biological child and the trial court dismissed his petition to intervene. *A.S.B.*, 293 Ill. App. 3d at 841. The putative father appealed challenging the constitutionality of the putative father registry under the equal protection and due process clauses. *Id.* The *A.S.B.* court, relying on the *Lehr* decision, held that the putative father registry provision, although gender-based, did not violate the equal protection rights of the putative father. *Id.* at 848-89. Additionally, the *A.S.B.* court held, although the interest of a parent in the care and custody of his child is fundamental, where a parent never establishes a “custodial, personal, or financial relationship” with a child or abandons the child, the Constitution does not automatically grant him that fundamental right of parenthood. *A.S.B.*, 293 Ill. App. 3d at 847 (quoting *Lehr*, 463 U.S. at 267–68). As the facts of the *A.S.B.* case revealed, the putative father did not establish a sufficient “custodial, personal, or financial relationship” with A.S.B. during her life and, therefore, could not claim to have a fundamental right as a parent. *Id.* (citing *Lehr*, 463 U.S. at 267–68).

¶ 46 In *K.J.R.*, the putative father failed to register and did not fall within an exception under any of the other statutory categories wherein he would have been entitled to notice of the

adoption proceedings. *K.J.R.*, 293 Ill. App. 3d at 67. The court in *K.J.R.* relied on the *Lehr* case, and reached the same conclusions as the court in *A.S.B.*, holding that the putative father registry provision did not violate a putative father's equal protection or due process rights. *Id.* at 67-68. In that case, the court held that the putative father's petition to intervene in the adoption proceeding was properly denied by the trial court based on the facts.

¶ 47 Here, Steven contends that his case is distinguishable from those cited above because he maintained at least some relationship with S.A., between and around the dates of his incarceration and S.A.'s temporary placement with petitioner's brother. Therefore, Steven claims the trial court should not have dismissed him as a party respondent to the adoption proceedings. As stated above, this court has concluded that father's limited relationship with S.A. was not a substantial and continuing relationship sufficient to fall under the exception to the requirement to register with the putative father registry. Therefore, we conclude that the putative father registry statute is constitutionally sound and Steven's right to consent to the adoption of S.A. and be present at the adoption proceedings has been forfeited.

¶ 48 **CONCLUSION**

¶ 49 For the foregoing reasons, we affirm the decision of the circuit court granting the GAL's petition to dismiss Steven as a party respondent to the adoption proceedings.

¶ 50 Affirmed.