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IN THE
COURT OF APPEALS OF INDIANA

In re the Matter of the Adoption
of I.B.

A.B. (Father),
Appellant-Respondent,

v.

B.B. (Stepfather),
Appellee-Petitioner

March 16, 2022

Court of Appeals Case No.
21A-AD-1792

Appeal from the St. Joseph Probate
Court

The Honorable Jason A.
Cichowicz, Judge

The Honorable Graham C.
Polando, Magistrate

Trial Court Cause No.
71J01-1908-AD-000090

May, Judge.

- [1] A.B. (“Father”) appeals the trial court’s order granting the petition of B.B. (“Stepfather”) to adopt I.B. (“Child”) without Father’s consent. Father argues Stepfather did not prove Father failed to significantly communicate with Child during the relevant time because S.B. (“Mother”) thwarted Father’s attempts to communicate with Child. We agree with Father and reverse.

Facts and Procedural History

- [2] Child was born on August 25, 2009, to Mother and Father. Mother and Father have never been married, but the trial court entered an order confirming Father's paternity on January 20, 2010. Mother was awarded primary custody of Child, and Father was granted parenting time and ordered to pay child support. On April 27, 2017, the trial court entered, "[b]y agreement of the parties" an order reducing Father's parenting time with Child to exclude overnights and requiring Father to "submit to an anger/psychological parenting time assessment and follow all recommendations." (App. Vol. III at 9.) On July 24, 2017, the trial court entered an order requiring Father's parenting time be supervised because Father had not followed the trial court's order to submit to anger management and parenting assessments. Additionally, the trial court ordered Father to "submit to a hair follicle test[.]" (*Id.* at 11.)
- [3] On September 30, 2017, Mother married Stepfather. On July 18, 2018, the trial court suspended Father's parenting time, noting pending criminal charges against Father and "Father's non-compliance regarding anger management and drug screens." (App. Vol. IV at 6.) Father's parenting time has never been reinstated.
- [4] On August 14, 2019, Stepfather filed a petition to adopt Child. On the same day, Mother filed her consent to Stepfather's adoption of Child. On August 30, 2019, Father filed his motion to contest Child's adoption by Stepfather. On June 30, 2020, the trial court held an evidentiary hearing on the issue of the

necessity of Father’s consent. During that hearing, Father presented evidence that from July 2018 until approximately June 2019, Father sent Mother multiple text messages asking to speak to Child. Father also testified he attempted to call Child and his calls would go “straight to voicemail.” (Tr. Vol. II at 14.) Mother did not respond to the text messages and testified Child did not call Father because “[s]he would have refused the call. She does not want to talk to her father.” (*Id.* at 48.)

[5] When Mother and Stepfather relocated to a new residence with child in July 2019, Mother did not file a notice of intent to relocate in the paternity action and did not tell Father her new address because “it’s too scary for him to know where I live.” (*Id.* at 39.) Father sent gifts for Child to maternal grandmother’s address in 2019, but they were returned unopened. Father also provided evidence that he has paid \$49,502.96 in child support payments from October 29, 2009, to June 1, 2020. Father maintained health insurance for Child during that time as well.

[6] On October 19, 2020, the trial court issued its order finding Father’s consent to Child’s adoption by Stepfather was not required because Father did not significantly communicate with Child for one year prior to the date Stepfather filed his petition for adoption. After hearing evidence regarding Child’s adoption on May 10 and May 27, 2021, the trial court granted Stepfather’s petition to adopt Child on July 28, 2021.

Discussion and Decision

[7] We will not disturb a decision in an adoption proceeding unless the evidence leads to but one conclusion and the trial judge reached an opposite conclusion. *In re Adoption of M.A.S.*, 815 N.E.2d 216, 218 (Ind. Ct. App. 2004). We will not reweigh the evidence. *Id.* Instead, we examine the evidence most favorable to the decision together with reasonable inferences drawn therefrom to determine whether there is sufficient evidence to sustain the decision. *Id.* The decision of the trial court is presumed correct, and it is the appellant’s burden to overcome that presumption. *Id.*

[8] When, as here, the trial court sua sponte enters findings of fact and conclusions of law pursuant to Indiana Trial Rule 52(A), we apply a two-tiered standard of review. *In re Adoption of A.S.*, 912 N.E.2d 840, 851 (Ind. Ct. App. 2009), *trans. denied*. First, we determine whether the evidence supports the findings and second, whether the findings support the trial court’s conclusions. *Id.* The trial court’s findings or conclusions will be set aside only if they are clearly erroneous. *Id.* A finding of fact is clearly erroneous if the record lacks evidence or reasonable inferences from the evidence to support it. *Id.* Issues on which the trial court makes no findings will be reviewed as a general judgment. *C.B. v. B.W.*, 985 N.E.2d 340, 344 (Ind. Ct. App. 2013), *trans. denied*. A “general judgment will be affirmed if it can be sustained upon any legal theory by the evidence introduced at trial.” *Id.*

[9] Generally, courts may not grant a petition for adoption without the consent of the child’s biological parents. Ind. Code § 31-19-9-1(a). However, Indiana Code section 31-19-9-8(a) provides, in relevant part:

(a) Consent to adoption, which may be required under section 1 of this chapter, is not required from any of the following:

* * * * *

(2) A parent of a child in the custody of another person if for a period of at least one (1) year the parent:

(A) fails without justifiable cause to communicate significantly with the child when able to do so; or

(B) knowingly fails to provide for the care and support of the child when able to do so as required by law or judicial decree.

Subsection (a)(2) is written in the disjunctive “such that the existence of any one of the circumstances provides sufficient ground to dispense with consent.” *In re Adoption of O.R.*, 16 N.E.3d 965, 973 (Ind. 2014).

[10] Father argues the trial court erred when it determined his consent was not necessary for Child’s adoption because he attempted to communicate significantly with Child but Mother and Stepfather thwarted his efforts. During the evidentiary hearing, Father testified he had exercised parenting time with Child “[s]ince she was essentially born[.]” (Tr. Vol. II at 16.) Father indicated his parenting time was “one overnight a week with some time on the weekends, and then it went to the Indiana State guideline of every other weekend, plus some time in the week.” (*Id.*) Father’s parenting time was suspended,

however, in July 2018 because he had been arrested for possession of marijuana.

[11] Father testified he repeatedly texted Mother in an attempt to communicate with Child on “June 24th . . . October 15th of 2018, October 27th, 2018, November 11th of ’18, November 12, ’18, November 13, November 14, November 15, November 22, Christmas, December 25, ’18. January 1 of ’19, 4/21 of ’19, 6/16 of ’19.” (*Id.* at 15) (errors in original). Each time, the text message was followed by a call, which went immediately to voicemail. Mother did not answer any of Father’s text messages, and he was never able to speak with Child. In 2019, Father dropped off a birthday present for Child at maternal grandmother’s house, which was left unopened. Not knowing Mother’s new address, Father sent a Christmas present to maternal grandmother’s home in 2019 that was returned to him as undeliverable.

[12] When asked why she did not respond to Father’s text messages, Mother testified that “[Child] would have refused the call. She does not want to talk to her father. . . . Because of the treatment that he has treated her for the last . . . ten years of her life.” (*Id.* at 48.) Mother did not elaborate on the alleged treatment that would prompt Child to avoid her Father. Father testified his “phone number seems to be blocked. Every time I call, it goes directly to voicemail. And I’ve made attempts to contact. And you know, after so many times of trying to contact with no contact back, it’s frustrating.” (*Id.* at 113.)

[13] Our Indiana Supreme Court addressed a custodial parent's efforts to thwart a non-custodial parent's communication with a child when the child reportedly refused to speak to the non-custodial parent in *J.W. v. D.F.*, 93 N.E.3d 759 (Ind. 2019). In that case, the court noted that while mother had not made many attempts to contact child, father and stepmother had not "made a good-faith effort to arrange communication" between mother and her child. *Id.* at 766. Our Indiana Supreme Court rejected stepmother's argument that "she and Father did not thwart Mother's ability to communicate because it was Child, not her or Father, who did not want to communicate." *Id.* The Court stated:

Custodial parents cannot defer to a child's decision to forgo communication and then claim that they did not technically thwart communication efforts. In acquiescing to Child's whims to not communicate, the custodial parents serve as the vehicle to thwart communication. A child is not in a position of authority to make that decision on his own and we expect custodial parents to instruct children to meet with their non-custodial parents, even if, for whatever reason, they are displeased. Accordingly, if the non-custodial parent makes a significant attempt to communicate with Child, a custodial parent must take reasonable steps to facilitate that communication, regardless of a Child's desires. By requiring such reasonable steps, we guard against the risk that a custodial parent will place undue influence on a child to reject the non-custodial parent's communication as a way to circumvent their obligation to not thwart significant communication attempts.

Id.

[14] The same is true here. Mother relocated without filing a request to relocate in the paternity action as required by Indiana Code section 31-17-2.2-1 and

without informing Father of her and Child’s new home address. Father sent Mother multiple text messages asking to speak with Child, called Mother and was sent to her voicemail, and sent Child gifts that were returned unopened. It was Mother’s responsibility as Child’s custodial parent to take reasonable steps to encourage communication between Child and Father, regardless of her feelings about Father or Child’s alleged wishes. Therefore, we conclude the trial court erred when it determined Father had “fail[ed] without justifiable cause to communicate significantly” with Child for at least one year prior to August 2019 when Stepfather’s adoption petition was filed. *See E. W. v. J. W.*, 20 N.E.3d 889, 896-7 (Ind. Ct. App. 2014) (“Father’s efforts to thwart Mother’s communication with R.W. are inseparably linked to the issue of Mother’s communication with R.W.” and thus Mother’s communication with R.W. was “significant under the circumstances.”), *trans. denied*.

Conclusion

[15] The trial court erred when it found Father had not communicated significantly with Child for one year prior to the filing of Stepfather’s petition to adopt Child because Mother thwarted Father’s attempts to communicate with Child. Thus, Father’s consent was required for Stepfather to adopt Child. Accordingly, we reverse the trial court’s grant of Stepfather’s petition to adopt.

[16] Reversed.

Brown, J., and Pyle, J., concur.