

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

S.G.,
Appellant,

v.

R.B.,
Appellee.

February 10, 2021

Court of Appeals Case No.
20A-AD-1625

Appeal from the Elkhart Superior
Court

The Honorable Kristine A.
Osterday, Judge

Trial Court Cause No.
20D01-1910-AD-79

Pyle, Judge.

Statement of the Case

- [1] S.G. (“Father”) appeals the trial court’s order granting R.B.’s (“Stepfather”) petition to adopt Father’s minor daughter, M.G. (“M.G.”). Father argues that the trial court clearly erred in concluding that: (1) his consent to the adoption

was not required because, for a period of at least one year, he failed without justifiable cause to communicate significantly with M.G. when able to do so; and (2) the adoption was in M.G.'s best interests. Concluding that the evidence supports the trial court's conclusions that: (1) Father failed to have significant communication with M.G. without justifiable cause for over one year when able to do so; and (2) the adoption was in M.G.'s best interests, we affirm the trial court's judgment.

[2] We affirm.

Issues

1. Whether the evidence supports the trial court's conclusion that Father's consent to the adoption was not required because, for a period of at least one year, Father failed without justifiable cause to communicate significantly with M.G. when able to do so.
2. Whether the evidence supports the trial court's conclusion that the adoption was in M.G.'s best interests.

Facts

[3] The evidence most favorable to the trial court's decision reveals that M.G. was born in June 2006. Her parents, Father and W.B. ("Mother"), never married, and their relationship ended in 2010 because of Father's drug use and physical abuse of Mother. Mother began dating Stepfather in 2010, and they married in 2012. Father exercised regular visitation with M.G. until 2016.

- [4] In 2018, when M.G. was eleven years old, Father set up a Facebook account for M.G. by misrepresenting her age. Father used the account to communicate with M.G. When Mother and Stepfather learned about the account, they deleted it because they felt that M.G. was too young to have a social media account.
- [5] In October 2019, Stepfather filed a petition to adopt M.G. The petition alleged that Father’s consent to the adoption was not required because Father “ha[d] not had any meaningful contact [with M.G.] for over a year[.]” (Appellant’s App. Vol. 2 at 17). Mother and M.G. both filed written consents to the adoption.
- [6] Testimony at the June 2020 hearing on Stepfather’s petition revealed that Stepfather and M.G. have a loving relationship. Stepfather has always treated M.G. as his own child, and they participate in sports and play video games together. In addition, Stepfather’s parents treat M.G. as their grandchild.
- [7] The testimony further revealed that forty-three-year-old Father, who has a total of ten children with several different women, does not have stable housing, a job, or a driver’s license. At the time of the hearing, Father also had a pending felony charge for possession of methamphetamine. In addition, over the past four years, Father had not inquired about M.G.’s academics, extracurricular activities, or health.
- [8] Mother testified that following the initial hearing on Stepfather’s petition, Mother and M.G. saw Father outside the courtroom. Father told them “that he

was going to get [them], just wait.” (Tr. Vo. 2 at 22). Following that encounter, M.G. attempted suicide and has been in mental health counseling. Also at the hearing, Mother denied interfering with Father’s ability to communicate with M.G. Rather, the testimony revealed that although Father knew Mother’s cell phone number and address, Father had failed to call or attempt to visit M.G. Instead, in 2018, Father established a Facebook account for then-eleven-year-old M.G. so that he could communicate with her on social media. Mother testified that she and Stepfather had deleted M.G.’s Facebook account in 2018 because “you don’t lie about somebody’s age and make them a Facebook [account].” (Tr. Vol. 2 at 42). Stepfather further explained that Mother had deleted M.G.’s Facebook account for safety reasons and not to prevent her from communicating with Father.

[9] Father testified that he had never physically abused Mother and had not threatened Mother and M.G. following the initial hearing on Stepfather’s petition. Father also testified that Mother had initially agreed to M.G. having a Facebook account and had then deleted it. In addition, Father testified that the last time that he had seen M.G. was sometime in 2018 when they had gone to McDonald’s.

[10] In August 2020, the trial court issued a detailed order granting Stepfather’s petition to adopt M.G. The order provides, in relevant part, as follows:

As to the issue of communication, the Court finds by clear and convincing evidence that Father failed to have significant communication with [M.G.] within the last year. Father

presented evidence that he tried a number of times over the years to have parenting time with [M.G.] but Mother would not allow him to do so. The evidence tendered was his testimony as well as text message communication with Mother and messages with [M.G.] over social media. The Court finds that these communications were token, at best, and do not constitute meaningful contact.

At all times during [M.G.]’s life, Father was aware of where [M.G.] resided[.] Father . . . stopped having regular contact with [M.G.] in 2016 and did not see her again until 2018 when he took her to McDonald’s without Mother’s knowledge. Father argues that he was prevented by Mother from seeing [M.G.]. The Court finds that Father’s argument has little to no merit.

Father takes issue with the fact that Mother prevented him from communicating with [M.G.] via Facebook. As Mother correctly points out, it is highly inappropriate to have a young child maintain a clandestine Facebook account. Father fails to take into consideration that [M.G.] was susceptible to contact from those with less than desirable motives and had potential exposure to inappropriate content. In the evidence tendered by Father regarding his communication with [M.G.] and Mother, both acknowledge to Father that [M.G.] may have communication with Father via text. It seems apparent that Father preferred to communicate with [M.G.] without Mother’s knowledge, which again shows poor judgment on Father’s part.

* * * * *

The Court therefore finds that Father had the ability to communicate with [M.G.] but merely made token efforts to do so. The Court also does not find that Mother interfered with Father’s ability to communicate with [M.G.]. The Court concludes that Father’s consent is not needed for purposes of these proceedings[.]

The next inquiry to be made by this Court is if it is in [M.G.]’s best interest for the Petition to be granted. The Court finds, based on the information tendered to the Court, that [Stepfather] has brought stability to not only [M.G.] but also to Mother. [Stepfather] and Mother have taken seriously any of [M.G.]’s mental health needs and have assisted with getting her the treatment that she needs. [Stepfather] and Mother also have a strong support system with extended family and close family friends.

By contrast, Father has struggled with employment, housing, transportation, and addiction. The Court believes that Father does love [M.G.]. Despite that fact, Father has shown either an inability or an unwillingness to do what is in [M.G.]’s best interest. Father is unable to provide [M.G.] the stability and consistency that all children need and deserve.

For all of the reasons stated, the Court grants the Petition for Adoption.

(Appellee’s App. Vol. 2 at 17-19). Father now appeals.

Decision

[11] Father argues that the trial court clearly erred in concluding that: (1) his consent to the adoption was not required because, for a period of at least one year, Father failed without justifiable cause to communicate significantly with M.G. when able to do so; and (2) the adoption was in M.G.’s best interests. We address each of his arguments in turn.

1. Father’s Consent

[12] Father first argues that the trial court clearly erred in concluding that his consent to Stepfather’s adoption of M.G. was not required because, for a period

of at least one year, Father had failed without justifiable cause to communicate significantly with M.G. when able to do so. We disagree.

[13] When reviewing the trial court’s ruling in an adoption proceeding, we will not disturb the ruling unless the evidence leads to one conclusion and the trial court reached an opposite conclusion. *In re Adoption of D.M.*, 82 N.E.3d 354, 358 (Ind. Ct. App. 2017). We do not reweigh the evidence, but instead examine the evidence most favorable to the trial court’s decision, together with the reasonable inferences to be drawn therefrom. *Id.* Further, we generally give considerable deference to the trial court’s decision in family law matters because the trial court is in the best position to judge the facts, determine witness credibility, get a feel for the family dynamics, and get a sense of a parent and his relationship with his child. *In re Adoption of M.S.*, 10 N.E.3d 1272, 1281 (Ind. Ct. App. 2014). Because Father does not challenge any of the trial court’s specific findings, we “must accept them as true.” *M.M. v. A.C.*, No. 20A-AD-1241, 2020 WL 7234450, at *1 (Ind. Ct. App. Dec. 9, 2020).

[14] The version of INDIANA CODE § 31-19-9-8 in effect at the time that Stepfather filed his petition to adopt M.G. provides, in relevant part, as follows:

(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.

Stepfather, as the petitioner, had the burden of proving by clear and convincing evidence that Father's consent was not required. *See In re Adoption of M.L.*, 973 N.E.2d 1216, 1222 (Ind. Ct. App. 2012).

[15] Here, Father specifically contends that his “minimal communication was justifiable given . . . Mother’s intentional interference and obstruction of [his] attempts at communicating with [M.G.]” (Father’s Br. 8, 12). However, our review of the evidence reveals that Mother did not interfere with Father’s ability to communicate with M.G. Father chose to stop having contact with M.G. in 2016. He did not see her again until he took her on a single trip to McDonald’s in 2018. Also in 2018, Father set up a Facebook account for then-eleven-year-old M.G. Mother deleted the account as soon as she learned about it because of safety concerns and not to prevent M.G. from communicating with Father. The trial court found that Father’s contact with M.G. through the Facebook account was token at best. Further, although Father knew Mother’s address and cell phone number, he never attempted to visit or call M.G. This evidence is sufficient to support the trial court’s conclusion that Father’s consent to the adoption was not required because, for a period of at least one year, Father failed without justifiable cause to communicate significantly with M.G. when

able to do so. Father's argument is a request that we reweigh the evidence, which we do not do. *See D.M.*, 82 N.E.2d at 358.

2. Best Interests

- [16] Father also argues that the trial court clearly erred in concluding that the adoption was in M.G.'s best interests. Again, we disagree.
- [17] The primary concern in every adoption proceeding is the best interests of the child. *M.S.*, 10 N.E.3d at 1281. Thus, even if a trial court determines that a parent's consent is not required for an adoption, the trial court must still determine whether the adoption is in the child's best interests. *Id.* Relevant factors to consider include a parent's historical and current inability to provide a suitable environment for the child and the child's need for permanence and stability. *Id.*
- [18] Here, our review of the evidence reveals that Stepfather and Mother have been married since 2012. Stepfather and M.G. have a loving relationship. Stepfather has always treated M.G. as his own child, and they participate in sports and play video games. Stepfather's parents also treat M.G. as their granddaughter. On the other hand, Father does not have stable housing, a job, or a driver's license. At the time of the hearing, Father also had a pending felony charge for possession of methamphetamine. In addition, over the past four years, Father had not inquired about M.G.'s academics, extracurricular activities, or health. This evidence supports the trial court's conclusion that the adoption was in

M.G.'s best interests. The trial court did not clearly err in granting Stepfather's petition to adopt M.G.

[19] Affirmed.

Vaidik, J., and Brown, J., concur.