

**ARKANSAS COURT OF APPEALS**

DIVISION III  
No. CA11-1177

ELBERT LEWIS and CAROLYN LEWIS  
APPELLANTS

V.

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES and MINOR  
CHILD

APPELLEES

Opinion Delivered May 16, 2012

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT,  
ELEVENTH DIVISION  
[NO. JV2011-466]

HONORABLE JAMES P. HAMILTON,  
JUDGE

AFFIRMED

---

**RAYMOND R. ABRAMSON, Judge**

Appellants Elbert and Carolyn Lewis filed a petition for adoption on March 23, 2011, in Pulaski County Circuit Court. Appellants sought to adopt M.B., born December 19, 2008, for whom they had been foster parents. The Arkansas Department of Human Services (DHS) opposed the petition. The court denied the adoption petition, and the Lewises have appealed that decision. We affirm.

On June 17, 2011, the same day as the hearing, DHS filed a motion to dismiss, alleging deficiencies in the petition for adoption and that documents required under Arkansas Code Annotated section 9-9-212 had not been filed. After hearing the arguments of counsel, the court proceeded to hold a hearing on the merits of the adoption petition.

At the hearing, Brenda Keith, an adoption specialist for DHS, testified that she had initiated the adoption of M.B. for appellants. M.B. came into DHS custody at birth and was



placed in foster care with appellants. Parental rights were terminated in April 2009. In October 2010, Keith initiated the adoption of M.B. by appellants. There were some delays in the process because of their adult daughter's criminal history; those were resolved when she eventually moved out. Keith learned that Mr. Lewis was charged with driving while intoxicated (DWI), and he told her that he had an attorney "who would take care of this." Then, she was informed of allegations that the Lewises' son was having sex with a minor foster child, and all foster children were removed from the Lewises' home. While Keith conceded that M.B. was well cared for in appellants' home and had bonded with them, the DWI and sex allegations caused DHS to change course. Keith testified that she was currently attempting to find an adoptive home for M.B. with his siblings.

Next, Lanea Blagburn, a senior investigator with the Arkansas State Police Crimes Against Children Division, testified that she investigated allegations that appellants' adult son Nigel had sex with their fifteen-year-old foster child. She found that there was not enough evidence to prove that appellants knew that the sex was occurring in their home, but they had not fully cooperated with some of the questions. DHS did not pursue formal charges against the Lewises. According to Blagburn, however, the allegations of sexual contact between Nigel and the foster child were true. The other foster children told Blagburn that Nigel lived in appellants' home, but appellants denied this. The children also stated that they were left in Nigel's care when appellants were not home. Blagburn further testified that there was a similar incident involving Nigel in Utah and that he had fathered a child with an underage girl in Arkansas.



Diana Johnson, who is married to Mrs. Lewis's brother, testified that she and her husband lived with appellants for one or two months at the beginning of 2009. She testified regarding the living arrangements and her observation of appellants as good, loving foster parents. Gloria Lewis Woods, Mr. Lewis's sister, testified regarding Nigel, the foster children, and their family life.

Appellant Elbert Lewis testified next. He stated that he and his wife had a foster-care home for about three years. They have three biological children and two adopted children. He testified that he received a DWI in October 2011 after drinking two beers. He testified that he always worked two or three jobs, working long hours. He testified that he did not lose his driver's license as a result of the DWI; rather, he had an interlock device installed on his vehicle the second day and did everything else he was supposed to do. He did not inform his supervisors at his job at Greater Little Rock Community Mental Health, where he supervised drivers, of his DWI. Lewis testified regarding the family's love for M.B. He denied any knowledge of Nigel and his foster daughter's sexual relationship and stated that he would have reported it had he known about it. He stated that Nigel's victim was asked to leave because she was stealing; he denied treating her any differently than his other children (particularly his daughter with theft-by-receiving charges who continued to live in his home). He acknowledged that Nigel visited the home, but stated that he was never left alone with the foster children. He further acknowledged that his wife's uncle, who was "slow," had lived on their property in a shed.



Finally, appellant Carolyn Lewis testified. She also denied that Nigel had ever been left alone with the foster children or that she knew anything about him having sexual contact with the foster child until she was approached by an officer. She estimated that he had stayed overnight in her home on twelve different occasions after the foster daughter had come to live with them. She did not think to tell DHS about the Utah incident because Nigel had not been actually charged; Mr. Lewis, on the other hand, testified that Nigel had been found not guilty of sexual penetration in Utah.

After Mrs. Lewis's testimony, DHS moved for a directed verdict, which the court granted from the bench. The court entered an order dismissing appellants' petition for adoption on August 10, 2011. The court found that there was insufficient evidence to show that the adoption was in the minor's best interest or that DHS was unreasonably withholding its consent to the petition, citing the evidence that appellants' adult son lived in their home and that Mrs. Lewis's uncle lived in substandard housing on appellants' property without DHS's knowledge while they were licensed foster parents. The court specifically found that the testimony of both petitioners lacked credibility. The court found that appellants did not file the following documents as required by statute: a description and estimate of value of any property of the individual to be adopted; a written home study; criminal background checks; child-maltreatment-registry background checks; a statement that an inquiry has been made to the putative father registry; proof that the biological parents' consent was not required; or a health and social history. Appellants' request to withdraw their petition was denied. The



court stated, “This matter was fully adjudicated and is dismissed on the merits of the Petition for Adoption.”<sup>1</sup> Appellants filed a timely notice of appeal on September 1, 2011.

Before an adoption petition can be granted, the circuit court must find from clear and convincing evidence that the adoption is in the best interest of the child. *In re Adoption of M.K.C.*, 2009 Ark. 114, at 2, 313 S.W.3d 513, 514. We will not reverse a circuit court’s decision regarding the best interest of a child to be adopted unless it is clearly against the preponderance of the evidence, giving due regard to the opportunity and superior position of the circuit court to judge the credibility of the witness. *Id.*

Arkansas Code Annotated section 9-9-206(a)(3) (Repl. 2009) states that “a petition to adopt a minor may be granted only if written consent to a particular adoption has been executed by any person lawfully entitled to custody of the minor or empowered to consent.” An exception to this requirement exists if the guardian “has failed to respond in writing to a request for consent for a period of sixty (60) days or who, after examination of his or her written reasons for withholding consent, is found by the court to be withholding his or her consent unreasonably.” Ark. Code Ann. § 9-9-207(a)(8) (Repl. 2009). This code section grants the circuit court the authority to decide whether DHS, as the legal guardian of M.B., had unreasonably withheld its consent to adopt.<sup>2</sup> See *Davis-Lewallen v. Clegg*, 2010 Ark. App. 627, at 8.

---

<sup>1</sup>We note that the court purported to both grant the motion for directed verdict under Ark. R. Civ. P. 50 and adjudicate the matter on the merits.

<sup>2</sup>There was no evidence that appellants sought DHS’s consent.



Here, appellants argue that the circuit court erred in determining that it was not in the best interest of the child to be adopted. They point to the following evidence: M.B. had lived with them for over two years; they had bonded; all charges against them regarding sex in their home had been dropped, and they had been removed from the child-maltreatment registry; there was no evidence that Mr. Lewis regularly abused alcohol or that he had ever driven with children after consuming alcohol. Under our adoption statutes, however, the petitioner must prove that any required consent has been obtained or excused. So, while appellants do not frame the argument this way, the issue is whether the evidence supports a finding that DHS was not unreasonably withholding its consent to the adoption.<sup>3</sup> On this record, we find no reversible error in the trial court's determination that DHS was not unreasonably withholding consent to the adoption petition. Therefore, it is unnecessary to reach appellants' argument

---

<sup>3</sup>

(c) If at the conclusion of the hearing the court determines that *the required consents have been obtained or excused* and the required period for the withdrawal of consent and withdrawal of relinquishment have passed and that the adoption is in the best interest of the individual to be adopted, it may (1) issue a final decree of adoption; or (2) issue an interlocutory decree of adoption which by its own terms automatically becomes a final decree of adoption on a day therein specified, which day shall not be less than six (6) months nor more than one (1) year from the date of issuance of the decree, unless sooner vacated by the court for good cause shown.

(d) *If the requirements for a decree under subsection (c) of this section have not been met, the court shall dismiss the petition* and the child shall be returned to the person or entity having custody of the child prior to the filing of the petition.

Ark. Code Ann. § 9-9-214 (emphasis added).



Cite as 2012 Ark. App. 347

that the court erred in denying their motion for a continuance so that they could cure deficiencies in the adoption petition.

Affirmed.

GLOVER and HOOFFMAN, JJ., agree.

*Chad M. Green*, for appellants.

*Tabitha B. McNulty*, Office of Chief Counsel, for appellee.

*Chrestman Group, PLLC*, by: *Keith L. Chrestman*, attorney ad litem for minor child.