

SUPREME COURT OF ARKANSAS

Lucas v. Jones

423 S.W.3d 580 (Ark. 2012) · Decided October 4, 2012

SUMMARY

Deborah Lucas appealed an Arkansas circuit court decree granting her parents’ petition to adopt her daughter. The Arkansas Supreme Court held that Lucas had not adequately preserved her constitutional claims concerning appointed counsel because she did not expressly request appointed counsel or obtain a specific ruling. The court also affirmed the findings that her consent was unnecessary due to her significant failure to support the child and that the adoption was in the child’s best interest.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| COURT                 | Supreme Court of Arkansas                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| WRITING FOR THE COURT | Jim Hannah, Chief Justice                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| JURISDICTION          | Arkansas                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| DECIDED               | October 4, 2012                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| PROCEDURAL POSTURE    | Appeal from an adoption decree entered by the Washington County Circuit Court in favor of the child's maternal grandparents.                                                                                                                                                                                                                                                                                                                                                           |
| STANDARD OF REVIEW    | Findings that parental consent is unnecessary because of a failure to support or communicate are reviewed for clear error. The circuit court's best-interest determination is also reviewed for clear error, with great weight given to the trial judge's personal observations when the welfare of young children is involved. Preservation issues are reviewed under the requirement that the appellant make known to the circuit court the requested action and the grounds for it. |
| PRECEDENTIAL VALUE    | Published Arkansas Supreme Court opinion                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| PARTIES               | Deborah Lucas v. Bill Frank Jones, Alice Fay Jones                                                                                                                                                                                                                                                                                                                                                                                                                                     |

TOPICS

- adoption
- parental rights
- family law procedure
- appellate procedure
- standard of review

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether Lucas preserved a claim that she was constitutionally entitled to appointed counsel as an indigent parent in a private adoption proceeding.
2. Whether the circuit court clearly erred in finding that Lucas's consent to the adoption was unnecessary because she significantly failed, without justifiable cause, to support the child for at least one year.
3. Whether the circuit court clearly erred in finding that the adoption was in J.J.'s best interest.

## HOLDINGS

1. Lucas did not preserve her constitutional arguments concerning appointed counsel because her motion sought a continuance to seek counsel rather than expressly requesting that the court appoint counsel, and she failed to obtain a specific ruling on appointment of counsel.
2. The circuit court did not clearly err in finding that Lucas's consent was unnecessary because she significantly failed, without justifiable cause, to provide support for J.J. for at least one year.
3. The circuit court did not clearly err in finding that the adoption was in J.J.'s best interest.

## KEY QUOTATIONS

*“Arguments not raised below, even constitutional ones, are waived on appeal.” (at 8)*

*“We affirm the circuit court's finding that appellant's consent was not necessary because she failed significantly without justifiable cause to support the child for one year.” (at 11)*

## FACTUAL BACKGROUND

J.J. was born to Deborah Lucas out of wedlock in 2005 and began living with her parents, Bill Frank Jones and Alice Fay Jones, in late 2007. The grandparents obtained permanent custody through an agreed guardianship order that allowed Lucas supervised visitation and required her to pay child support and comply with conditions related to substance-abuse treatment. Lucas made only one child-support payment, in April 2008, last visited J.J. in October 2009, and did not maintain consistent communication or visitation. At the adoption hearing, the evidence showed that J.J. was thriving in the grandparents' care, while Lucas acknowledged that she was not prepared to resume custody.

## PROCEDURAL HISTORY

Bill Frank Jones and Alice Fay Jones petitioned to adopt J.J., whom they had held under a permanent guardianship order. Deborah Lucas, the child's mother, appeared pro se and filed a motion for a continuance stating that she wanted time to seek legal counsel; the circuit court denied the motion without comment. After a hearing, the circuit court found that Lucas's consent was unnecessary because she had significantly failed, without justifiable cause, to support and communicate with the child, and that the adoption was in the child's best interest. The Arkansas Supreme Court affirmed.

## DISPOSITION

affirmed

#### CASES CITED

- *Lassiter v. Department of Social Services*, 452 U.S. 18, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981)
- *Bearden v. Arkansas Department of Human Services*, 344 Ark. 317, 42 S.W.3d 397 (2001)
- *Hooker v. Farm Plan Corp.*, 331 Ark. 418, 962 S.W.2d 353 (1998)
- *Jewell v. Arkansas State Board of Dental Examiners*, 324 Ark. 463, 921 S.W.2d 950 (1996)
- *Fruit v. Lockhart*, 304 Ark. 457, 802 S.W.2d 930 (1991)
- *Riley v. State Farm Mutual Automobile Insurance Co.*, 2011 Ark. 256, 381 S.W.3d 840
- *Turkey Express, Inc. v. Skelton Motor Co.*, 246 Ark. 739, 439 S.W.2d 923 (1969)
- *Johnson v. State*, 303 Ark. 12, 792 S.W.2d 863 (1990)
- *Shaw v. State*, 299 Ark. 474, 773 S.W.2d 827 (1989)
- *Tracy v. Dennie*, 2012 Ark. 281, 411 S.W.3d 702
- *Harwell-Williams v. Arkansas Department of Human Services*, 368 Ark. 183, 243 S.W.3d 898 (2006)
- *Turner v. Rogers*, 564 U.S. 431, 131 S. Ct. 2507, 180 L. Ed. 2d 452 (2011)
- *Powell v. Lane*, 875 Ark. 178, 289 S.W.3d 440 (2008)
- *Harper v. Caskin*, 265 Ark. 558, 580 S.W.2d 176 (1979)
- *Racine v. Nelson*, 2011 Ark. 50, 378 S.W.3d 93
- *In re Adoption of Lybrand*, 329 Ark. 163, 946 S.W.2d 946 (1997)
- *In re Adoption of A.M.C.*, 368 Ark. 369, 246 S.W.3d 426 (2007)
- *Pender v. McKee*, 266 Ark. 18, 582 S.W.2d 929 (1979)
- *Jones v. State*, 347 Ark. 409, 64 S.W.3d 728 (2002)