

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In Re: The Adoption of G.R.
and M.R.;

K.R.,
Appellant

v.

K.W.,
Appellee.

May 12, 2023

Court of Appeals Case No.
22A-AD-1501

Appeal from the Decatur Circuit
Court

The Honorable Timothy Day,
Judge

Trial Court Cause Nos.
16C01-2109-AD-19
16C01-2109-AD-20

Memorandum Decision by Judge Pyle

Judges Bradford and Kenworthy concur.

Pyle, Judge.

Statement of the Case

[1] K.R. (“Father”) appeals the trial court’s orders granting K.W.’s (“Stepfather”) petitions to adopt Father’s seven-year-old daughter, M.R., (“M.R.”), and his five-year-old son, G.R., (“G.R.”), (collectively “the Children”). Father specifically argues that the trial court clearly erred in finding that: (1) his consent to the adoptions was not required; and (2) adoption was in the Children’s best interests. Concluding that the trial court did not err, we affirm the trial court’s judgments.

[2] We affirm.

Issue

Whether the trial court erred in granting Stepfather’s petitions to adopt the Children.

Facts

[3] Father and A.W. (“Mother”), who never married, began dating in 2012. When M.R. was born in March 2014, Father and Mother were residing together, and Father signed a paternity affidavit. In October 2014, Father pleaded guilty to Class A misdemeanor theft and was placed on probation. Two months later, in December 2014, the trial court entered an agreed paternity order establishing M.R.’s paternity. In February 2015, Father admitted that he had violated the terms and conditions of his probation by using Hydrocodone that was not prescribed to him. Seven months later, in September 2015, Father pleaded guilty to Class B misdemeanor possession of marijuana.

- [4] G.R. was born in February 2016, and Father signed a paternity affidavit. No paternity order was entered. Seven months later, in September 2016, Father was convicted of Class A misdemeanor domestic battery following a domestic dispute with Mother. Shortly thereafter, Father and Mother ended their relationship. Father and Mother reconciled in November 2017, and three months later, in February 2017, Father pleaded guilty to Level 6 felony domestic battery in the presence of a child. Mother was the victim, and the battery took place in the presence of M.R. Mother and Father permanently ended their relationship in 2018. Also, in 2018, Father attended a sixty-day inpatient substance abuse treatment program.
- [5] Mother met Stepfather in early 2020. In February 2020, Father pleaded guilty to Level 6 felony possession of heroin. Although the record is unclear as to the frequency of Father's parenting time with the Children from 2018 until 2020, it appears that Father often scheduled parenting time with the Children and then failed to attend the scheduled visits. Father also failed to follow through with telephone calls and FaceTime opportunities with the Children that Mother had arranged for him. It is undisputed that Father's last parenting time visit with the Children was at his mother's ("Paternal Grandmother") home in June 2020. In August 2020, Father filed a petition to establish G.R.'s paternity. However, when Father failed to attend the paternity hearing, his petition was dismissed.
- [6] In February 2021, Father texted Mother and asked if he could call G.R. to wish him a happy birthday. Mother did not respond to Father's text message. In March 2021, Father texted Mother and asked her to have M.R. call Father so

that Father could wish her a happy birthday. Mother did not respond to Father's text message. Also in March 2021, Father violated the terms and conditions of his probation. In June 2021, Father texted Mother and asked if he could talk to M.R. and G.R. because his grandfather had passed away. Mother did not respond to Father's text message.

[7] Mother and Stepfather married in August 2021. Also, in August 2021, Father filed a second petition to establish G.R.'s paternity. In September 2021, Stepfather filed petitions to adopt M.R. and G.R. In these petitions, Stepfather stated that Father had not seen, supported, or communicated with the Children for over one year. Stepfather attached Mother's consents to the adoptions to the adoption petitions. In October 2021, Father filed objections to Stepfather's adoption petitions.

[8] In December 2021, Paternal Grandfather and Paternal Grandfather's girlfriend celebrated Christmas with the Children at Mother and Stepfather's home. Father did not attend the celebration or send Christmas gifts to the Children. Father texted Mother at 9:30 p.m. on Christmas night and asked if he could wish M.R. and G.R. a Merry Christmas. The Children were asleep, and Mother did not respond to Father's text message. The Children had a delayed Christmas celebration with Paternal Grandmother on New Year's Eve. Father did not attend the celebration because he does not maintain any contact with Paternal Grandmother.

[9] The trial court held a hearing on Stepfather's adoption petitions in January 2022. At the beginning of the hearing, the trial court explained that the purpose of the hearing was to determine whether it could grant Stepfather's petitions to adopt M.R. and G.R. without Father's consent.

[10] At the hearing, Father testified that he had not had contact with the Children since June 2020. He also testified that he had known that Paternal Grandmother had celebrated Christmas with the Children on New Year's Eve but explained that he had not been a part of that celebration because he had chosen not to have contact with Paternal Grandmother. Father further testified that he guessed that he should have reached out to Paternal Grandmother to schedule a time to see the Children. Father testified that he had never sent the Children any letters or cards and that he did not know the last time that he had purchased a Christmas gift for them. In addition, Father testified that he did not know the Children's birth years or what grade the Children were in at school. Father also testified that he did not know anything about the Children's extracurricular activities. Father also testified that he did not know the name of the Children's pediatrician or who provided the Children with health insurance. In addition, Father testified that he was capable of supporting the Children.

[11] Mother testified that Father had never telephoned her and asked to have parenting time with the Children and that she had never blocked him on her phone or refused him parenting time with the Children. Mother further testified that although she had seen Father drive by Stepfather and Mother's home, Father had never stopped and asked to have contact with the Children. In

addition, Mother testified that she had frequent contact with Father's family and that the Children regularly spent time with Paternal Grandmother. Mother explained that she had not responded to Father's 2021 texts because, in the past, Father had failed to attend scheduled visits with the Children and the Children's feelings had been hurt. Mother also testified that Father had not provided support for the Children since she and Father had ended their relationship in 2018.

[12] Stepfather testified that he had never met Father and that he had seen Father for the first time that day in the courtroom. Stepfather further testified that he held the Children out as his children and wanted to be their legal father. In addition, Stepfather testified that he wanted the Children to have a stable home. Stepfather also testified that Paternal Grandmother had regular contact with the Children and that Paternal Grandfather had spent Christmas with the Children at Stepfather and Mother's home. According to Stepfather, Father was "literally stopping himself" from seeing the Children. (Tr. Vol. 2 at 37).

[13] Shortly after the hearing, the trial court issued a nine-page order finding that Father had last had contact with the Children in June 2020 and had not called, visited, or sent birthday or holiday cards or presents to the Children since that time. The trial court further found that Father's text messages to Mother in February, March, and December 2021 were "not significant communications and [were] not communications with the [C]hildren." (App. Vol. 2 at 25). In addition, the trial court found that Father's inability to recall basic information such as the children's dates of birth or grades in school provided further

evidence of Father's lack of communication with the Children. The trial court also found that although the Children had visited with Paternal Grandmother, Father had not had contact with the Children during those visits. Based upon these findings, the trial court concluded that Father had failed, without justifiable cause, to communicate significantly with the Children for at least one year when able to do so and that his consent to the adoptions was not required. The trial court also concluded that Father's consent to the adoptions was not required because Father had knowingly failed to provide for the care and support of the Children for at least one year when able to do so as required by law or judicial decree. The trial court scheduled a March 2022 hearing to determine whether adoption was in the Children's best interests.

[14] At the March 2022 hearing, Stepfather testified that he had been supporting the Children for the previous two years and that he had provided health insurance for them. In addition, Stepfather testified that the Children called him "dad." (Tr. Vol. 2 at 98). According to Stepfather, M.R. was in the second grade, loved school, and played soccer. Stepfather further testified that G.R. was in kindergarten and also played soccer. Stepfather is home every day when the Children come home from school and helps them with their homework. Stepfather also testified that the Children deserve stability and that it was not in their best interests mentally, physically, or emotionally to have a parent constantly letting them down. According to Stepfather, Father had "chosen not to show up." (Tr. Vol. 2 at 99). Stepfather further testified that he owned the home where the family lived and that he had worked at the same job for the

previous eight years. In addition, Stepfather testified that he had no criminal history and that he provided a loving, caring, safe, and stable home for the Children.

[15] Mother testified that the Children had a strong bond with Stepfather. Mother specifically explained that G.R. wanted to be with Stepfather all the time and that M.R. had asked Stepfather to take her to a father and daughter dance. Mother's cousin's fiancée testified that she had believed that Stepfather was the Children's natural father because of the way that the Children interacted with him.

[16] Paternal Grandmother testified that she had been estranged from Father for two years because he believed that she had been "taking sides." (Tr. Vol. 2 at 177). According to Paternal Grandmother, there had been times when Father had known that the Children were at her home and had chosen not to visit them.

[17] Lastly, Father testified that he lived with his girlfriend and her six-year-old son. Father also testified that he worked for Main's Contracting, earned \$20 per hour, and was capable of supporting the Children. Father further testified that he loved the Children.

[18] In May 2022, the trial court issued an order that provides, in relevant part, as follows:

13. Father has failed to support the [C]hildren for extended periods of time and also had not communicated with the [C]hildren or made attempts to establish or reinstate his parenting time for a period of time exceeding one year.

Father also has a criminal history, a history of drug abuse and domestic violence, and a history of failing to follow court orders. In contrast, [Stepfather] has a close relationship with the [C]hildren, assists them in getting to and from school, helps them with their homework and school projects, and attends their extracurricular activities. The [C]hildren are thriving in [Stepfather]’s care and earn good grades in school. [Stepfather] has never been convicted of a crime and has full-time employment. [Stepfather] desires to adopt the [C]hildren and cares for them deeply.

(App. Vol. 2 at 35). The trial court concluded that adoption was in the Children’s best interests and granted Stepfather’s petitions to adopt M.R. and G.R.

[19] Father now appeals.

Decision

[20] Father argues that the trial court erred in granting Stepfather’s petitions to adopt M.R. and G.R. Father specifically contends that the trial court erred in concluding that his consent to the adoptions was not required and that adoption was in the Children’s best interests.

[21] When reviewing the trial court’s ruling in an adoption proceeding, we presume that the trial court’s decision is correct, and the appellant bears the burden of rebutting this presumption. *M.M. v. A.C.*, 160 N.E.3d 1133, 1135 (Ind. Ct. App. 2020). 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 the parent's relationships with his children. *Id.*

[22] We will not disturb the trial court's decision unless the evidence leads to one conclusion and the trial court reached an opposite conclusion. *Id.* The trial court's findings and judgment will be set aside only if they are clearly erroneous. *Id.* A judgment is clearly erroneous when there is no evidence supporting the findings or the findings fail to support the judgment. *Id.* We will neither reweigh the evidence nor assess the credibility of the witnesses. *Id.* Further, we will examine only the evidence most favorable to the trial court's decision. *Id.*

[23] Generally, a trial court may grant an adoption petition only if both the mother and father of the child consent. IND. CODE § 31-19-9-1. However, INDIANA CODE § 31-19-9-8 provides that consent to an adoption is not required from:

(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.

I.C. § 31-19-9-8.

[24] In sum, a parent who meets society's expectations by maintaining a connection with his children and by financially supporting his children cannot have his

legal relationship with the children severed without his consent. *Matter of Adoption of I.B.*, 163 N.E.3d 270, 276 (Ind. 2021). However, when a parent fails to maintain a meaningful relationship with or financially support his children, he loses his right as a natural parent to withhold his consent to adoption. *Id.* Our Indiana Supreme Court has explained that what constitutes failure is a fact-sensitive inquiry. *Id.*

[25] Father argues that the trial court erred in concluding that his consent to the adoptions was not required because he had failed without justifiable cause to communicate significantly with the Children for at least one year when able to do so.¹ We disagree.

[26] “A determination on the significance of the communication is not one that can be mathematically calculated to precision.” *I.B.*, 163 N.E.3d at 276 (cleaned up). “Indeed, even multiple relatively consistent contacts may not be found significant in context.” *Id.* (cleaned up). “On the other hand, a single significant communication within one year is sufficient to preserve a non-custodial parent’s right to consent to the adoption.” *Id.* (cleaned up).

¹ Father also challenges the trial court’s conclusion that his consent to the adoptions was not required because he had knowingly failed to provide for the care and support of the Children for at least one year when able to do so as required by law or judicial decree. However, the provisions of INDIANA CODE § 31-19-9-8 are written in the disjunctive and each provides independent grounds for dispensing with parental consent. *In re Adoption of K.S.*, 980 N.E.2d 385, 388 (Ind. Ct. App. 2012). Because we have found that Father’s failure without justifiable cause to communicate significantly with the Children for at least one year when able to do so rendered his consent unnecessary, we need not address his additional challenge to the trial court’s order.

[27] Here, our review of the evidence reveals that Father had no significant communication with the Children from June 2020 through September 2021, when Stepfather filed the petitions to adopt M.R. and G.R. Specifically, since the June 2020 visit with the Children at Paternal Grandmother's home, Father had not telephoned the Children, visited them, or sent them birthday or holiday cards or presents. As noted by the trial court, as further evidence of Father's failure to communicate with the Children, Father did not know the years of the Children's births or their grades in school. In addition, Father did not know anything about the Children's extracurricular activities. The evidence further reveals that Mother allowed the Children to regularly visit with Paternal Grandmother, but Father had not visited with the Children during those times.

[28] Further, although "Indiana courts have occasionally found that consent for adoption was required with less contact between a natural parent and child, those cases generally involved a parent whose active pursuit of, and success in, substance-abuse recovery justified their reduced communication with their child." *I.B.*, 163 N.E.3d at 277 (citing *In re Adoption of D.H.*, 135 N.E.3d 914, 924 (Ind. Ct. App. 2019); *E.B.F. v. D.F.*, 93 N.E.3d 759, 762 (Ind. 2018)). Here, although Father has struggled with substance abuse and attended an inpatient substance abuse treatment program in 2018, he presented no evidence that attempts at drug rehabilitation had prevented him from seeing the Children. Based upon this evidence, the trial court did not err in concluding that Father's consent to the adoptions was not required because he had failed without

justifiable cause to communicate significantly with the Children for at least one year when able to do so.

[29] Father also argues that the trial court erred when it determined that adoption was in the Children's best interests. Again, we disagree.

[30] The primary concern in every adoption proceeding is the best interests of the children. *In re Adoption of M.S.*, 10 N.E.3d 1272, 1281 (Ind. Ct. App. 2014). Thus, even if a court determines that a parent's consent is not required for an adoption, the court must still determine whether adoption is in the children's best interests. *Id.*

[31] The adoption statute does not provide guidance for which factors to consider when determining the best interests of the children in an adoption proceeding, but we have noted that there are strong similarities between the adoption statute and the termination of parental rights statute in this respect. *Id.* In termination cases, we have held that the trial court is required to look to the totality of the evidence to determine the children's best interests. *Id.* Relevant factors include, among others, a parent's historical and current inability to provide a suitable environment for the children and the children's need for permanence and stability. *Id.*

[32] Here, our review of the record reveals that, over the years, Father has neither communicated with nor supported the Children. In addition, Father has a criminal history that includes two convictions for domestic battery, a history of drug abuse, and a history of failing to follow court orders. In contrast, it is

undisputed that Stepfather has provided the Children with a stable, nurturing environment. It is also undisputed that the Children have bonded with Stepfather and view him as a parent. Stepfather helps the Children with their homework and attends their extracurricular activities, and, as noted by the trial court, the Children are thriving under Stepfather's care. Further, Stepfather has no criminal history. Based on this evidence, the trial court did not err in determining that adoption was in the Children's best interests. *See M.S.*, 10 N.E3d at 1282.

[33] In conclusion, the trial court was in the best position to judge the facts, determine witness credibility, get a feel for the family dynamics, and get a sense of a both Father's and Stepfather's relationships with the Children. We will not reweigh the evidence or reassess the credibility of the witnesses. Based on the facts of this case, Father has not met his burden to overcome the presumption that the trial court's decision is correct, and we cannot say that the evidence leads to but one conclusion and the trial court reached the opposite conclusion. Accordingly, the trial court did not clearly err in granting Stepfather's petitions to adopt M.R. and G.R., and we affirm the trial court's judgments. *See K.H. v. M.M.*, 151 N.E.3d 1259, 1269 (Ind. Ct. App. 2020), *trans. denied*.

[34] Affirmed.

Bradford, J., and Kenworthy, J., concur.