

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA12-511

DESRAE YERBY

APPELLANT

V.

VINCE YERBY

APPELLEE

Opinion Delivered January 23, 2013

APPEAL FROM THE CRAWFORD
COUNTY CIRCUIT COURT
[NOS. 17-DR-2006-392; 17-PR-2010-
131]

HONORABLE GARY COTTRELL,
JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

This is an appeal from the denial of a petition to adopt three minor children. The trial court denied the petition on grounds that the children's father's consent was required and was not given. Appellant argues that the trial court erred in finding that the father's consent was required. We affirm.

We review adoption proceedings de novo on the record, but we will not reverse the trial judge's decision unless its findings are clearly erroneous or clearly against the preponderance of the evidence, after giving due regard to his opportunity to determine the credibility of the witnesses. *In re Adoption of J.L.T.*, 31 Ark. App. 85, 788 S.W.2d 494 (1990). In cases involving minor children, the trial court must utilize to the fullest extent all of its power of perception in evaluating the witnesses, their testimony, and the children's best interest. Because the appellate court has no such opportunity, the superior position, ability,



and opportunity of the trial court to observe the parties are afforded their greatest weight in cases involving minor children. *Id.*

The record shows that the parties had previously been married and were divorced in 2008. Appellant was awarded custody of their minor children, who, when the briefs in this case were filed, were thirteen, eleven, and eight years of age. Appellee exercised regular visitation until May 11, 2010, when an anonymous telephone call to the child-abuse hotline resulted in an investigation being conducted. The child-safety plan implemented during the investigation prohibited appellee from having any contact with his children. Shortly thereafter, appellee was involved in a head-on collision and hospitalized. Appellee, who suffers from severe depression and anxiety disorder, was misdiagnosed as having schizophrenia while hospitalized, and was placed on medications inappropriate for his actual condition. Those medications put him in a catatonic-like state and caused him to lose forty pounds. During this time, appellee's brother confessed to raping the parties' youngest child and was imprisoned. Appellee was devastated to learn this and experienced what appears to have been a breakdown. In June 2010, appellant filed a motion to adopt her children (in order to terminate appellee's parental rights). *See Ark. Code Ann. § 9-9-204(3) (Repl. 2009)* (unmarried parent may adopt his or her own children). Appellant filed a motion to suspend appellee's visitation with the children in August 2010. Appellant did not allow appellee to see his children again until July 2011. Appellee, who had been unemployed, recently qualified for Social Security Disability payments and is willing and able to contribute a portion of this modest income to the support of his children.



Appellant asserted in the adoption proceeding that appellee's consent to the adoption was not necessary because he had abandoned the children and failed to support them for more than one year. Because the children were born during the marriage of the parties, appellee's written consent is required before they may be adopted unless his consent is rendered unnecessary because he has, for a period of at least one year, failed significantly without justifiable cause to communicate with the children or to provide for the care and support of the children as required by law or judicial decree. Ark. Code Ann. § 9-9-207(a)(2) (Supp. 2011). The essential question is whether appellee intentionally abandoned his children and failed to support them or whether he was reasonably unable to do so by virtue of a tragic occurrence, accident, mental illness, and obstruction on the part of appellant. The trial court emphatically found that appellee had justifiable cause for his lapses and that his improving condition and devotion to the children were such that it would be contrary to the children's best interest to sever the parental relationship by granting the adoption. On this record, we cannot say that it clearly erred in so finding.

Affirmed.

WYNNE and BROWN, JJ., agree.

Hilburn, Calhoon, Harper, Pruniski & Calhoun, LTD., by: *Traci LaCerra*, for appellant.

Medlock and Gramlich, LLP, by: *Lucas Gramlich*, for appellee.