NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 CU 1234

SUSAN K. POIRIER

VERSUS

ROBIN POIRIER

Judgment Rendered: OCT 31 2008

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On Appeal from the Family Court
In and For the Parish of East Baton Rouge
State of Louisiana
Docket No. F144,608

Honorable Jennifer Luse, Pro Tempore, Judge Presiding

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Roy H. Maughan, Jr.
Baton Rouge, Louisiana

Counsel for Plaintiff/Defendant-in-Rule/Appellee
Susan K. Poirier

Deborah P. Gibbs
Baton Rouge, Louisiana

Counsel for Defendant/Plaintiff-in-Rule/Appellant
Robin Poirier

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BEFORE: PARRO, McCLENDON, AND WELCH, JJ.

McCLENDON, J.

Robin Poirier, the adoptive father of three children,[1] appealed the denial of his request to lift a previously imposed restriction on the children's visitation with the biological family of the oldest child (the biological family) and the grant of a request by the adoptive mother, Susan K. Poirier (whose married name at the time of trial was Brown), as to the choice of school for one of the children. After a thorough review, we find that the record contains sufficient evidence to support the findings of the trial court, and we cannot say that the trial court was clearly wrong or abused its discretion.[2] Thus, we affirm.

It is well settled that an appellate court may not set aside a trial court's factual finding unless it is clearly or manifestly wrong. Of course, legal errors may serve as a basis for reversal if the errors are prejudicial, that is, the errors "materially affect the outcome and deprive a party of substantial rights." **Evans v. Lungrin**, 97-0541 & 97-0577, pp. 6-7 (La. 2/6/98), 708 So.2d 731, 735.

On the issue of restrictions, we initially note that, unlike the case relied on by Mr. Poirier, **Mathews v. Mathews**, 99-2358 (La.App. 1 Cir. 11/3/00), 770 So.2d 527, the requisite supervision herein does not concern or apply in any way to visitation between the children and either of their adoptive parents.[3] Additionally, the restrictions in this case were agreed to by the adoptive parents in an earlier stipulated judgment, which was signed on October 24, 2002, and imposed only on the biological family. In pertinent part, the 2002 stipulated judgment ordered that overnight visitation with the biological family was prohibited and that only supervised visitation was allowed. The 2002 judgment

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[1] The three adopted children are not biologically related to each other, but Mr. Poirier is related to the oldest child.

[2] Mr. Poirier also assigned error to the trial court's admission of e-mails and pictures concerning one of the children. However, Mr. Poirier did not provide argument in his brief, and the evidence at issue, which was presented during the testimony of the child, not the adoptive mother as stated by appellant, was admitted at trial with the agreement of Mr. Poirier's counsel and without specific objection under LSA-C.C.P. art. 1635. See URCA-Rule 2-12.4.

[3] Subject to the applicable law governing the possibility of continuing contact, a valid adoption generally terminates any remaining rights of the biological family. LSA-Ch.C. art. 1218; see LSA-Ch.C. art. 1269.1, et seq.

also provided that the parties reserved "the right to seek modification [of the stipulations] without the necessity of showing a change in circumstances . . . ."

From our review of the record before us, the trial court could have reasonably found that serious concerns still surrounded the biological family. Specifically, the trial court could have made credibility determinations and found that several generations of the biological family lived in the same household and that one couple was not married. In addition, the trial court could have determined that, at the very least, one member of the biological family had behaved inappropriately with the biologically related child. The record also supports a finding that, although the biological father was no longer living in the same household, he had sexually molested his biological child, who was the oldest adopted child, at an early age, and that the child, who was a young teen at the time of trial, had recently exhibited poor judgment and risky behavioral choices. Finally, the record supports a finding that a non-family member of the biological family's household had experienced drug related problems in the recent past, and that another member of the household had a criminal record. Thus, based on the record before us, and regardless of whether Mr. Poirier, as the mover for the change, or Mrs. Brown had the burden of proof, we cannot say that the trial court abused its discretion or made an unsupportable or unreasonable decision in holding that continuation of the supervised visitation for all three of the adopted children was in their best interest. See LSA-C.C. art. 136.

With regard to the school issue, Mr. Poirier wanted the second oldest child to change school systems and attend the same private school as the other two children. He testified by deposition that he believed his choice was in the best interest of the child. Mrs. Brown testified that continuity for the particular child was in her best interest; an opinion that was confirmed at trial by the child's fifth grade teacher.

The judgment dated December 14, 2004, appointed Mr. Poirier as the domiciliary parent and provided that all prior judgments that were not

inconsistent with the 2004 judgment "shall remain in full force and effect." On appeal, Mr. Poirier argues that the parties' prior agreement in the 2002 stipulated judgment, that they would jointly agree on educational decisions, was inconsistent with his rights as the domiciliary parent and was thus overruled. However, even if the LSA-R.S. 9:335B(3) presumption in favor of the domiciliary parent's educational decisions applied, the result would be the same. The trial court, under the same statute, had the right to review Mr. Poirier's decision upon Mrs. Brown's challenge, and the record reasonably supports a finding that Mrs. Brown sufficiently rebutted the statutory presumption and met her burden of proof. Mr. Poirier cited no authority for his claim that the standard of proof rose to a higher level than preponderance of the evidence and the statute itself contains no such requirement. See **Talbot v. Talbot**, 2003-0814, pp. 9-12 (La. 12/12/03), 864 So.2d 590, 598-600.

Admittedly, although the child in question was quite shy, she had an excellent record at the elementary school in the Episcopal school system, and had developed a close circle of positive relationships with her friends at school. The child had also expressed a preference for continuing on to the next school in the Episcopal system, which served the sixth and higher grades, and was the same school that would be attended by the child's close friends. On all other points, the testimony in the record either failed to support Mr. Poirier's decision to send the child in question to a different private school or was equivocal. Thus, we cannot say that the court below clearly erred or abused its discretion in continuing the child's education in the Episcopal school system.

For these reasons, we affirm the judgment in this memorandum opinion issued in compliance with URCA Rule 2-16.1.B. The costs of the appeal are assessed to appellant, Robin Poirier.

AFFIRMED.