

SUPREME COURT OF RHODE ISLAND

In re Damien M.

819 A.2d 213 (R.I. 2003) · No. No. 2001-92-Appeal · Decided February 25, 2003

SUMMARY

The Rhode Island Supreme Court affirmed a Family Court order terminating the respondent-father's parental rights and granting an adoption petition. The court held that the father waived his judicial-bias argument by failing to raise it below and, in any event, that the trial justice's questioning was not improper. It also concluded that the evidence, including the father's lack of meaningful contact with the child for more than six months, established abandonment under Rhode Island law.

CASE DETAILS

COURT	Supreme Court of Rhode Island
JURISDICTION	Rhode Island
DECIDED	February 25, 2003
DOCKET	No. 2001-92-Appeal
DISPOSITION	affirmed
PROCEDURAL POSTURE	The respondent-father appealed a Family Court order terminating his parental rights and granting the adoption petition of the child's mother and stepfather.
STANDARD OF REVIEW	The Supreme Court reviewed whether the evidence was sufficient to support abandonment and termination of parental rights. The abandonment determination required clear and convincing evidence; an unpreserved claim of judicial bias was subject to Rhode Island's raise-or-waive rule.
PRECEDENTIAL VALUE	Published Rhode Island Supreme Court opinion
PARTIES	Lance Mosely v. Elizabeth Colon, Jorge Colon

TOPICS

- termination of parental rights
- parental rights
- family law
- preservation of error
- appellate procedure

PRACTICE AREAS

- family law
- termination of parental rights
- appellate procedure

QUESTIONS PRESENTED

1. Whether the father's challenge to the trial justice's questioning and alleged bias was preserved for appellate review.
2. Whether the trial justice's questioning of witnesses demonstrated judicial bias or was otherwise improper.
3. Whether the petitioners proved abandonment by clear and convincing evidence sufficient to support termination of the father's parental rights.

HOLDINGS

1. The father waived his challenge to the trial justice's alleged bias because he did not object to the questioning, move for a mistrial, or otherwise seek disqualification in the Family Court.
2. A trial justice may question witnesses to elicit the truth and clarify testimony, so long as the justice remains impartial; the mere fact that the trial justice questioned witnesses did not establish impropriety or bias.
3. The evidence supported the Family Court's finding of abandonment, and the trial justice properly terminated the father's parental rights.

KEY QUOTATIONS

"In any event, a trial justice may, as here, question witnesses to elicit the truth from them and to clarify matters in their testimony, provided that the trial justice maintains his or her impartiality while doing so." (214)

"Thus, his testimony regarding his paltry attempts to locate his son demonstrated that they were, at best, so half-hearted and so ineffectual as to barely distinguish them from making no effort at all." (214)

"Moreover, the mere fact that, as the father argues, he may not have formed the 'settled intention' to abandon his son was of no consequence in this case because the very lack of any meaningful contact between father and son for a period of at least six months constituted prima facie evidence of abandonment." (214)

FACTUAL BACKGROUND

After separating from the child's mother in December 1991, the father had only one contact with his son, when the mother brought the child to visit him in prison in 1997. He made only one weekly child-support payment during the years he was obligated to pay support and did not seek to suspend his obligations during incarceration. He also made no meaningful effort to obtain visitation or otherwise maintain contact with the child.

PROCEDURAL HISTORY

The Family Court terminated Lance Mosely's parental rights after finding that he had failed to properly care for and maintain his child for at least one year and had abandoned or deserted him. The Family Court also granted the adoption petition filed by Elizabeth and Jorge Colon. On appeal, the father challenged the trial justice's questioning of him and the sufficiency of the evidence of abandonment. A single justice ordered the parties to

show cause why the appeal should not be decided summarily; no sufficient cause was shown, and the Supreme Court decided the appeal summarily.

DISPOSITION

affirmed

CASES CITED

- Olivieri v. Olivieri, 760 A.2d 1246, 1252 (R.I. 2000)
- Cavanagh v. Cavanagh, 118 R.I. 608, 621-22, 375 A.2d 911, 917-18 (1977)
- Cronan ex rel. State v. Cronan, 774 A.2d 866, 879 (R.I. 2001)
- State v. Anderson, 752 A.2d 946, 948 (R.I. 2000)
- State v. Giordano, 440 A.2d 742, 745 (R.I. 1982)

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