

SUPREME COURT OF RHODE ISLAND

In re Livia B.L.

151 A.3d 756 (R.I. 2017) · No. 2015-217-Appeal (06-663-1) · Decided January 6, 2017

SUMMARY

The Rhode Island Supreme Court affirmed a Family Court order terminating Anthony Bucci’s parental rights to Livia based on abandonment and granting Derek Gray’s petition to adopt her. The court held that legally competent evidence supported the finding that Bucci had made no reasonable effort to see or contact Livia since November 2010, and that his asserted sporadic attempts at contact were insufficient to rebut abandonment. The court also applied the clear-and-convincing-evidence standard and deferred to the trial justice’s credibility determinations.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	Associate Justice Gilbert V. Indeglia; Chief Justice Suttell; Justice Goldberg; Justice Flaherty; Justice Robinson; Justice Indeglia
JURISDICTION	Rhode Island
DECIDED	January 6, 2017
DOCKET	2015-217-Appeal (06-663-1)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Anthony Bucci appealed from a Family Court order terminating his parental rights based on abandonment and granting Derek Gray's petition to adopt Livia. The Rhode Island Supreme Court summarily decided the appeal after directing the parties to show cause why the issues should not be decided without further briefing or argument.
STANDARD OF REVIEW	The Supreme Court reviews the record to determine whether legally competent evidence supports the Family Court justice's ruling. It gives great weight to the trial justice's findings and will not overturn them unless clearly wrong or the justice overlooked or misconceived material evidence. The Court's review is limited to whether any legally competent evidence supports the findings. Termination allegations must be proved by clear and convincing evidence.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Anthony Bucci v. Marissa Levesque, Derek Gray

TOPICS

termination of parental rights

parental rights

adoption

family law procedure

appellate procedure

PRACTICE AREAS

family law

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QUESTIONS PRESENTED

1. Whether the Family Court clearly erred in finding by clear and convincing evidence that Bucci abandoned Livia under G.L. 1956 § 15-7-7(a)(4).
2. Whether Bucci's incarceration, claimed cards and letters, and alleged attempts to obtain visitation rebutted the prima facie evidence of abandonment.
3. Whether the Family Court's failure to expressly discuss every item of Bucci's evidence constituted a material oversight or misconception requiring reversal.
4. Whether the order granting Gray's adoption petition should be disturbed; the Supreme Court did not reach that issue because Bucci did not press it on appeal.

HOLDINGS

1. The Family Court properly found abandonment because legally competent evidence established that Bucci had no contact with Livia for more than six months and had not made reasonable efforts to see or contact her.
2. Incarceration alone is insufficient to prove abandonment, but abandonment may be established when the evidence, including the parent's conduct during incarceration, demonstrates a failure to maintain reasonable contact with the child.
3. The Family Court did not commit reversible error by failing to expressly address Bucci's testimony about cards and letters because its findings indicated that it heard and disbelieved, or found insufficient, those claimed efforts.
4. Termination of parental rights requires a finding of parental unfitness supported by clear and convincing evidence; once parental unfitness is established, the child's best interests outweigh other considerations.

KEY QUOTATIONS

"While we agree that more than incarceration is necessary to prove abandonment, here we are satisfied that legally competent evidence supported the trial justice's determination to the requisite clear and convincing evidence standard." (at 757)

"We reject the suggestion that a trial justice must resolve every disputed factual contention that may arise during a trial." (at 759)

"Any evidence of attempted contact with Livia by the respondent was "halfhearted" at best and, as such, the trial justice rightfully declined to assign it weight in his decision." (at 760)

FACTUAL BACKGROUND

Livia was born in 2004 to Marissa Levesque and Anthony Bucci, who were unmarried and lived separately. Bucci's contact with Livia was sporadic; the evidence showed no contact after November 2010, apart from his claimed cards and letters and a visitation motion that was rejected by the Family Court clerk and never refiled. Bucci was incarcerated for an eight-year robbery sentence, had substantial child-support arrears, and made no successful effort to resume visitation. Levesque and her husband, Derek Gray, who had acted as a father figure since 2009 or 2010, jointly sought termination of Bucci's parental rights and Gray's adoption of Livia.

PROCEDURAL HISTORY

Marissa Levesque and Derek Gray jointly petitioned the Washington County Family Court to terminate Bucci's parental rights and permit Gray to adopt Livia. After a three-day trial, the Family Court found abandonment, terminated Bucci's parental rights, and granted the adoption petition. Bucci timely appealed, and the Supreme Court affirmed.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The record was remanded to the Washington County Family Court.

CASES CITED

- In re Abby D., 839 A.2d 1222, 1223 n.3 (R.I. 2004)
- In re Jake G., 126 A.3d 450, 456 (R.I. 2015)
- In re Jah-nell B., 116 A.3d 784, 791 (R.I. 2015)
- In re Max M., 116 A.3d 185, 193 (R.I. 2015)
- In re Steven D., 23 A.3d 1138, 1154-1155 (R.I. 2011)
- In re Caleb W., 990 A.2d 1225, 1228 (R.I. 2010)
- In re Robert S., 840 A.2d 1146, 1149 (R.I. 2004)
- Notarantonio v. Notarantonio, 941 A.2d 138, 147 (R.I. 2008)
- Narragansett Electric Co. v. Carbone, 898 A.2d 87, 102 (R.I. 2006)
- Mattera v. Mattera, 669 A.2d 538, 541 (R.I. 1996)
- In re Serenity K., 891 A.2d 881, 884 (R.I. 2006)
- In re Ariel N., 892 A.2d 80, 86-87 (R.I. 2006)
- In re Brook Ann R., 994 A.2d 1241, 1244 (R.I. 2010)