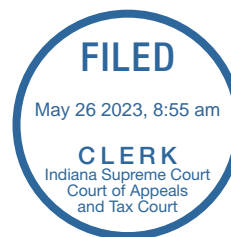


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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ATTORNEY FOR APPELLANT

Heather L. George Myers  
Greenwood, Indiana

ATTORNEYS FOR APPELLEE

Denise F. Hayden  
Lacy Law Office, LLC  
Indianapolis, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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In the Matter of the Adoption of  
A.R.;

J.R.,

*Appellant-Respondent,*

v.

J.M.,

*Appellee-Petitioner.*

May 26, 2023

Court of Appeals Case No.  
22A-AD-2925

Appeal from the Johnson Superior  
Court

The Honorable Kevin M. Barton,  
Judge

Trial Court Cause No.  
41D01-1903-AD-19

**Memorandum Decision by Judge Tavitas**  
Judges Vaidik and Foley concur.

**Tavitas, Judge.**

## **Case Summary**

- [1] J.R. (“Father”) appeals the trial court’s order granting the petition of J.M. (“Stepfather”) to adopt J.R.’s biological daughter, A.R. (“Daughter”). Father claims that the trial court clearly erred by concluding that Father’s consent to the adoption was not required because Father, for a period of at least one year and without justifiable cause, failed to communicate significantly with Daughter when able to do so. We disagree and, accordingly, affirm.

## **Issue**

- [2] Father presents one issue, which we restate as whether the trial court clearly erred by concluding that Father’s consent to the adoption was not required because Father, for a period of at least one year and without justifiable cause, failed to communicate significantly with Daughter when able to do so.

## **Facts**

- [3] Father and S.M. (“Mother”) are the biological parents of Daughter, who was born in December 2014. By the time of Daughter’s birth, Mother and Father were no longer in a relationship. Father established paternity of Daughter by executing a paternity affidavit. Father visited Daughter at the hospital on the day she was born and four times after she was released from the hospital. Father’s last visit with Daughter was on April 10, 2015. Although Father was scheduled to visit Daughter on May 3, 2015, Father did not appear for the visit.
- [4] Mother moved from Nineveh, Indiana, to Franklin, Indiana, in July 2015. Mother did not notify Father that she had moved or provide him with her new

address. Father, however, never attempted to send any mail to Daughter at the Nineveh address. Mother had the same telephone number from December 2014 until November 2017, but Father usually contacted Mother via Facebook messages. Mother admitted, however, to having blocked Father from contacting her on Facebook periodically over the years. Still, the parties repeatedly communicated through Facebook.

- [5] In June 2016, Father sent Mother a Facebook message asking to visit with Daughter. Mother agreed but informed Father that he could not tell Daughter that he was her biological father and would instead have to refer to himself as her uncle. Father objected to these terms and did not visit Daughter at that time.
- [6] Mother and Stepfather were married in July 2016. In May 2017, Mother contacted Father through Facebook and asked for his consent for Stepfather to adopt Daughter. At this time, Stepfather gave his telephone number to Father. Father did not respond to these requests, nor did he ask to have visitation with Daughter at that time.
- [7] In February 2018, Mother again contacted Father on Facebook and asked about the health of Father's mother. Father responded and requested to visit Daughter. Mother informed Father that he could visit Daughter at Mother's house. Father never followed up on this offer and did not visit Daughter. Father never tried to send any cards or letters to Daughter or to communicate with her in any way other than his occasional requests for visitation.

[8] On March 13, 2019, Stepfather filed a petition to adopt Daughter. Father filed a motion to contest the adoption on July 3, 2019. The trial court held a hearing on the adoption petition and the necessity of Father's consent to the adoption on November 13, 2019. At the end of this hearing, the trial court took the matter under consideration. On January 10, 2020, the trial court entered an order determining that Father's consent to the adoption was not required. This order provides in relevant part:

13. Mother consistently imposed conditions on the visitation. Mother acknowledges that [in] the communication in February of 2018, she said that visitation was subject to being controlled by Petitioner, [Stepfather].

14. A condition was imposed on a communication that Father would have to consent to adoption and would have to agree to being called something other than Father. It is unclear just when these conditions were imposed. However, the conditions may have been present [during] the contact on June 28, 2016.

15. Father has never sent any cards or letter to [Daughter]. Father has not otherwise attempted to communicate with [Daughter].

16. Father has not sought to establish visitation through a court proceeding.

17. Mother testified that she had the same telephone number from [Daughter's] birth until November, 2017. Father had Mother's telephone number. Father testified that his phone broke in 2015. From this, the Court is given to understand that Father lost Mother's telephone number. However, Father did not attempt to contact Mother to obtain her telephone number. Although the cellular phone "broke", there is no evidence that the SIM card was lost or the data was not retrievable.

18. Mother did move her residence in July of 2015 and again in 2016. Updated address information was not provided to Father. However, there is no evidence that Father ever sought to locate Mother. Mother's moves did not [a]ffect Father not having contact inasmuch as he did not attempt to see Mother.

19. Father testified that he has been blocked on Facebook at times. Mother acknowledges that Father has been blocked on Facebook at various times. No evidence shows that Father made any effort to otherwise contact Mother.

20. The Court finds that Indiana Code 31-19-9-8(a)(2)(A) has been established by clear and convincing evidence. **During the period of April 10, 2015<sup>[1]</sup> through June 28, 2016, Father did not communicate with [Daughter]. Father made no effort to communicate or to visit with [Daughter] or to establish any right of visitation.**

21. The evidence most favorable to Father is that Mother conditioned visitation with providing consent to adoption as of June 28, 2016. Inasmuch as this would be an unacceptable restriction, Mother precluded Father from visitation with [Daughter]. **However, the restriction was not imposed until June 28, 2016 at the earliest. The one[-]year time period had already run as of June 28, 2016.**

**22. Father's consent to adoption is not required.**

Appellant's App. Vol. II. pp. 11-12 (emphases added). On October 15, 2021, Stepfather filed a motion for a final adoption hearing. The trial court held a

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<sup>1</sup> Earlier in its order, the trial court stated that Father last visited Daughter on April 16, 2015, but this is merely a scrivener's error, as the testimony confirms the last visit was on April 10, 2015. See Tr. Vol. II p. 10.

final hearing on November 3, 2022, and entered an adoption decree on November 12, 2022. Father now appeals.<sup>2</sup>

## Discussion and Decision

### *Standard of Review*

[9] Our Supreme Court has explained that appellate courts should “generally show ‘considerable deference’ to the trial court’s decision in family law matters ‘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.’” *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)). “So, ‘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.’” *Id.* (quoting *E.B.F.*, 93 N.E.3d at 762). “[W]e will not disturb that decision ‘unless the evidence leads to but one conclusion and the trial judge reached an opposite conclusion.’” *Id.* (quoting *In re Adoption of T.L.*, 4 N.E.3d 658, 662 (Ind. 2014)).

[10] In an adoption case, a trial court’s findings and judgment will be set aside only if they are clearly erroneous. *E.B.F.*, 93 N.E.3d at 762. “A judgment is clearly

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<sup>2</sup> The trial court’s order that Father’s consent was not required was not a final appealable order under Appellate Rule 2(H)(1). *In re Adoption of S.J.*, 967 N.E.2d 1063, 1065 (Ind. Ct. App. 2012). Nor did the trial court’s order regarding Father’s consent contain the “magic language” of Trial Rule 54(B) that would deem the order a final appealable order. Thus, Father properly appeals from the final adoption decree.

erroneous when there is no evidence supporting the findings or the findings fail to support the judgment.” *Id.* On appeal, we will neither reweigh evidence nor assess the credibility of witnesses; instead, we consider the evidence in the light most favorable to the trial court’s decision. *I.B.*, 163 n3d at 274 (citing *In re Adoption of T.L.*, 4 N.E.3d at 662).

***Father’s Consent Was Not Required***

[11] Father argues that the trial court clearly erred in concluding that Father’s consent to the adoption was not required. “In general, ‘a petition to adopt a child who is less than eighteen (18) years of age may be granted only if written consent to adoption has been executed by . . . [t]he mother of a child born out of wedlock and the father of a child whose paternity has been established. . . .’” *In re Adoption of C.W.*, 202 N.E.3d 492, 495 (Ind. Ct. App. 2023) (citing Ind. Code § 31-19-9-1(a)(2)). “[U]nder carefully enumerated circumstances,’ however, the adoption statutes allow ‘the trial court to dispense with parental consent and allow adoption of the child.’” *Id.* (quoting *I.B.*, 163 N.E.3d at 274).

[12] At issue here is the circumstance enumerated in Indiana Code Section 31-19-9-8(a)(2), which provides in relevant part:

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. . . .

[13] Our courts have long held that a natural parent enjoys special protection in adoption proceedings. *C.W.*, 202 N.E.3d at 495 (citing *I.B.*, 163 N.E.3d at 274). Accordingly, we strictly construe our adoption statutes to preserve the fundamentally important parent-child relationship. *Id.*

[14] In his petition to adopt, Stepfather alleged that Father’s consent was not required under this provision.<sup>3</sup> The trial court found that Father’s consent was not required because of Father’s failure, without justifiable cause, to communicate significantly with Daughter when able to do so. Father claims this finding is unsupported by the evidence. We disagree.

[15] Although Father had contact with Daughter in the months after she was born, he last visited her on April 10, 2015. Father failed to appear for his scheduled visit with Daughter on May 3, 2015. Father then made no attempt to contact Daughter until June 28, 2016, when Father sent Mother a Facebook message asking to see Daughter. Thus, Father failed for a period of over one year to even attempt to communicate or visit Daughter. *See In re Adoption of J.T.A.*, 988 N.E.2d 1250, 1255 (Ind. Ct. App. 2013) (“[T]he relevant time period is not limited to either the year preceding the hearing or the year preceding the

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<sup>3</sup> In his petition to adopt, Stepfather also alleged that Father, for a period of at least one year, knowingly failed to provide for the care and support of Daughter when able to do so as required by law or judicial decree. *See* I.C. § 31-19-9-8(a)(2)(B). The trial court made no finding on this issue, and the parties do not argue this issue on appeal.



petition for adoption, but is any year in which the parent had an obligation and the ability to provide support, but failed to do so.”), *trans. denied*; *In re Adoption of S.W.*, 979 N.E.2d 633, 640 (Ind. Ct. App. 2012) (noting that a parent’s contact after a petition to adopt is filed is irrelevant and that the relevant question is whether the parent failed to significantly communicate with the child for any one-year period), *trans. denied*.

[16] On appeal, Father claims that he was not able to communicate with Daughter because Mother blocked him on Facebook and because he lost Mother’s telephone number. *See E.B.F.*, 93 N.E.3d at 766 (noting that “a custodial parent’s efforts to thwart communication between the non-custodial parent and her child are relevant to determining the non-custodial parent’s ability to communicate and should be weighted in the non-custodial parent’s favor”). Although Mother admitted to having periodically blocked Father on Facebook, he was still able to contact Mother using Facebook during the periods when he was not blocked. Father also had Mother’s telephone number during this period. Father claims that he lost Mother’s telephone number when his phone broke, but the trial court correctly noted that Father took no steps to recover Mother’s number or obtain Mother’s number from other sources. Moreover, Father had Stepfather’s telephone number, and there is no evidence that Father attempted to contact Mother at all during the relevant one-year time period. Accordingly, we cannot agree that Father’s failure to communicate with Daughter during the relevant one-year period was due to Mother having blocked him on Facebook.

[17] Father also never even attempted to communicate with Daughter by card or letter. He attempts to excuse this by claiming that Daughter was too young to appreciate such communications. Even so, Father's failure shows a lack of interest in his Daughter, and Father's claim that Mother would not have given any of his cards or letters to Daughter is mere speculation.

[18] Father also claims that Mother improperly conditioned any contact with Daughter on Father falsely claiming to be Daughter's uncle. As noted by the trial court, however, Mother did not impose any improper conditions on Father's visitations until June 18, 2016, at the earliest, at which time Father had already failed to communicate with Daughter for a period of one year. Thus, the record supports the trial court's conclusion that Father was able to communicate with Daughter yet failed to do so for a period of at least one year.

## **Conclusion**

[19] The trial court did not err by concluding that Father, for a period of at least one year and without justifiable cause, failed to communicate significantly with Daughter when able to do so. Accordingly, we affirm the judgment of the trial court.

[20] Affirmed.

Vaidik, J., and Foley, J., concur.