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See Okla.Sup.Ct.R. 1.200 before citing.

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

IN THE MATTER OF THE ADOPTION)
OF K.G.G., a Minor Child:)
)
PEARL SEABODY,)
)
Appellant,)
)
vs.) Case No. 121,567
)
SHARI JANE ROWLAND,)
)
Appellee.)

APPEAL FROM THE DISTRICT COURT OF
CANADIAN COUNTY, OKLAHOMA

HONORABLE BOB W. HUGHEY, ASSOCIATE DISTRICT JUDGE

AFFIRMED

Jeremy S. Elliott
Durant, Oklahoma — For Appellant

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LINQUE HILTON GILLETT
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and

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Yukon, Oklahoma — For Appellee

OPINION BY GREGORY C. BLACKWELL, JUDGE:

Pearl Seabody appeals the court's finding that her consent was not required for the adoption of her minor child, K.G.[1] Upon review, we affirm the trial court's decision and hold that Ms. Seabody's consent to the adoption was not required pursuant to 10 O.S. § 7505-4.2(H).

BACKGROUND

Appellee, Shari Rowland, the paternal grandmother of the minor child, filed a petition for adoption on April 1, 2022. The petition alleged the minor child was eligible for adoption without consent of Ms. Seabody pursuant to 10 O.S. § 7505-4.2(B)(1) and 10 O.S. § 7505-4.2(H). The trial court ultimately agreed and entered a final decree of adoption on November 18, 2022. However, it appears that Ms. Seabody's legal battles over K.G. began in 2014.

On July 8, 2014, a Georgia juvenile court ordered that K.G. was to be placed into the care and custody of Ms. Rowland and that she was not to be reunified with her mother, Ms. Seabody. Ms. Rowland lived in Oklahoma at the time, so K.G. moved there with her.

It appears that K.G.'s father, Nathan Rowland, was deployed when Ms. Rowland was granted custody of K.G. by the Georgia court.[2] However, upon his return, he filed a petition to establish custody in Bryan County Case No. FP-15-84 on December 31, 2015, arguing that, as K.G.'s father, he was the proper party

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[1] K.G. is an Indian child. *See* 25 U.S.C. 1903(4) and 10 O.S. § 40.2. However, no part of this appeal relates to the unique standards for adoption of Indian children set forth in the Indian Child Welfare Act.

[2] We note here that Mr. Rowland permanently relinquished his parental rights of K.G. on November 18, 2022.

to have custody of K.G., rather than his mother. The court entered an order the same day, granting Mr. Rowland custody of K.G. and denying visitation to Ms. Seabody. Ms. Seabody claims she was never served in the paternity action and did not become aware of it until 2019, when she filed a petition to vacate the judgment.

On February 11, 2021, Ms. Rowland filed a petition for guardianship for K.G. in Canadian County Case No. PG-21-16. She was granted emergency custody of K.G. the same day. Apparently, Ms. Seabody opposed the motion and requested custody of K.G., though none of these documents appear in the record, and the date of her response is unknown.

On January 13, 2022, the Bryan County court held a hearing in the paternity case regarding Ms. Seabody's motion to vacate the judgment, finding that Canadian County had jurisdiction over the minor child. On that basis, the court reserved its ruling on vacating the December 2015 order until the guardianship case was decided.

The petition for guardianship was heard on April 1, 2022, and the court granted Ms. Rowland guardianship over K.G. As a part of this order, K.G. was allegedly also ordered to be placed in counseling and that the counselor was to assess the possibility of contact between Ms. Seabody and K.G. However, as stated above, no documentation from the guardianship case is in the record on appeal, which proceeds solely from the adoption case.

On the same day she was made guardian, Ms. Rowland filed a petition to adopt K.G. without the consent of Ms. Seabody. The court held a hearing on the

adoption without consent matter on June 28, 2022. On September 27, 2022, the court held a hearing to determine whether the adoption was in the K.G.'s best interest. The court ultimately found that the adoption could proceed without Ms. Seabody's consent and found that adoption by Ms. Rowland was in the child's best interest. The court entered a final decree of adoption on November 18, 2022. From this order, Ms. Rowland appeals. We note, however, her only claims of error on appeal relate to the trial court's ruling at the AWOC hearing.[3]

STANDARD OF REVIEW

The burden rests on the party seeking to destroy the parent-child bond to establish by clear and convincing evidence that an adoption without consent or termination of parental rights is warranted. *See In the Matter of the Adoption of A.J.B.*, 2023 OK 122, ¶ 8, 540 P.3d 473, 474. Clear and convincing evidence is that measure of degree of proof that will produce in the trier of fact's mind "a firm belief or conviction as to the truth of the allegation sought to be established." *Id.* at ¶ 9. We examine the trial court's finding that a minor child is eligible for adoption without the biological parent's consent to determine if that conclusion is supported by the clear weight of the requisite clear and convincing evidence. *Matter of Adoption of M.A.S.*, 2018 OK 1, ¶ 12, 419 P.3d 204.

[3] All of Ms. Seabody's propositions of error relate to the AWOC ruling; nevertheless, she included the transcript of the best-interest hearing in the record on appeal. We have reviewed the latter transcript and reference it to the extent it contains information relevant to the propositions of error or general understanding of the proceedings below.

ANALYSIS

On appeal, Ms. Seabody alleges that the trial court erred in determining that she had not taken sufficient legal action to establish or maintain a positive relationship with her minor child. Upon review, we find that the trial court's determination that Ms. Seabody failed to establish and or maintain a substantial and positive relationship with K.G. was supported by the clear weight of the evidence. Ms. Rowland contended that Ms. Seabody's consent to the adoption was not required pursuant to 10 O.S. § 7505-4.2(H):

> H. 1. Consent to adoption is not required from a parent who fails to establish and/or maintain a substantial and positive relationship with a minor for a period of twelve (12) consecutive months out of the last fourteen (14) months immediately preceding the filing of a petition for adoption of the child.
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> 2. In any case where a parent of a minor claims that prior to the receipt of notice of the hearing provided for in Sections 7505-2.1 and 7505-4.1 of this title, such parent had been denied the opportunity to establish and/or maintain a substantial and positive relationship with the minor by the custodian of the minor, such parent shall prove to the satisfaction of the court that he or she has taken sufficient legal action to establish and/or maintain a substantial and positive relationship with the minor prior to the receipt of such notice.

In the present case, it was undisputed that Ms. Seabody did not have any contact with K.G. during the requisite twelve consecutive months of the relevant statutory period. In fact, Ms. Seabody stated that she has not seen or spoken to the child since 2014, except for seeing her from afar at church in 2022.[4] Tr.

[4] Ms. Seabody did not attempt to speak with or otherwise engage with the child when seeing her at church. She allegedly did this per the advice of a district attorney, who also happened to be at the service.

(June 28, 2022), 21. Rather, she argues that first, Mr. Rowland, and later Ms. Rowland, denied her the opportunity to maintain a relationship with K.G.

Regarding Mr. Rowland, Ms. Seabody contends that on December 31, 2015, he was granted an order establishing paternity and custody by the district court of Bryan County in Case No. 15-84.[5] The order stated as follows:

> It is in the best interest of the mental, physical and moral welfare of the minor child that her custody be awarded to the Plaintiff and that no visitation be allowed with the natural mother until further order of the Court.

Ms. Seabody contends that this order prohibited her from having any kind contact with K.G. Additionally, she filed a petition to vacate the paternity judgment on May 21, 2019. The court ultimately found that Canadian County had exclusive jurisdiction over the matter and that it would reserve ruling on vacating the judgment pending the outcome of the Canadian County guardianship case concerning K.G., Case No. PG-21-16. Therefore, the 2015 order ordering no visitation between Ms. Seabody and K.G. is still in place.

In her appellate brief, Ms. Seabody highlights that Ms. Rowland filed a petition for guardianship on February 11, 2021, and the court granted

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[5] We note that while Ms. Seabody argues that Mr. Rowland denied her the ability to maintain/establish a substantial and positive relationship with K.G., it appears Mr. Rowland lost custody of K.G. at the beginning of the relevant statutory period. As stated above, according to § 7505-4.2(H), consent to adoption is not required from a parent who fails to establish and/or maintain a substantial and positive relationship with a minor for a period of twelve consecutive months out of the last fourteen months immediately preceding the filing of a petition for adoption of the child. Here, the petition for adoption was filed on April 1, 2022; therefore, the relevant statutory period began in February 2021. Ms. Rowland filed the petition for emergency guardianship in February 2021, which was granted. Because Mr. Rowland was granted custody of K.G. in the 2015 paternity case, we note that even though the order granting Ms. Rowland a guardianship over K.G. is not before this Court, it is clear that K.G. was removed from his custody in February 2021.

emergency custody of the minor child to Ms. Rowland the same day. The petition for guardianship was later heard on April 1, 2022, and the court again granted guardianship to Ms. Rowland. Ms. Seabody contends that, as part of this process, the district court ordered the minor child to be placed back in counseling and that the counselor be asked to address possible contact with her.[6]

Ms. Seabody contends that she took all reasonably available legal action to establish a relationship with the minor child, citing the motion to vacate the judgment in the paternity case and participating in the guardianship case in Canadian County as evidence. We find that, on the record as presented in this appeal, the filing of the motion to vacate in 2019 and mere participation in the February 2021 guardianship proceeding did not constitute sufficient legal action to satisfy § 7505-4.2(H)(2),[7] to the extent that defense is implicated on these facts, where Ms. Seabody failed to prove to the satisfaction of the court that she established or maintained a substantial and positive relationship with K.G or that she was denied from doing so by Ms. Rowland.

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[6] The record is silent as to precisely what the guardianship court ordered regarding Ms. Seabody's visitation and contact with K.G., if any. As noted above, none of those orders were included in the appellate record.

[7] We emphasize here that these actions, most notably the filing of a response in the guardianship case allegedly requesting custody, could certainly, on a different record than the one before this Court, constitute sufficient legal action that would prevent an adoption without consent. Here, however, Ms. Seabody did not include the relevant guardianship filings in this record, did not testify at all as to the guardianship proceedings, and failed to put the question of the sufficiency of her efforts in the guardianship case before the court below. On such a record, we cannot fault the trial court for failing to find Ms. Seabody's efforts in the guardianship case were insufficient.

The Oklahoma Supreme Court recently held in *Matter of Adoption of A.J.B.*, 2023 OK 122, ¶ 18, 540 P.3d 473, 480, that, despite a natural father's failure to take any legal action to establish a relationship with the minor child, there was sufficient evidence to support the trial judge's ruling to deny the natural mother and her new husband's petition for adoption without consent. As a basis for this ruling, the Court noted various actions taken by the mother to conceal the child from the father, who was imprisoned in Texas at the time.

> Here, [the mother] would not give [the father] her address. She blocked him on her phone and social media. Although his testimony was at times contradictory, it appears [the father] thought [the mother] and [the minor child] were living somewhere in Durant, Oklahoma. That was all the information he had. *[The mother] intentionally concealed [the minor child's] whereabouts from [the father].* The trial court made no specific finding as to the sufficiency of [the father's] legal efforts to establish a relationship with [the minor child]. However, after hearing all the testimony and reviewing the evidence, it held the evidence was insufficient to sustain the petition for adoption and application for adoption without consent. We hold there was evidence to support the trial judge's ruling.

Id. (emphasis supplied). We find the present case is distinguishable for the following reasons.

Matter of Adoption of A.J.B. concerns the situation where a failure to maintain a relationship was due to *concealment.* We find no evidence in the record that Ms. Rowland ever concealed K.G.'s whereabouts from Ms. Seabody. Ms. Seabody first testified that she had no idea where K.G. was from 2015-2019. Tr. (June 28, 2022), 13. Later, she testified that she thought, according to the Georgia court order, K.G. was with Ms. Rowland during that same time period. Tr. (Sept. 27, 2022), 80. Additionally, Ms. Seabody testified that in 2019 she

knew Ms. Rowland's address because she filed the motion to vacate the judgment in the paternity action.[8] Although the exact circumstances that led to Ms. Rowland being given emergency custody of K.G. in 2021 are unclear,[9] we note that Ms. Seabody opposed the motion, and it was granted, nonetheless. Therefore, as of February 2021, Ms. Seabody knew or should have known that K.G. was in Ms. Rowland's custody and could have made efforts at communication if she chose to do so.

Additionally, Ms. Seabody testified that she currently lives in Bokchito, Oklahoma, which is only thirty minutes from Durant, where K.G. was living. Tr. (June 28, 2022), 6. In fact, the two were in such close proximity that on April 17, 2022, after the petition for adoption was filed, Ms. Seabody testified that she saw K.G. at church. *Id.* at 11. She stated that it was the first time she had seen her daughter since 2014. *Id.* at 21. Ultimately, there is nothing in the record to support a contention that Ms. Rowland concealed K.G. from Ms. Seabody. Instead, the record viewed as a whole contains ample evidence that, during the

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[8] As stated above, Mr. Rowland did not have custody of K.G. during the relevant statutory period. However, it is clear that as of 2019, Ms. Seabody would have been aware of Mr. Rowland's address, as she would have had to serve him as well since they were both parties to the paternity action. Because Ms. Seabody had both Ms. Rowland and Mr. Rowland's address, she would have been able to locate K.G., further disproving that she was being concealed by either her guardian or her father.

[9] We note however, that the record states that Nathan Rowland was charged with "using technology to engage in communication for sexual and prurient interest with a minor" in Oklahoma County case CF-2021-5637. *Doc. 11.* He was convicted in March 2022 before Ms. Rowland was granted a final guardianship.

relevant statutory period, Ms. Seabody knew where K.G. was and could have attempted to contact her at various times but never did so.[10]

We also find that Ms. Rowland, as K.G.'s guardian during the relevant statutory period, did not deny Ms. Seabody the ability to establish or maintain the relationship with the child. Ms. Seabody argued that Ms. Rowland blocked her on Facebook as early as 2013, prohibiting her from contacting K.G.[11] There was also testimony that Ms. Seabody had Ms. Rowland's cell phone number. Ms. Seabody never denied having Ms. Rowland's number; rather, she maintained that Ms. Rowland had blocked her number. However, the record shows that counsel asked Ms. Seabody if she had texted Ms. Rowland on the phone number

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[10] Ms. Seabody claims that her decision to not reach out to K.G. during this time was due to the advice of various legal counsel; however, the only support for that contention in the record is Ms. Seabody's testimony. The trial court could have, consistent with the evidence, disbelieved the claim. And, even if the claim were true, advice of counsel is not a defense to not establishing or maintaining a relationship under § 7505-4.2(H).

[11] Ms. Seabody's counsel introduced a screenshot of Facebook messages between Ms. Seabody and Ms. Rowland. Tr. (Sept. 27, 2022), 46. When questioning Ms. Rowland about the messages, counsel noted that at the bottom of the screenshot it shows that Ms. Rowland blocked Ms. Seabody. *Id.* Ms. Rowland did not dispute this. *Id.* However, counsel implied that the date she was blocked was October 7, 2013, because that is the date above the last message sent by Ms. Seabody. *Id.* Ms. Rowland disputes that that was the date she blocked Ms. Seabody and stated that there could have been multiple messages after the one on October 13. When moving to admit the exhibit, Ms. Rowland's counsel specifically objected stating, "when you're on your phone, you can stop at any point in the message and screenshot it and it would still say this message that stays at the bottom. There is no way to tell when this was ...." *Id.* at 47. The court admitted the exhibit over counsel's objection; however, we agree with Ms. Rowland's counsel's characterization of the exhibit and note that the date of the message was not indicative of the date blocked.

There were several other issues regarding Ms. Seabody's Facebook addressed at trial. For example, Ms. Seabody testified that she has had many different Facebook accounts because she repeatedly got hacked. However, instead of stealing her identity or stealing from her directly, Ms. Seabody's hackers would send hate messages to her mother. Tr. (Sept. 27, 2022), 98. Ms. Rowland testified that Ms. Seabody had stated certain messages she sent to Mr. Rowland were not actually sent by her but by a hacker, and described those messages as "threatening." Tr. (Sept. 27, 2022), 138.

she had had for ten years and Ms. Seabody responded that she had, but "it wouldn't go through." Counsel then asked Ms. Seabody if she had screenshots of the messages that were unable to go through, and Ms. Seabody implied that in order to get them she would have to ask a judge to sign an order requesting them. When asked why she did not have or save the messages, Ms. Seabody responded that her phone was in evidence at Fort Hood as a result of an assault case between her and a former partner. At this point, the judge intervened and asked when the incident was, to which Ms. Seabody responded 2015. The judge asked, "And you're telling me after seven years they haven't released the evidence?" and Ms. Seabody, neither confirming nor denying, merely replied that the case was still open.[12]

After the AWOC hearing, Ms. Rowland testified that had it not been for the court order mandating no visitation, she would not have prohibited Ms. Seabody from continuing to see K.G. *See* Tr. (Sept. 27, 2022), 12-13.[13] But nothing in the record shows that Ms. Rowland ever specifically denied Ms. Seabody the opportunity to contact K.G., as it is clear that Ms. Seabody never attempted

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[12] We note that Ms. Seabody was able to produce evidence of the Facebook messages showing that she had been blocked but failed to be prepared to do so regarding the text messages that allegedly did not go through to Ms. Rowland.

[13] Ms. Rowland also testified that she made sure K.G. stayed involved with Ms. Seabody's family even after visitation ended, specifically, Ms. Seabody's mom, Mary Holt. It appears that at least once a month for a few years K.G. would go spend time with Ms. Holt. Tr. (Sept. 27, 2022), 14. Ms. Rowland stated that visits between K.G. and Ms. Holt stopped in 2017, when Ms. Rowland found out that Ms. Seabody was living with Ms. Holt. *Id.* at 15. Even though 2017 is before the relevant statutory period in this case, Ms. Seabody living with Ms. Holt after a time in which K.G. had been visiting Ms. Holt also shows that Ms. Seabody could have reached out to her mom at any point regarding information about K.G.'s whereabouts or how to get in touch with her. Yet, it appears Ms. Seabody never did.

contact her. During the September 27, 2022, hearing, Ms. Rowland was asked if K.G. ever decided she wanted a relationship with her mother, the two were in therapy together, and it was safe and appropriate for them to have a relationship, would she stand in the way of them having such a relationship. *Id.* at 43. Ms. Rowland replied that she would not. *Id.* Ms. Rowland testified throughout the hearing about prioritizing K.G.'s best interests, which is why she fostered a relationship between K.G. and Ms. Seabody's family, ensured K.G. was involved with her tribe, and would even be open to K.G. having a relationship with Ms. Seabody despite all the trauma she endured as a child.

Ultimately, there was no evidence presented of Ms. Seabody attempting to contact K.G. or Ms. Rowland during the relevant statutory period, therefore, it follows that Ms. Rowland could not have denied Ms. Seabody any ability to establish or maintain a relationship with the child since she took no action to do so.[14] In fact, the record shows that Ms. Rowland might have even been open or receptive to such efforts made by Ms. Seabody, had Ms. Seabody tried to communicate with either her or K.G.

We also find the Oklahoma Supreme Court's holding in *Matter of Adoption of L.B.L.*, 2023 OK 48, 529 P.3d 175, to be persuasive in this case. *Adoption of L.B.L.* distinguishes between a lack of *visitation* and an entire lack of *attempted*

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[14] Ms. Seabody's counsel asked Ms. Rowland a variety of questions regarding whether she ever reached out to Ms. Seabody regarding K.G. Ms. Rowland, as K.G.'s guardian, was under no duty to reach out or contact Ms. Seabody regarding K.G. Rather, according to the statute, it is the duty of the parent to establish or maintain a substantial and positive relationship with the child. There is no statutory authority supporting the contention that it is the guardian's responsibility to facilitate, encourage, or instigate parent and child establishing a relationship.

communication. In that case, the Court found that there was also no dispute that the mother failed to establish and/or maintain a substantial and positive relationship with the child during the relevant time period. *Id.* ¶ 19. The mother in *L.B.L.* contended that her failure to establish or maintain the relationship with her child "wasn't her fault, because Guardians refused her requests for visitation after her first FaceTime visit caused Child to injure himself." *Id.* ¶ 21. However, the Court emphasized that § 7505-4.2(H)

> *is not limited to visitation; visitation and communication are different things*. As Mother herself admitted, she could have sent letters, cards, books or toys to foster a positive relationship. She could have, as she had been ordered to do, contacted Child's therapist. She could have contacted Guardians to explore other avenues of communication. The record does not show that Guardians prevented Mother from making any attempt at establishing a relationship, other than refusing visitation for Child's safety. Between late August 2019 and August 2020, when the petition for adoption was filed, Mother's only contact with Child was when she sent a birthday package.

Id. ¶ 23 (emphasis supplied). The Court also noted that the record showed "that throughout Child's short life, his contacts with Mother were not positive." *Id.* ¶ 25. Even though the child had an adverse response to a visit with the mother after the no visitation order was dissolved by way of the guardianship, the Court found that the reaction "was and is no prohibition against all contact. Mother could have explored other avenues to remain in Child's life. She chose not to do so." *Id.* Therefore, the Court held that there was clear and convincing evidence to support the trial court's conclusion that the guardians met their burden to show that the Mother failed to establish and/or maintain a substantial and

positive relationship with the child and found that the adoption without consent was allowed. *Id.* ¶ 26.

Similarly, while the judge in the paternity case, judge in the Georgia case, and perhaps even the judge in the guardianship case, all issued various orders that did not require visitation between the child and Ms. Seabody, we reiterate the Court's holding in *L.B.L* that visitation and communication are distinct. As stated above, Ms. Seabody had the child's address as early as 2019 when she filed the motion to vacate in the paternity action. She could have sent letters, cards, books, or toys, or made other effort—any effort—to foster a positive relationship. Instead, she did nothing.

Further, similar to *L.B.L.* there was testimony by Ms. Rowland that K.G.'s prior visits with her mother in 2014 caused her to have an adverse reaction after spending time together.[15] These reactions are ultimately what caused the judge to order no visitation in the Georgia case. However, we reiterate that just because such a reaction takes place or because a court does not order mandatory visitation, it is not a prohibition against all contact and Ms. Seabody could have explored avenues to remain in K.G's life, but did not do so. The mother in *L.B.L.* at least offered proof of attempts to Facetime the guardians to speak with the child as a basis for denial to establish or maintain a substantial and positive relationship. Ms. Seabody in this case offers no such evidence. Instead, the only

[15] Ms. Rowland testified that, K.G "started back bed wetting. She was having nightmares and night terrors. She'd wake up in the middle of the night screaming and crying. And those were behaviors that were new after the visits started." Tr. (Sept. 27, 2022), 13.

evidence she presented of attempts at communication was the alleged Facebook and phone number blocking, both of which are unsubstantiated. Ms. Seabody could have reached out to her family members to get in touch with K.G., she could have sent letters or gifts to Ms. Rowland's address, which she specifically testified that she knew as early as 2019, she could have tried emailing or contacting K.G. or Ms. Rowland through other social media if indeed she was blocked on Facebook, and more. Ultimately, she did nothing. Accordingly, we find the trial court did not err by finding Ms. Seabody's consent to the adoption was not required by 10 O.S. § 7505-4.2(H).[16]

AFFIRMED.

HUBER, P.J., and HIXON, J., concur.

June 17, 2024

[16] Ms. Seabody also alleges that the trial court erred when it determined that she had willfully failed to support K.G. under § 7505-4.2(B). We need not decide this issue because we have already affirmed the trial court's decision that Ms. Seabody's consent was not required under subsection (H) of the statute.