

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)

OPINION

PER CURIAM.

819 A.2d 213 (2003) In re DAMIEN M. No. 2001-92-Appeal. Supreme Court of Rhode Island. February 25, 2003. Joseph A. Palmieri, Providence. Paula Rosin, Providence. ORDER This is an appeal from a Family Court order terminating the parental rights of the respondent-father, Lance Mosely (father or respondent). This case originally came before the Family Court with respect to the adoption petition of Elizabeth and Jorge Colon, the natural mother and stepfather, respectively, of the child in question, Damien M. On appeal, the father asks us to reverse the Family Court's termination of his parental rights and to order a new trial.

He asserts that the trial justice improperly questioned him during the trial of this case, thereby revealing the trial justice's bias against him. He also contends that the trial justice erroneously concluded that he abandoned the child. A single justice of this Court ordered the parties to show cause why we should not decide this appeal summarily.

Because they have not done so, we proceed to decide the appeal at this time. After Damien's birth in August of 1989, petitioner, Elizabeth Colon (mother or petitioner), lived together with the father for a short period. According to the mother's testimony, the two first lived together at petitioner's mother's house for a few months before 1991; petitioner, however, disputes that they actually lived together during this period.

In any event, the couple moved into an apartment during the summer of 1991, where they lived together with Damien for approximately six months. In December 1991, however, petitioner separated from respondent because of alleged domestic abuse. Thereafter, the father only visited with Damien on one occasion in 1997, when the mother took the child to visit him at the Adult Correctional Institutions where he was imprisoned.

After separating from the mother, the father failed to comply with court-ordered child support, making only one weekly payment during all the post-separation years when he was obliged to do so. Nor did he seek to suspend his child-support obligations while he was incarcerated. At the conclusion of the hearing, the trial justice found that the father had failed to properly care for and maintain his child for at least one year and that, consequently, he had abandoned or deserted him.

As a result, the trial justice terminated the father's parental rights and granted the adoption petition. On appeal, the father suggests that the trial justice improperly questioned him during the Family Court proceedings, thereby revealing his prejudice toward him. He also contends that petitioners failed to prove the alleged abandonment by clear and convincing evidence.

We have held that "in order affirmatively to establish personal bias or prejudice [on the part of the judge], a litigant must show that such bias or prejudice is because of a preconceived or settled opinion and that mere criticism is not sufficient." *Olivieri v. Olivieri*, 760 A.2d 1246, 1252 (R.I.2000) (citing *Cavanagh v. Cavanagh*, 118 R.I. 608, 621-22, 375 A.2d 911, 917-18 (1977)).

Here, it does not appear from the record that the father objected to the trial justice's questions, moved for a mistrial, or otherwise attempted to disqualify the trial justice because of his alleged improper questioning during the trial.

We have *214 stated repeatedly that we will not address issues raised for the first time on appeal: "According to our well-settled 'raise or waive' rule, issues that present themselves at trial and that are not preserved by a specific objection at trial, 'sufficiently focused so as to call the trial justice's attention to the basis for said objection, may not be considered on appeal.'" *Cronan ex rel.*

State v. Cronan, 774 A.2d 866, 879 (R.I.2001) (quoting *State v. Anderson*, 752 A.2d 946, 948 (R.I.2000)). Because the father did not raise this issue with the trial court, he has therefore waived any right to challenge the trial justice's alleged bias on appeal.

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. See *State v. Giordano*, 440 A.2d 742, 745 (R.I.1982).

Thus, the mere fact that the trial justice questioned one or more witnesses during the trial was not improper or an indication of judicial bias against respondent. The father also argues that the petitioners failed to prove abandonment by clear and convincing evidence. But our review of the evidence in this case reveals sufficient grounds for the trial justice to determine that the father's conduct towards his child constituted abandonment.

By his own admission, he only saw his son on one occasion after he and the mother separated in 1991, and that was because in 1997 the mother brought the child to visit him in prison. Although the, father suggested that he made no other attempts to visit his son because he was in fear of

violating a no-contact order with the mother, the evidence also showed that he never made any attempts to file a motion to seek visitation with his son.

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. 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.

See G.L.1956 § 15-7-7(a)(4) ("A lack of communication or contact with the child for at least a six (6) month period shall constitute prima facie evidence of abandonment or desertion."). The trial justice was entitled to conclude that the father's actions spoke louder than his words regarding his intention to develop a relationship with his son.

Therefore, we hold, the trial justice properly terminated the father's parental rights. For these reasons, we deny the respondent's appeal and affirm the Family Court's order terminating the respondent's parental rights.