IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION

NATHANIEL BOWERMAN, JR., and BRIDGET CHADWICK, EX REL.,	)	C/A NO. 03A01-9601-CV-00012
	)	HAMILTON LAW
ON BEHALF OF	)	
	)	HON. WILLIAM L. BROWN,
ADAM MICHAEL BOWERMAN, D.O.B. 6-5-84	)	JUDGE
	)	
Plaintiffs-Appellants,	)	
	)	
v.	)	
	)	
NATHANIEL BOWERMAN, SR., and LOUISE BOWERMAN,	)	AFFIRMED
	)	AND
Defendants-Appellees.	)	REMANDED

S. DAWN COPPOCK, Strawberry Plains, for Plaintiffs-Appellants.

MARTIN J. LEVITT, LEVITT & LEVITT, Chattanooga, for Defendants-Appellees.

OPINION

Franks. J.

In this action, Nathaniel Bowerman, Jr., the natural father of Adam Michael Bowerman, is seeking custody of Michael and also seeks to set aside a decree of adoption by defendants, paternal grandparents of Michael, entered on November 5, 1986.

Following an evidentiary hearing, the Trial Judge ruled that the adoption was valid and that plaintiff had abandoned the child.

Plaintiff has appealed, and raises the following issues:

A. Were the birth parents' rights properly terminated and if they were not can a valid adoption be based on fraudulent or invalid termination of parental rights?

B. Based upon the particular facts of this case, was there a legal abandonment?

C. If there has been no valid adoption and no abandonment, can a non-parent deprive a fit parent of custody of his child.

We do not reach these issues because this action is essentially a collateral attack on an adoption decree.

The record reveals that on July 7, 1986, a petition of adoption was filed in the Circuit Court of Hamilton County styled: ?Nathanial Bowerman, Sr., and Louise Bowerman, natural grandparents, and Nathanial Bowerman, Jr., natural father, petitioners?. The petition shows that it was signed by all three parties. At the trial of this cause, Nathanial Bowerman, Jr., testified that he had never signed a surrender document, nor signed any papers in connection with this adoption, and that he was not aware of the adoption until sometime in 1993. There is evidence in the record that he was in Chattanooga at his parents' home in June of 1986, and there is testimony that he went to the office of the lawyer who handled the adoption to sign papers pertaining to the adoption.

The Trial Court, in making his findings, commented that some of the plaintiff's testimony was ?ludicrous? and he accredited the defendants' testimony made without objection that plaintiff joined in and was agreeable to the adoption, that he told Mr. Epstein the child wasn't his, and whatever

they did was ?ok.? The Court specifically found that plaintiff knew of the adoption and acquiesced in the adoption, and concluded by saying that he found ?the credibility of the witnesses in conflict and the testimony weigh heavily in favor of Mr. and Mrs. Bowerman . . . and against the credibility of Nathan Bowerman, Jr.?

Plaintiff insists on appeal that the adoption is invalid because he did not legally surrender the child to his parents, nor were his parental rights terminated in a judicial proceeding. *Citing Nale v. Robertson,* 871 S.W.2d 674 (Tenn.. 1994). Plaintiff's reliance on *Nale* is misplaced. This jurisdiction has long held in adoption cases, if the natural parent is before the Court, either voluntarily or by personal service, the Court has jurisdiction of the adoption proceeding, regardless of whether the parent has legally surrendered the child for adoption. *Young v. Smith, et al.*, 191 Tenn. 25 (1950). Given the Trial Court's assessment of the credibility of the witnesses, the evidence preponderates that plaintiff knew of the adoption proceeding and joined therein, and the adoption decree is *res judicata* as to this issue.

The plaintiff cites several alleged irregularities in the adoption proceedings, including the insistence that the natural mother's surrender did not comport with Tennessee law.

The pertinent statute in force at the time of this adoption provides:

> **T.C.A. §36-1-127. Binding effect of adoption. -** (a) When a child is adopted pursuant to the provisions of this part, the adoptive parents shall not thereafter be deprived of any rights in the child, at the insistence of the natural parents or

> otherwise, except in the same manner and for the same causes as are applicable in proceedings to deprive natural parents of the children.
>
> (b) After the final order of adoption is signed, no party to an adoption proceeding, nor anyone claiming under such a party, may later question the validity of the adoption proceeding by reason of any defect or irregularity therein, jurisdictional or otherwise, but shall be fully bound thereby, save for such appeal as may be allowed by law. . . .

While strict compliance with the adoption statute is required in context of appellate review of the actions of lower courts, we said in *Brown v. Raines*, 611 S.W.2d 594 (Tenn. App. 1980):

> This requirement does not apply, however, when a final decree of adoption, no longer subject to appeal, is attacked either collaterally or by an independent action in equity for relief from a judgment. In this situation, the provisions of T.C.A. §36-127 apply:
>
> > After the final order of adoption is signed, no party to an adoption proceeding, nor anyone claiming under such a party, may later question the validity of the adoption proceeding by reason of any defect or irregularity therein, jurisdictional or otherwise, but shall be fully bound thereby, save for such appeal as may be allowed by law.
> >
> > . . .
> >
> > The same result has been reached in cases antedating the statute. Under prior case law an independent or collateral attack on a final decree of adoption could be maintained only upon a showing that the court rendering the decree lacked subject matter jurisdiction . . . Thus under either T.C.A. §36-127 or prior case law, the appellant as a party to the original proceedings is now foreclosed from claiming that the adoption is void because of the failure to comply with the surrender requirement.

P. 596.

We hold that plaintiff is precluded from raising these issues in his collateral attack on the adoption decree.

Finally, there is a public policy issue to take into account, as mentioned in *Brown*. The Trial Court found that

plaintiff was aware of the adoption, acquiesced therein, yet this action was not filed until March 27, 1995. In *Brown* we said it was difficult to pinpoint the exact time when a collateral attack should be filed. However, we held in that case that seven years was too long. In this case, the action was brought after nine years, and for this reason alone the attack on the adoption decree would be disallowed.

The judgment of the Trial Court is affirmed, and the cause remanded at appellants' cost.

_____
Herschel P. Franks, J.

CONCUR:

_____
Houston M. Goddard, P.J.

_____
Charles D. Susano, Jr., J.