

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

IN THE INTEREST OF: D.D.C.;
N.J.A. AND A.R.A.

Plaintiff
Respondents

v.

D.C. (Natural Father)

Appellant

DOCKET NUMBER **WD73294**

DATE: August 16, 2011

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Marco Antonio Roldan, Judge

Appellate Judges:

Division Two
Thomas H. Newton, P.J., Cynthia L. Martin, and Gary D. Witt, JJ.

Attorneys:

David W. Whipple, Independence, MO
Jamie L. Beucke, Independence, MO

Counsel for Appellant
Co-Counsel for Appellant

Attorneys:

James A. Waits, Kansas City, MO
Anastacia R. Adamson, Kansas City, MO

Counsel for Respondents
Counsel for Plaintiff

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

IN THE INTEREST OF: D.D.C.; Plaintiff, N.J.A. AND A.R.A.,
Respondents, v. D.C. (Natural Father), Appellant

WD73294

Jackson County

Before Division Two Judges: Newton, P.J., Martin, and Witt, JJ.

Child was born in September 2006 to Father and Mother who both used methamphetamine in the home. In September 2007, Father moved to Arizona.

In June 2008, Child came under the juvenile court's jurisdiction due to Mother's drug use and was placed with Foster Parents. Father was subsequently incarcerated for unpaid child support for his other children in Arizona. Meanwhile, in February 2009 Mother gave birth to Half-Brother, who was also placed with Foster Parents.

Father returned to Kansas City in May 2009 and moved in with Mother. He contacted the Children's Division and was subsequently allowed bi-weekly visitation with Child. Father voluntarily participated in individual and joint counseling and weekly drug testing. He did not provide adequate support for Child.

In September 2009, Foster Parents petitioned for termination of Mother and Father's parental rights and sought to adopt Child and Half-Brother. Hearing was held in September and October 2010. At the commencement of hearing, the Commissioner ordered Father and Mother be drug tested. Mother subsequently consented to termination of her rights and Child's adoption. Father's test results were positive for methamphetamine use within the prior 90 days. The Commissioner terminated Father's parental rights and granted the adoption. The trial court subsequently adopted the Commissioner's findings. Father appeals.

AFFIRMED.

Division Two Holds:

Termination of parental rights requires the trial court find a statutory ground for termination and that termination is in the child's best interest. In his first point, Father argues that the trial court erred in terminating his parental rights under subsection 211.447.5(2) for a chemical dependency and a failure to support. We agree that the trial court erred in terminating his rights for a chemical dependency under 211.447.5(2)(b) because the plain language of that subsection states that it requires a chemical dependency, which cannot be treated. No showing was made that Father's dependency could not be treated. However, we affirm the trial court's finding of a ground for termination under 211.447.5(2)(d) for Father's failure to provide adequate support when able to do so. Further, the trial court also found Father to be an unfit parent based on a pattern of drug abuse before Child, which is a ground for termination under subsection 211.447.5(6). Father does not dispute this ground and the trial court's finding was supported by the evidence. Because the trial court's decision must only be supported by one

ground for termination and two grounds were sufficiently shown, we do not address Father's other arguments on the issue.

In his third point, Father argues that the trial court failed to properly consider whether termination was in Child's best interest pursuant to the factors delineated in 211.447.7. We do not agree. The trial court made findings on each factor that were supported by the record. On balance, we cannot find that the trial court abused its discretion in finding that termination was in Child's best interest.

In his fifth point, Father argues that the trial court erred in terminating his parental rights because the trial court failed to follow statutory procedures. Because Father did not preserve these claims, we review them for manifest injustice. Father first argues that because the trial court did not order an investigation and social study as required by section 211.455, the termination of his rights must be reversed. We do not agree. While failure to comply with the statutory procedures is reversible error, a manifest injustice did not occur because of the quantity of other testimonial and documentary evidence before the trial court. Father next argues that the trial court failed to follow the procedures to order an investigation and report for adoption as required by sections 453.070 and 453.077. The trial court's judgment states that it received a report. Although Father argues the content of the report was not in compliance with the statutes, he did not provide the exhibit on appeal. We presume evidentiary omissions support the trial court's decision and given the other evidence before the trial court as to the suitability of Foster Parents and Child for adoption, we find little indication of a manifest injustice. Father further argues that pursuant to statutory procedure, the juvenile officer was required to be joined as a party. His argument is incorrect. The statute on which he relies requires the joinder of either the juvenile officer or the Division and in the instant case, the Division was made a party and participated at trial.

Finally, Father argues that the petition failed to allege specific facts leading to grounds for termination, and thus failed to provide notice to Father. A petition for termination of parental rights must conform to Rule 113.01a and section 211.452. Under these rules we have held that a petition is sufficient if it tracks the language of the statute and gives the parent adequate notice of the allegations. Here, the petition alleged each of the statutory grounds for termination found by the trial court. The allegations were sufficient to inform Father of the charges.

Therefore, we affirm the trial court's judgment.

Opinion by Thomas H. Newton, Presiding Judge

August 16, 2011

* * * * *

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.