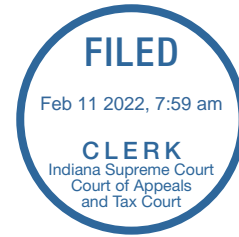


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Joann M. Price Franklin
Merrillville, Indiana

ATTORNEY FOR APPELLEE

Kristina L. Garza
Crown Point, Indiana

IN THE COURT OF APPEALS OF INDIANA

In Re the Matter of:

C.G.,

Appellant-Respondent,

v.

M.G. and M.G.,

Appellees-Petitioners.

February 11, 2022

Court of Appeals Case No.
21A-AD-1357

Appeal from the Lake Superior
Court

The Honorable Thomas P.
Stefaniak, Jr., Judge

Trial Court Cause No. 45D06-1810-
AD-184. 45D06-1810-AD-185, and
45D06-1810-AD-186

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Respondent, C.G. (Mother), appeals the trial court’s denial of her motion to withdraw her consent to the adoption of her minor children, A.G., K.G., and G.G. (collectively, Children), by Appellees-Petitioners, M.G. (Grandmother) and M.G. (Step-Grandfather), (collectively, Grandparents).
- [2] We affirm.

ISSUE

- [3] Mother presents this court with three issues pertaining to the validity of her consent to Children’s adoption, but we find another issue to be dispositive: Whether Mother’s consent to Children’s adoption was irrevocably implied by law after she failed to timely contest the adoption.

FACTS AND PROCEDURAL HISTORY

- [4] The facts most favorable to the trial court’s judgment are that Mother¹ is the biological mother to A.G., born on October 9, 2012, K.G., born on July 19, 2014, and G.G., born on January 6, 2016. Beginning some time in 2014, Mother struggled with excessive alcohol consumption which negatively impacted her parenting. Beginning in 2014, Mother and Grandparents discussed Grandparents having guardianship of Children, and Grandmother

¹ A.G., K.G., and G.G. have different fathers. The trial court determined that Children’s fathers’ consent to the adoption was “irrevocably implied.” (Appellant’s App. Vol. II, p. 47). Children’s fathers do not participate in this appeal.

retained counsel. Mother's condition worsened during the summer of 2018, and she was charged with operating a vehicle while intoxicated (OWI). During the summer of 2018, Children lived in three separate homes, with A.G. living with his paternal aunt, K.G. living with her paternal grandfather, and G.G. living with her maternal great-grandmother (Great-Grandmother). Mother did not exercise regular parenting time with Children, and she did not offer them meaningful support.

[5] Mother and the rest of the family did not believe that Children living apart was in Children's best interests. After being charged with OWI, Mother requested that Grandparents take custody of Children so that they would be together and would not end up in foster care. Counsel for Grandmother prepared a consent for adoption form (the consent form) for Mother's execution. Grandmother left the consent form with Great-Grandmother. Great-Grandmother had the consent form at her home for several months, which Mother knew.

[6] On October 10, 2018, Mother asked Great-Grandmother to drive her to the home of a notary public so that she could execute the consent form, and Great-Grandmother did so. Prior to signing the consent form, Mother did not complain that Grandmother was taking Children, express reluctance to sign the consent form, indicate that she had questions about the consent form, or state a desire to consult an attorney before signing. Mother signed the consent form at the home of a notary public who was a cousin to Great-Grandmother. The notary public affixed her seal to the signed consent form. Mother signed her name under averments providing that she consented to giving custody of

Children to Grandparents and to Grandparents' adoption of Children; she had "voluntarily signed" the form and that "no coercion exercised and no duress has been present in consenting to this adoption"; she had given due consideration and deliberation to the matter, was fully aware of the implications of signing the consent, and understood that her consent was final and irrevocable; she was not under the influence of drugs or alcohol when executing the form; and she had not been promised, nor had she received, anything in exchange for executing the consent form. (Appellant's App. Vol. II, p. 16).

- [7] On October 16, 2018, Grandparents filed a petition to adopt Children and for temporary custody. A hearing was set for November 16, 2018, but was continued. On December 14, 2018, the trial court held a hearing on Grandparents' petition for temporary custody of Children at which Mother appeared. The trial court awarded Grandparents temporary custody of Children during the adoption proceedings. The trial court ordered Grandmother to arrange for a home study to be completed by a licensed child placing agency and set an adoption hearing for February 27, 2019. Around Christmas of 2018, A.G. went to live with Grandparents. K.G. and A.G. lived with Great-Grandmother., whose home was three blocks away from C.G.'s home, until October of 2019. During this period, Mother did not exercise regular parenting time and did not financially support Children in a meaningful manner. All three Children have lived with Grandparents since October of 2019.

- [8] The adoption hearing was continued multiple times. In addition to hearings that had been scheduled for November 16, 2018, and December 14, 2018, Mother received notice of hearings that were scheduled for January 17, 2019, March 27, 2019, June 20, 2019, June 27, 2019, September 4, 2019, December 2, 2019, and January 13, 2020. On February 11, 2020, Mother filed a request that she be appointed counsel to represent her in contesting the adoption proceedings, and the trial court appointed Mother a public defender.
- [9] On August 24, 2020, the trial court held an evidentiary hearing on the issue of whether Mother’s consent to Children’s adoption was voluntary. Mother maintained that her consent had been procured by coercion, duress, and fraud and because Grandmother had scared and rushed her into signing the consent form by telling her that Children would be placed in foster care. Mother acknowledged that Grandmother was not present at the notary’s home when Mother executed the consent form. Mother maintained that she had “vaguely” read the consent form before signing it, but she also admitted that no one had prevented her from reading it thoroughly and that it was “[o]n me” that she had not read the document more thoroughly. (Tr. Vol. II, pp. 39, 78). Mother graduated from high school, reads and writes English, and understood the meaning of the word “irrevocable.” (Tr. Vol. II, p. 60). In response to the trial court’s questions, Mother affirmed that she had understood when she signed the consent form that she was giving custody of Children to Grandparents and consenting to Children’s adoption.

[10] On May 6, 2021, the trial court entered an order in which it made findings consistent with the above-recited facts. The trial court found that Mother's consent to Children's adoption was voluntary. In addition, the trial court found that pursuant to Indiana's adoption statute, a person who wished to contest an adoption must do so no later than thirty days after being served with notice of the petition for adoption. The trial court further found that, because Mother had not challenged the adoption until February of 2020, or fifteen months after she had been provided notice of the filing of the adoption petition, her challenge was not timely, and, therefore, her consent to Children's adoption was not necessary.

[11] On June 16, 2021, the trial court held the final adoption hearing. Grandmother related that Children had adapted well to their new home and were happy and healthy. Mother had a viral illness that precluded her from working. During the pendency of Children's adoption proceedings, Mother had given birth to two additional children. Mother had not had regular parenting time with Children, nor had she maintained consistent telephone or videocall contact with Children. It was Grandmother's opinion that she, not Mother, was the one ensuring that Children had a relationship with Mother. Grandparents were willing to continue to allow Mother to have a relationship with Children as long as she was sober, acted appropriately, and Children responded well. On June 17, 2021, the trial court entered its written order granting Grandparents' petition to adopt Children.

[12] Mother now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

[13] Our standard of review of a trial court's ruling in adoption proceedings is well-settled:

In family law matters, we generally give considerable deference to the trial court's decision because we recognize that 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.

Accordingly, when reviewing an adoption case, we presume that the trial court's decision is correct, and the appellant bears the burden of rebutting this presumption.

We will not disturb the trial court's decision in an adoption proceeding unless the evidence at trial leads to but one conclusion and the trial court reached the opposite conclusion.

We will neither reweigh the evidence nor assess the credibility of witnesses, and we will examine only the evidence most favorable to the trial court's decision.

Matter of Adoption of E.M.M., 164 N.E.3d 779, 781-82 (Ind. Ct. App. 2021)

(cleaned up), *trans. denied*.

II. *Implied Consent*

[14] The Indiana Adoption Code generally requires the written consent of a child's biological parents prior to the child being adopted. *In re Adoption of Baxter*, 799 N.E.2d 1057, 1060 (Ind. 2003) (citing Indiana Code sections 31-19-9-1 and 10-6(1)(B)). A consent to adoption may be executed before a notary public at any time after a child's birth. I.C. § 31-19-9-2(a)(2). However, the Adoption Code

further provides in relevant part that the “consent of a person who is served with notice [] to adoption is irrevocably implied without further court action if the person [] fails to file a motion to contest the adoption [] not later than thirty (30) days after service of notice[.]” I.C. § 31-19-9-18 (b)(1). This court has recognized that section 31-19-9-18 is a “nonclaim statute” that

imposes a condition precedent to the enforcement of a right, *i.e.*, the filing of a motion to contest a petition for adoption. If the condition precedent is not met, the right of action is lost and the adoption may not be challenged. The legislative intent to take away a right of recovery is clear from the language utilized. Further, we note that this interpretation of I.C. § 31-19-9-18 is consistent with the objective of avoiding unnecessary instability and uncertainty in adoption proceedings.

In re Adoption of K.M., 31 N.E.3d 533, 538 (Ind. Ct. App. 2015) (quotation omitted). A biological parent who has failed to challenge an adoption within the thirty-day time limit “is not entitled to equitable deviation” from the time limit, and “courts are not permitted to utilize equity to rectify an injustice even if warranted by the situation.” *Id.* at 538-39 (holding that mother who had not timely challenged an adoption was not permitted to contest the adoption or the validity of her consent to the adoption).

[15] Here, Grandparents filed their petition to adopt Children on October 16, 2018. Although Mother denied being presented with a copy of the adoption petition when she executed her consent, Mother does not contend that she was never

served with a copy of the adoption petition.² In addition, Mother received notice of the November 16, 2018, hearing, and she was present at the December 14, 2018, temporary custody hearing. Therefore, at the latest, Mother knew by December 14, 2018, that the adoption was pending. Mother did not lodge her challenge to Children’s adoption or the validity of her consent until February 11, 2020, which was more than thirty days after the latest date she could have claimed to have received notice of the adoption proceedings. Therefore, Mother did not challenge the adoption proceedings within the statutory timeframe, and her consent was irrevocably implied by statute. I.C. § 31-19-9-18 (b)(1).

[16] Although Mother asserts that she was never advised that there was a time limit for challenging the adoption, she cites to no authority for her apparent proposition that such an advisement was necessary. The Adoption Code itself does not mandate that advisement. Mother does not contest the trial court’s factual findings regarding the timeliness of her challenge to the adoption. In light of the evidence before the trial court regarding Mother’s notice of the adoption proceedings and the timing of her challenge, we cannot say that the trial court’s conclusions were against the totality of the evidence. *See E.M.M.*, 164 N.E.3d at 782. Like the trial court, we are without authority to ignore the

² Any service pages related to the adoption petition and other documents that were filed along with the adoption petition are not part of the record on appeal. The chronological case summary indicates that on October 19, 2018, Mother was served by mail with a copy of the order setting a hearing on Grandparents’ adoption petition and motion for temporary custody.

strictures of the Adoption Code. *See K.M.*, 31 N.E.3d at 538-39. Because Mother did not challenge Children’s adoption in a timely manner, we will uphold the trial court’s adoption order.³

CONCLUSION

[17] Based on the foregoing, we conclude that Mother’s consent to Children’s adoption was irrevocably implied after her failure to timely challenge their adoption, rendering any additional consent on her part unnecessary.

[18] Affirmed.

Robb, J. concurs in result

Molter, J. concurs in result with separate opinion

³ Given our disposition, we do not address the merits of Mother’s challenges to the validity of her consent to Children’s adoption or her argument that the trial court’s denial of her motion to withdraw her consent was not in Children’s best interests.

I N T H E
C O U R T O F A P P E A L S O F I N D I A N A

In Re the Matter of:

C.G.,

Appellant-Respondent,

v.

M.G. and M.G.,

Appellees-Petitioners.

Court of Appeals Case No.
21A-AD-1357

Molter, Judge, concurring.

- [1] I concur in the lead opinion’s reasoning that the trial court must be affirmed based on Mother’s irrevocably implied consent. I write separately to note that while Mother did not include implied consent in the statement of issues for her appellant’s brief, this is not an issue we raise *sua sponte*. Rather, implied consent was one of the bases for the trial

court's order granting Grandparents' petition to adopt children.

Appellant's App. Vol. 2 at 13, 18.

- [2] As the appellant, it was Mother's burden to address that basis for the trial court's order, which she failed to do. *See Schrader v. Eli Lilly & Co.*, 639 N.E.2d 258, 261 (Ind. 1994) (explaining that where the trial court's judgment is based on multiple independently sufficient grounds, the appellant must demonstrate that the trial court erred as to each of the grounds). To be sure, Mother argues that her execution of the consent form was induced by fraud. But she does *not* argue that fraud also nullified her irrevocably implied consent which resulted as a matter of law from failing to contest the adoption within thirty days. *Cf. In re Adoption of Fitz*, 805 N.E.2d 1270 (Ind. Ct. App. 2004) (concluding that the putative father's consent to adoption was irrevocably implied when he filed a paternity action one day too late notwithstanding his motion for relief from judgment based on fraud). Even if she had made that argument, the trial court concluded there was in fact no fraud. *See Appellant's App. Vol. 2 at 18* (rejecting Mother's contention that her consent was induced by fraud). We can only reverse that finding if it was clearly erroneous, *In re Adoption of T.L.*, 4 N.E.3d 658, 662 (Ind. 2014), and Mother does not articulate any such basis for reversal. We therefore must affirm.