

[Cite as *In re Adoption of Suvak*, 2004-Ohio-536.]

**COURT OF APPEALS
THIRD APPELLATE DISTRICT
ALLEN COUNTY**

**IN THE MATTER OF
THE ADOPTION OF:**

CASE NUMBER 1-03-51

**BRANDON LEE SUVAK AKA
INFANT BOY SUVAK**

O P I N I O N

**(RANDY ALLEN GREEN, JR., AND
JESSICA LYNN GREEN, APPELLANTS)**

**CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas
Court, Probate Division.**

JUDGMENT: Judgment affirmed.

DATE OF JUDGMENT ENTRY: February 9, 2004.

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SHAW, P.J.

{¶1} The petitioners-appellants, Randy and Jessica Green, appeal the July 3, 2003 judgment of the Common Pleas Court, Probate Division, of Allen County, Ohio.

{¶2} On October 11, 2002, Dianne Suvak, age sixteen, gave birth to Brandon Lee Suvak in Westerville, Franklin County, Ohio. Four days later, Dianne filed an application for approval of placement of Brandon with the Greens in the probate court of Allen County, where the Greens resided. After discussing the matter with the court, Dianne decided that she needed more time to decide whether to place Brandon with the Greens. Three days later, she returned to the court, requesting that placement be made with the Greens, and she signed a consent form for the Greens to adopt Brandon. The court determined the Greens to be suitable for placement and placed Brandon in their care.

{¶3} On October 24, 2002, the Greens filed a petition for the adoption of Brandon with the Allen County Probate Court.¹ Included in this petition was an allegation that the consent of Brandon's father was not necessary because he had abandoned Dianne during her pregnancy and up to the time of her surrender of Brandon. A hearing on the matter was set, and the appellee, Henry Sprouse, III, age fifteen and the putative father of Brandon, objected to the adoption. However, this hearing was later converted to a pre-trial. In its pre-trial orders of January 16, 2003, the trial court noted that parentage proceedings involving Brandon and Henry were pending in Delaware County, where Dianne and Henry lived, as of October 16, 2002. In those proceedings, DNA testing had been conducted but the results were not yet known. Therefore, the Allen County court elected not to proceed until those results were available. The court further noted that the only issue before it to be determined at the subsequent hearing was whether Henry's consent was necessary before the Greens could adopt Brandon.

{¶4} The hearing to determine whether Henry's consent was necessary was held on February 20, 2003. By the time of this hearing, the DNA results confirmed that Henry was Brandon's father. However, the record is unclear as to whether his paternity had been judicially determined in the Delaware County action. In any event, the court proceeded to hear evidence regarding whether Henry's consent was necessary. At the conclusion of the hearing, the parties

¹ At some point, the Greens changed Brandon's name to Brayden Spence Green. However, for purposes of consistency, we elect to refer to the child by his birth name, Brandon.

agreed to submit written closing arguments and the matter was taken under advisement. Thereafter, on July 3, 2003, the trial court determined that Henry had not willfully abandoned Dianne during her pregnancy and up to the time of her surrender of Brandon. Thus, the court held that Henry's consent to the adoption was necessary. This appeal followed, and the Greens now assert five assignments of error.

THE PROBATE COURT ERRED IN FINDING THAT GRANDPARENTAL OFFERS OF SUPPORT CAN BE IMPUTED TO A MINOR PUTATIVE FATHER.

THE PROBATE COURT ERRED IN FINDING THAT THE GRANDPARENTAL OFFERS TO THE BIRTHMOTHER CONSTITUTED SUPPORT.

THE PROBATE COURT'S FINDING THAT THE MATERNAL GRANDPARENTS PREVENTED COMMUNICATIONS BETWEEN THE PUTATIVE FATHER AND THE BIRTH MOTHER IS AGAINST THE MANIFEST WEIGHT OF EVIDENCE.

THE PROBATE COURT ERRED IN CONSIDERING THE CONDUCT OF THE PARTIES AND THEIR ATTORNEYS IN THE POST-PLACEMENT PARENTAGE ACTION PROCEEDINGS.

THE PROBATE COURT ERRED IN CONSIDERING WHETHER THE PUTATIVE FATHER WAS GIVEN NOTICE AS TO THE PLACEMENT PROCEEDINGS.

{¶5} Each of these assignments of error involve whether the trial court erred in determining that Henry's consent to the adoption was required. As such, they will be addressed together.

{¶6} Our analysis of this issue begins by noting “that the right of a natural parent to the care and custody of his children is one of the most precious and fundamental in law. *Santosky v. Kramer* (1982), 455 U.S. 745, 753, 102 S.Ct. 1388, 1394, 71 L.Ed.2d 599; *In re Baby Girl Baxter* (1985), 17 Ohio St.3d 229, 479 N.E.2d 257, Celebrezze, C.J., concurring at 235. Adoption terminates those fundamental rights. R.C. 3107.15(A)(1).” *In re Adoption of Masa* (1986), 23 Ohio St.3d 163, 165. For this reason, the Ohio Supreme Court has “held that ‘[a]ny exception to the requirement of parental consent [to adoption] must be strictly construed so as to protect the right of natural parents to raise and nurture their children.’” *Id.*, quoting *In re Schoeppner* (1976), 46 Ohio St.2d 21, 24. In recognition of these rights, the Revised Code states that “[u]nless consent is not required under section 3107.07 of the Revised Code, a petition to adopt a minor may be granted only if written consent to the adoption has been executed by all of the following: * * * (C) The putative father of the minor[.]” R.C. 3107.06(C). Revised Code section 3107.07, in pertinent part, provides that the putative father’s consent to adopt is not necessary if “[t]he court finds, after proper service of notice and hearing, that any of the following are the case: * * * (c) The putative father has willfully abandoned the mother of the minor during her pregnancy and up to the time of her surrender of the minor, or the minor’s placement in the home of the petitioner, whichever occurs first.” R.C. 3107.07(B)(2)(c).

{¶7} The Ohio Supreme Court has placed the burden on the petitioner to demonstrate by clear and convincing evidence that the putative father willfully

abandoned the mother of the minor during her pregnancy and up to the time of her surrender of the minor. See *In re Adoption of Masa*, 23 Ohio St.3d at 165. “The petitioners must carry this burden of proof because ‘[t]he statute is not framed in terms of avoidance, but is drafted to require the petitioner to establish *each* of his allegations,’” including why consent of the putative father is not necessary. *Id.*, quoting *In re Adoption of Holcomb* (1985), 18 Ohio St.3d 361, 368; see, also, *In re Adoption of Gibson* (1986), 23 Ohio St.3d 170, 171-72. The question of whether such an allegation “has been proven by clear and convincing evidence in a particular case is a determination for the probate court and will not be disturbed on appeal unless such determination is against the manifest weight of the evidence.” *In re Adoption of Masa*, 23 Ohio St.3d at 166, citing *In re Adoption of McDermitt* (1980), 63 Ohio St.2d 301, 306.

{¶8} In the case sub judice, the evidence revealed that Henry, then age fourteen, and Dianne, then age fifteen, began secretly seeing one another sometime in December of 2001. By late December, 2001, or early January, 2002, the two began a sexual relationship. This sexual relationship continued until sometime in February, 2002, when Dianne realized that she was pregnant. At some point during the sexual portion of their relationship, Dianne also engaged in sexual intercourse with another boy while in Henry’s presence on at least one occasion. Nevertheless, Henry went to Dianne’s home with her on the day he discovered that she was pregnant, and the two of them told her parents that she was pregnant with Henry’s child. Naturally, her parents were very upset by this

news. Her father became very angry and told Henry in no uncertain terms to leave the house, not to return, and to stay away from Dianne. To the contrary, Henry's parents, although upset, were less so and told Henry and Dianne that they would support them in any way possible, encouraged Dianne not to abort the child as she feared her dad would force her to do, and offered Dianne a home in the event that her parents would make her leave their home. In addition, Henry's parents attempted to speak with Dianne's parents about the situation, but Dianne's parents would not talk to them.

{¶9} Initially, Henry and Dianne continued to secretly visit one another and to speak on the phone. However, one night Dianne came to Henry's home without her parents' knowledge and the police were dispatched to Henry's home by Dianne's parents once they realized she was gone. The police told Henry not to have anything to do with Dianne, that her parents would pursue charges against him if they caught him with Dianne again, and that her father might obtain a restraining order against Henry if he continued to see Dianne. Again, the two attempted to see one another and speak on the phone. However, by June, 2002, Henry grew weary of "sneaking around" and the stress of potentially being caught with Dianne, and he ceased visiting and talking on the phone with her.

{¶10} Despite these problems, Henry's parents continued to offer financial support, as well as emotional support, to Dianne, as did Henry's sister. However, neither Dianne nor her parents requested any assistance from the Sprouses, including Henry. The only assistance ever requested by Dianne to any of the

Sprouses was a ride to work, which Dianne requested of Henry's sister. On this occasion, Henry's sister did take her to work, but no further requests were made by Dianne.

{¶11} At some point during the pregnancy, Dianne decided that she wanted to place her baby for adoption. Although Henry initially agreed with this decision, he later decided against it and asked his parents to help him. They contacted an attorney for Henry and also asked Dianne if she should allow them to adopt the baby if she did not want to keep him. Henry also registered with the Ohio Putative Father registry on July 15, 2002. Henry's attorneys began corresponding with attorneys for Dianne and her parents about the need for genetic testing. In addition, one of these letters, dated September 11, 2002, expressed the Sprouse family's willingness "to assist and be involved with Dianne's baby in the event that Henry III is the father." This letter further stated that "the Sprouses would like to help Dianne through the remainder of her pregnancy and childbirth in any way that she will allow, including but not limited to food, housing, clothes and medical bills." Lastly, this letter also referenced the need for genetic testing and the desire to have this testing conducted before any discussions of custody or adoption.

{¶12} Once again, at no point after this letter was written did Dianne or her parents ever request any type of assistance from the Sprouses. Moreover, no one informed Henry or his parents that Dianne was in labor, where she was hospitalized, or the fact that Brandon had been born until October 14, 2002, three

days after Brandon's birth. Dianne registered as a "confidential patient" when she went into labor. This prevented anyone from visiting her or the baby without Dianne's approval. In addition, Henry was not told where Dianne or the baby were after they were released from the hospital, and a gift basket from the Sprouse family that was sent to the Suvak home after the birth was refused by Dianne's parents.

{¶13} Upon learning of his son's birth, Henry again registered with the Putative Father Registry on October 14, 2002. He then filed a parentage action in Delaware County on October 16, 2002, by and through his parents and next friends, Henry and Donna Sprouse. However, Henry was not informed of the placement of Brandon with the Greens until he received notice that the Greens had filed a petition to adopt Brandon. He then objected to the adoption and continued with proceedings to determine whether he was Brandon's biological father.

{¶14} The trial court determined that the offers of support to Dianne conditioned upon a determination of parentage was not unreasonable given the knowledge that Dianne had engaged in sexual intercourse with another male in close proximity to the time of conception. In addition, the court found that the various actions of Henry's parents were made not merely by their interest in the baby, but also made on behalf of Henry, their minor son, for whose care, nurture, and welfare they were responsible. See R.C. 2111.08. Further, the court determined that the actions of Dianne and her parents constituted substantial interference with Henry's ability to establish a relationship with either Dianne or

the baby and that Henry had not *voluntarily* and *intentionally* abandoned Dianne during her pregnancy and up to the time of surrender of or placement of Brandon.

{¶15} The Greens now maintain that the trial court incorrectly considered the conduct of the parties during the post-placement parentage proceedings and in considering whether Henry was given notice regarding placement proceedings.

We disagree.

{¶16} In its February 20, 2003 judgment, the trial court noted the delay in genetic testing of Brandon and attributed that delay to Dianne and the Greens.

The trial court also noted that Henry was not aware of the placement proceedings.

However, although these facts, which were undisputed, occurred after Brandon's birth, they simply demonstrated the extent of interference by the Suvaks with

Henry's involvement with Brandon. These facts further show that any

"abandonment" of Dianne during her pregnancy and *up to the time of placement*

by Henry was not a voluntary choice by him, but rather was yet another way to

further distance Henry from Dianne and Brandon. Thus, the trial court did not err

in considering these facts in determining whether Henry willfully abandoned

Dianne and Brandon up to the time of placement.

{¶17} The Greens also assert that the trial court erred in attributing the

actions of Henry's parents to Henry, himself, and in finding that the offers of

Henry's parents constituted support. The Revised Code provides that parents "are

the joint natural guardians of their minor children and are equally charged with

their care, nurture, welfare, and education and the care and management of their

estates.” R.C. 2111.08. Thus, parents are statutorily charged with the responsibility for their minor children.

{¶18} Henry, at ages fourteen-fifteen, was a minor. Therefore, his parents were statutorily required to care for his physical needs, as well as his legal affairs. To think that Henry, at fourteen, would know how to contact an attorney, be able to pay an attorney’s fee with annual earnings of slightly less than \$7,000.00, and to pursue his legal rights to his child without the aid of his parents is not reasonable. In addition, contrary to the contentions of the Greens, Henry could not offer housing to Dianne as his young age would substantially impair his ability to obtain independent housing on his own. Moreover, Henry had already been threatened with criminal charges and a restraining order if he continued to contact Dianne. Thus, he turned to the aid of his parents, as most children do, and did as they and his attorney instructed him regarding this situation, which was to avoid contact with Dianne.

{¶19} In order to take care of Henry and his needs, his parents offered their home to Dianne, a home in which Henry also resided, if her parents made her leave her home, attempted to contact Dianne’s parents to discuss the matter, obtained no less than four attorneys for Henry, and decided to help Henry and Dianne, financially. However, his parents also told Henry to give them money so that they could establish a savings account for the baby’s needs and told him to buy various necessities for the baby, both of which he did. Thus, the trial court did not err in finding that the offers of Henry’s parents were made on his behalf.

Furthermore, the cases cited in support of the Green's assertion that grandparental offers of support are not to be imputed to the biological father all involved a biological father of the age of majority rather than a minor. This case is easily distinguished from those referenced by the Greens as parents have no similar duty of support to their adult children.

{¶20} As for whether these offers constituted support, the trial court did not err in determining that they did given the aforementioned evidence presented at the hearing. Although some of the offers made to Dianne and her parents were conditioned upon Henry being the biological father of the baby, Dianne was still offered financial support, as well as emotional support, throughout her pregnancy. Even after Henry and his parents learned that the baby's paternity could not be determined until after the baby was born because Dianne's doctors thought that DNA testing in utero was too great a risk, they continued to offer her support. These offers were never accepted and even the congratulatory gift basket sent to Dianne was rebuffed. Furthermore, Henry and his family attempted to contact both Dianne and her parents throughout the pregnancy but were met with repeated rejection. Thus, the trial court did not err in finding that the numerous offers made by Henry and his parents constituted support.

{¶21} Lastly, the Greens contend that the trial court erred in finding that Dianne's parents prevented communication between Dianne and Henry because such a finding was against the manifest weight of the evidence. We disagree.

{¶22} Dianne testified that her father ordered Henry out of their home on the day that they informed him that she was pregnant. She further testified that her parents sent the police to the Sprouse home upon discovering that she was gone from their house. In addition, Dianne testified that she knew that the police had told Henry not to contact her and that her parents would pursue charges against him should he continue to maintain contact. Dianne also testified that her father wanted her to have an abortion, including showing her cheerleading outfit to her and demanding that she make a choice between cheerleading or having a baby, and that he threatened to kick her out of his home if she decided to keep the baby. Henry and his parents also testified that the police told Henry that Dianne's father was going to get a restraining order against him if he continued to contact Dianne and that her parents would pursue criminal charges against him. Further, all attempts to contact Dianne's parents about the situation went unanswered. Moreover, as previously discussed, Henry and his family were not notified when Dianne went into labor, were not told which hospital she was in, were not informed of Brandon's birth until three days later, were not told where she and Brandon were taken upon their release from the hospital, and were not informed of Brandon's placement with the Greens until they were notified of the adoption petition even though the Suvaks knew that Henry wanted DNA testing conducted as soon as Brandon was born. In short, every effort was made by the Suvaks to keep Henry and his family away from both Dianne and the baby.

{¶23} Despite the actions of the Suvaks, Henry made a concerted effort to establish his potential parental rights. These efforts included filing not once, but twice, with the Putative Father Registry, requesting that DNA testing be conducted as soon as such testing could be safely performed, continuing to secretly visit Dianne until the threat of discovery became too stressful, filing a paternity action shortly after discovering Brandon was born and filing a motion for genetic testing contemporaneously with instituting that action, and objecting to the adoption petition. In addition, Henry and his parents began consulting with an attorney as early as February, 2002, to determine his potential parental rights and consulted with no less than four different attorneys as to various issues surrounding the pregnancy, all the while informing Dianne and her family that they were willing to provide any type of support she needed.

{¶24} The only things Henry did not do were to unequivocally admit his paternity prior to obtaining genetic testing, a decision that the trial court found to be reasonable given the fact that Henry witnessed Dianne engage in sexual intercourse with another male around the time of conception, and to actually give Dianne money that he earned through his employment. Given the aforementioned evidence, the trial court did not err in determining that Dianne and her parents thwarted the efforts made by Henry and his family to establish a relationship with either Dianne or Brandon.

{¶25} Based on the foregoing discussion and recognizing the difficult position of the adoptive parents resulting from these circumstances, the trial

court's determination that Henry did not *willfully* abandon Dianne during her pregnancy and up to the time Brandon's placement in the home of the Greens was amply supported by the record. Thus, the trial court's conclusion that Henry's consent was necessary before the adoption could occur was not against the manifest weight of the evidence. Accordingly, all five assignments of error are overruled.

{¶26} For these reasons, the judgment of the Common Pleas Court, Probate Division, of Allen County, Ohio, is affirmed.

Judgment affirmed.

BRYANT and CUPP, JJ., concur.