MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE:

IN THE INTEREST OF: E.B.M.;

Juvenile

JUVENILE OFFICER,

Respondent

v.

B.M.

Appellant

DOCKET NUMBER WD83612

DATE: September 29, 2020

Appeal From:

Circuit Court of Jackson County, MO
The Honorable James Dale Youngs, Judge

Appellate Judges:

Division One
Thomas H. Newton, P.J., Mark D. Pfeiffer and Edward R. Ardini, Jr., JJ.

Attorneys:

Katie Rooney, Kansas City, MO	Counsel for Appellant

Attorneys:

Michael Herrin, Kansas City, MO	Counsel for Respondent
Lori Stipp, Kansas City, MO	Co-Counsel for Respondent
Monica Hutchinson-Penrose, Kansas City, MO	Co-Counsel for Respondent
Mary Mann, Kansas City, MO	Counsel for Juvenile

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

IN THE INTEREST OF: E.B.M., Juvenile;
JUVENILE OFFICER, Respondent,
v.
B.M., Appellant.

WD83612 **Jackson County**

Before Division One Judges: Newton, P.J., Pfeiffer and Ardini, JJ.

The Jackson County Circuit Court terminated the Father's parental rights in E.B.M. (the Child). The court found that he abandoned the Child by failing to support the Child and by not contacting the Child except for a visit two days after the child was born in Kansas City in January 2018. The court ruled that Father did not rectify, or repent, the abandonment because he made only token visits with the Child and provided token support in the form of gifts, formula, clothes, and diapers after he was permitted by the court to contact the Child when an August 2018 paternity test proved that he was the biological father. The Father had limited income. He would travel up to 20 hours round-trip by bus at a cost of $250-$300, sometimes sleeping in the bus station, for a one-hour supervised visit with the Child, a trip he made six times between November 2018 and October 2019. Although the Children's Division had been ordered to initiate an Interstate Compact on the Placement of Children (ICPC) home study for Father shortly after the Child was born, that study was not completed in Father's home state of Indiana, where he chose to reside to be near his two teenaged children, until after the termination hearing ended in December 2019. The court denied a request to postpone the hearing pending completion of the home study and overruled a motion for new trial on the basis of newly discovered evidence—the January 2020 ICPC home study.

REVERSED AND REMANDED.

Division One holds:

Father challenges the trial court's ruling on ten grounds, but we address only the ninth. He argues that the trial court abused its discretion by failing to grant the motion for new trial. Missouri courts rarely grant a new trial on the basis of newly discovered evidence. But a new trial may be granted if the evidence came to the party's knowledge since trial, due diligence would not have uncovered the evidence sooner, the new evidence is so material that it would probably produce a different result, and the evidence is not cumulative.

On this record, we find that the ICPC home study, completed after the trial court terminated Father's parental rights in January 2020, could not have been uncovered sooner despite counsel's repeated efforts to obtain it. We also suggest that the home study may have produced a different

result given the trial court's acknowledgement that the case was close. The court stated that Father was in a "Catch 22" situation—he was not permitted by court order to contact the Child until the paternity test was completed, yet he was alleged to have abandoned the Child due to a lack of contact in the first months of the Child's life. And the court stated that it was willing to consider the home study, along with all the other evidence, if it were completed while the parties prepared post-hearing briefs. The home study is only cumulative of other evidence as to the location, cleanliness, size, and suitability of Father's home, which were matters an Indiana caseworker testified about during the termination hearing. The home study also reveals considerable information about Father's character, which is not marked by addictions or a disabling mental condition, and about his interest in the Child. These are matters that bear on a termination ruling and are relayed by individuals who work with a sister-state social-services agency and recommend the Child's placement with Father. Accordingly, this Court rules that the trial court erred in failing to grant Father's motion.

We reverse the judgment and remand for the trial court to reconsider its conclusions as to the grounds for termination of parental rights in light of the ICPC home study.

Opinion by: Thomas H. Newton, Presiding Judge September 29, 2020

* * * * * * * * * * * * * * * * * *

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