

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

IN RE: ADOPTION OF JOHN JACOB	:	APPEAL NOS. C-081281
ASSITER CRANDALL AND GEORGE	:	C-081296
DUNCAN ASSITER CRANDALL	:	TRIAL NO. 2005003325
	:	<i>JUDGMENT ENTRY.</i>

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

In December 2003, a Texas court granted custody of John Jacob Assiter Crandall and George Duncan Assiter Crandall to their maternal stepgrandmother, Debora Crandall, who lives in Cincinnati, Ohio. In its final order, dated May 28, 2004, the Texas court appointed Crandall the permanent managing conservator of the children.<sup>2</sup> Ann Assiter, the children's biological mother, was named a possessory conservator, which allowed her limited visitation rights.

In July 2005, Crandall filed a petition to adopt the children in the Hamilton County Court of Common Pleas, Probate Division. A magistrate of the probate court denied Assiter's motion to dismiss the petition for lack of subject-matter jurisdiction. And following an extensive hearing, the magistrate determined that the adoption by Crandall was in the best interest of the children. The probate court overruled Assiter's objections to the magistrate's decisions and granted Crandall's petition for adoption.

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

<sup>2</sup> Tex.Fam.Code 153.371.

Assiter filed a motion for a new trial, asserting again that the probate court lacked jurisdiction. After the magistrate had denied the motion, Assiter filed objections, and Crandall moved for attorney fees under Civ.R. 11.

The probate court denied Assiter's objections to the magistrate's decision and overruled Crandall's motion for attorney fees. Both parties have appealed.

In her first assignment of error, Assiter now argues that the trial court erred by failing to dismiss Crandall's adoption petition for lack of jurisdiction. Assiter contends that the Texas court had continuing jurisdiction over the case.

In July 2008, the Texas court issued an order denying Assiter's motion for enforcement of its order for access to the children and declined to hold Crandall in contempt.<sup>3</sup> Because the children, Crandall, and Assiter resided in Ohio, the court determined that Texas was an inconvenient forum and that it would transfer the matter to the appropriate Ohio court.

The original and exclusive jurisdiction over adoption proceedings is vested in the probate court.<sup>4</sup> "Jurisdiction exists notwithstanding the fact that the custody of the minor child involved is within the continuing jurisdiction of another court."<sup>5</sup> So the continuing jurisdiction of the Texas court over the custody of Assiter's children did not present a jurisdictional bar to the adoption proceedings in the probate court.<sup>6</sup> Interestingly, an argument is often raised that jurisdiction over adoption proceedings that have originally begun as dependency or custody litigation in the juvenile court system should be retained in the juvenile court system, thus providing a "seamless" process for the petitioner and the child who is the subject of the litigation. This one child-one court process would provide a historical perspective to the case, not to

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<sup>3</sup> Tex.Fam.Code 157.001.

<sup>4</sup> *State ex rel. Portage Cty. Welfare Dept. v. Summers* (1974), 38 Ohio St.2d 144, 311 N.E.2d 6.

<sup>5</sup> *In the Matter of the Adoption of Vitatoe* (Mar. 20, 1985), 1st Dist. No. C-830310, citing *In re Adoption of Biddle* (1958), 168 Ohio St. 209, 152 N.E.2d 105, and *In re Johnson* (1978), 56 Ohio App.2d 265, 382 N.E.2d 1176.

<sup>6</sup> See *State ex rel. Hitchcock v. Cuyahoga Cty. Ct. of Common Pleas* (1994), 97 Ohio App.3d 600, 647 N.E.2d 208.

mention the input that could be provided by the child's original, juvenile-court appointed, guardian ad litem, thus aiding the court in its best interest determination. But that is not the law in Ohio. Accordingly, we hold that the probate court properly exercised jurisdiction over the adoption proceedings in this case. We overrule the first assignment of error.

In her second assignment of error, Assiter argues that the trial court erred by "interviewing the minor children on multiple occasions until the minor child changed his decision that he did want be adopted [sic]." Assiter contends that, at some point, one of the children had not consented to the adoption.

First, we note that Assiter has failed to direct us to any point in the record that would indicate that either of the children had expressed opposition to being adopted. Instead, the record reflects several instances in which the children had expressed their desire to be adopted.

The children told a social worker in 2005 that they wanted Crandall to adopt them. In August 2007, both children executed written consent to the adoptions in the presence of the court, pursuant to R.C. 3107.06(E). In September 2007, during the best-interest hearing, one of the children became upset during questioning by Assiter's counsel. The magistrate questioned the child outside the presence of the parties and counsel, and the child reiterated that he wanted to be adopted by Crandall. The magistrate then allowed counsel to question the child without Crandall or Assiter in the courtroom. Both children testified that they wanted to be adopted by Crandall.

The probate court went to great lengths to ensure that the children desired adoption. Accordingly, we overrule the second assignment of error.

In her third assignment of error, Assiter argues that the trial court erred by determining that she "was not going to regain custody of the minor children."

At several points during the best-interest hearing, the magistrate referred to the Texas court's custody order. And the magistrate correctly pointed out that regardless of whether she granted the adoption petition, the children at that point would remain with Crandall, who would either be their parent or remain their custodian. Accordingly, we overrule the third assignment of error.

In her fourth assignment of error, Assiter argues that the trial court erred by determining that adoption was in the best interest of the children.

In determining whether to grant or deny an adoption, a trial court must consider "(1) whether the petitioner is suitably qualified to care for and rear the child, and (2) whether the best interests of the child will be promoted by the adoption."<sup>7</sup> When a court makes a determination in a contested adoption concerning the best interest of a child, the court must consider all relevant factors, including those in R.C. 3107.161(B).

In this case, after considering the statutory factors, the trial court determined that the children's best interest would be promoted by their adoption. Following our review of the record, we are convinced that the court did not abuse its discretion in granting Crandall's petition for adoption. Accordingly, we overrule the fourth assignment of error.

In her cross-appeal, Crandall argues that the trial court erred by denying her Civ.R. 11 motion for sanctions. She contends that Assiter's motion for a new trial was filed for purposes of delay because it merely reiterated the arguments she had made in her unsuccessful motion to dismiss. We will not reverse a trial court's decision on a motion for sanctions absent an abuse of discretion.<sup>8</sup>

We cannot say that the trial court abused its discretion by refusing to award sanctions. Assiter's motion for a new trial was filed after the Texas court had issued

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<sup>7</sup> *In re Ridenour* (1991), 61 Ohio St.3d 319, 574 N.E.2d 1055.

<sup>8</sup> *State ex rel. Fant v. Sykes* (1987), 29 Ohio St.3d 65, 505 N.E.2d 966.

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a ruling on her contempt motion. There was no evidence that Assiter's attorney had willfully violated Civ.R. 11. Crandall's assignment of error is overruled, and the judgment of the trial court is affirmed.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HENDON, P.J., SUNDERMANN and CUNNINGHAM, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on September 9, 2009

per order of the Court \_\_\_\_\_.

Presiding Judge