MEMORANDUM DECISION

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IN THE

Court of Appeals of Indiana

In re the Adoption of B.Z. and J.Z. (Minor Children),

J.B. and D.B.,

Appellants-Petitioners

v.

N.B. and D.Z.,

Appellees-Respondents

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Court of Appeals
and Tax Court

July 25, 2024

Court of Appeals Case No.
24A-AD-27

Appeal from the Vanderburgh Superior Court

The Honorable Travis Clowers, Special Judge

Trial Court Cause Nos.
82D04-2207-AD-105
82D04-2207-AD-106

Memorandum Decision by Judge Kenworthy

Judges Riley and Felix concur.

Kenworthy, Judge.

Case Summary

[1] J.B. and D.B. (collectively, "Grandparents") appeal the denial of their petitions to adopt J.Z. and B.Z. (collectively, "Children"). Grandparents argue the trial court incorrectly found natural parent consent was required before adoption. Because the primary concern in every adoption proceeding is the best interests of the child, we affirm.

Facts and Procedural History

[2] N.B. ("Mother") and D.Z. ("Father") (collectively, "Parents") are the natural parents of J.Z.—born on November 20, 2013—and B.Z.—born on December 8, 2014. In June 2017, the Department of Child Services ("DCS") alleged Children were children in need of services ("CHINS") and removed them from Parents' home. DCS placed Children with Grandparents. Around the same time, Father was arrested and charged with multiple criminal offenses. As a result, Father was incarcerated until December 2017. The CHINS case was closed in April 2018 and Children were returned to Parents' care. Just days later, however, Mother was hospitalized due to illicit substance use. Soon after, Grandparents were named emergency temporary guardians over Children. The guardianships became permanent in August 2018, over Parents' objections.

[3] In fall 2018, Father was arrested and later convicted of several felony offenses for which he received an aggregate three-year sentence in the Indiana Department of Correction ("DOC"). Meanwhile, Mother started in-patient treatment at the Healing Place, a recovery center in Louisville, Kentucky. Children remained with Grandparents. Mother completed her treatment in April 2019 and has remained sober since.

[4] In July 2021, Father was released from the DOC and began supervised community transition while living at the Volunteers of America ("VOA"). During his ten-month stint on work release, Father voluntarily enrolled in counseling and parenting classes, which he completed in February 2022. Father was permitted to leave the VOA four months early and started his probation and parole thereafter. Father then began renting a house and rejoined the Pipefitters Local 136 union as an apprentice. Father has not had a positive drug screen since his release from the DOC.

[5] Grandparents petitioned to adopt Children in July 2022. Parents objected. A few months later, Father moved to terminate Grandparents' guardianships over Children. Toward the end of 2022, Parents and Grandparents agreed on parenting time and the trial court dismissed the adoption petitions without prejudice. Around the same time, Father was arrested following an argument in a bar. The charges against Father were ultimately dismissed and his probation was not revoked.

[6] In March 2023, Parents moved to terminate the guardianships. Grandparents refiled petitions to adopt Children. Like before, Parents objected to the adoption petitions. During a hearing on the petitions, family counselor Jarred Kelley testified Parents' relationships with Children had grown "closer" and shared he did not believe severing the relationships was in Children's best interests. *Tr. Vol. 2* at 64. Guardian ad Litem Amy Brandsasse "agreed with probably 99 percent of what [Kelley] testified to," including that severing Children's relationship with Parents was not in Children's best interests. *Tr. Vol. 3* at 134. The trial court denied Grandparents' petitions to adopt Children, concluding Parents' consent was required but lacking.[1]

Standard of Review

[7] Generally, we show "considerable deference" to the trial court's decision in family law matters because the trial judge is "in the best position to judge the facts, determine witness credibility, get a feel for the family dynamics, and get a sense of the parents and their relationship with their children." *In re Adoption of I.B.*, 163 N.E.3d 270, 274 (Ind. 2021) (quoting *E.B.F. v. D.F.*, 93 N.E.3d 759, 762 (Ind. 2018)). Accordingly, we presume the trial court's decision was correct and place the burden of rebutting this presumption on the appellant. *Id.* When reviewing adoption proceedings, we do not reweigh evidence or assess

[1] The trial court's order also took the request to terminate the guardianships under advisement. This appeal, however, concerns only the portions of the order concerning the denial of Grandparents' adoption petitions. Grandparents' appeal relating to the guardianships was dismissed by order of this Court. *See* Order Granting Motion to Dismiss, No. 24A-AD-27 (Ind. Ct. App. Apr. 18, 2024).

the credibility of witnesses. *Id.* And we will set aside the trial court's findings and judgment only if they are clearly erroneous—when no evidence supports the findings or the findings fail to support the judgment. *In re Adoption of O.R.*, 16 N.E.3d 965, 973 (Ind. 2014). We affirm "unless the evidence leads to but one conclusion and the trial judge reached an opposite conclusion." *I.B.*, 163 N.E.3d at 274 (quoting *E.B.F.*, 93 N.E.3d at 762).

The trial court's determination that adoption was not in Children's best interests was not clearly erroneous.

[8] The parties spend much time arguing whether the trial court properly found Parents' consent to Children's adoptions was required.[2] In doing so, however, both sides seem to have lost sight of the bigger picture. Regardless of whether parental consent is required, adoption must be in the best interests of the child. *See* I.C. § 31-19-11-1(a)(1) (2021). Apparent from its order, the trial court determined adoption was not in Children's best interests.

[9] "Even if a court determines that a natural parent's consent is not required for an adoption, the court must still determine whether adoption is in the child's best interests." *O.R.*, 16 N.E.3d at 974 (quoting *In re Adoption of M.S.*, 10 N.E.3d 1272, 1281 (Ind. Ct. App. 2014)); *see also* I.C. § 31-19-11-1(a)(1) (requiring the trial court to find adoption is in the best interest of the child prior to granting a

[2] Typically, a petition to adopt a minor child may be granted only if written consent to adopt has been provided by the biological parents. *See* Ind. Code § 31-19-9-1 (2023). But there are several exceptions to the consent requirement. *See* I.C. § 31-19-9-8 (2023).

petition for adoption and entering an adoption decree). Simply put, "[t]he primary concern in every adoption proceeding is the best interests of the child." *M.S.*, 10 N.E.3d at 1281.

[10] Here, the trial court concluded adoption was not in Children's best interests. As to Mother, the trial court found she had regularly visited with Children "since at least 2020." *Appellant's App. Vol. 2* at 201. The trial court also determined Mother has a "strong bond" with Children, pays child support, is financially stable, and has remained sober for a "significant amount of time." *Id.* Turning to Father, the trial court recognized his increased involvement in Children's lives, noting he is "consistently exercising parenting time with [Children]." *Id.* The trial court also found Father has stable housing and good employment and is sober and paying child support.

[11] Although the trial court recognized Parents were less involved with Children previously, it credited "the progress made by each parent and their current circumstances." *Id.* Plus, the trial court recounted GAL Brandsasse's and family counselor Kelley's testimonies that severing Children's relationship with Parents was not in Children's best interests. *See id.* at 196 (explicitly finding such testimonies credible). Granting the petitions for adoption, however, would have done just that. *See I.B.*, 163 N.E.3d at 273 (describing an adoption as "a creature of paradox: it cements one relationship while it terminates another"). To the extent Grandparents point to evidence contrary to the trial court's findings, they request we reweigh evidence and judge witness credibility for ourselves, which we may not do. *See id.* at 274. Considering the findings as

a whole and the deference we give to trial courts in family-law matters, we cannot say the trial court clearly erred in determining adoption was not in the best interests of Children.

Conclusion

[12] Because the trial court's determination that adoption was not in Children's best interests was not clearly erroneous, we affirm.

[13] Affirmed.

Riley, J., and Felix, J., concur.

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