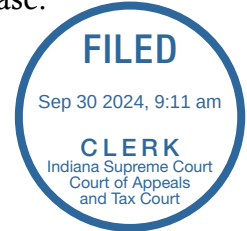
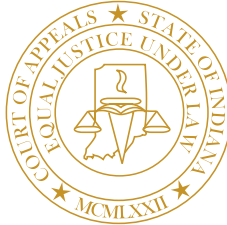


MEMORANDUM DECISION

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

IN THE MATTER OF THE ADOPTION OF B.E.B.,

J.M. and S.M.
Appellant-Defendant

v.

C.B.
Appellee-Plaintiff

September 30, 2024

Court of Appeals Case No.
24A-AD-00648

Appeal from the Gibson Circuit Court
The Honorable David Kiely, Special Judge
Trial Court Cause No. 26C01-2211-AD-001588

Memorandum Decision by Judge Bailey
Judges Kenworthy and Felix concur.

Bailey, Judge.

Case Summary

- [1] J.M. (“Grandmother”) appeals the denial of her petition to adopt B.E.B. (“Child”), upon the objection of C.B. (“Father”). S.M. (“Mother”) appeals the child support order entered for the benefit of Child. We affirm the denial of the adoption petition. We remand with instructions to the trial court to address the matter of retroactive child support.

Issues

- [2] We address the following restated and consolidated issues:¹

- I. Whether the findings of fact, conclusions thereon, and order denying the adoption are clearly erroneous because Grandmother established by clear and convincing evidence that Father had abandoned Child and thus his consent to adoption is not required; and

¹ Grandmother and Mother articulate an additional issue concerning the omission of a Guardian Ad Litem. According to Grandmother and Mother, the trial court “committed reversible error in admitting that it did not have all of the information it wanted before it regarding best interests of B.E.B. and the fitness of C.B. because it did not realize a Guardian ad Litem was not appointed in the mater, and it had mistakenly assumed the preparer of the Adoption Home Study report was investigating the matter in the capacity as a Guardian ad Litem.” Appellants’ Brief at 6. Our review of the record does not reveal an admission by the trial court that it lacked adequate information to support its decision, nor does our review indicate a dearth of evidence as to best interests of Child or parental fitness. Moreover, Grandmother and Mother develop no argument with citation to any authority indicating that a Guardian ad Litem appointment is mandatory in an adoption proceeding. Accordingly, we do not address this issue.

- II. Whether the trial court failed to comply with Indiana Code Section 31-14-11-5, which provides for a retroactive child support order in a paternity matter.

Facts and Procedural History

- [3] Mother and Father were living together when Child was born in December of 2018. At that time, Father executed a paternity affidavit; no court order was sought by the parties. In the summer of 2019, Father moved out. Thereafter, he had six visits with Child – four at Mother’s house, one at his aunt’s house, and one at his grandparents’ house. On a few occasions, Father gave Mother some cash for the support of Child.
- [4] When Child was eight months old, the relationship between Father, Mother, and Mother’s parents soured when it was learned that Father had rekindled a relationship with the mother of Child’s half-sibling, who was three months older than Child. Grandmother posted a Facebook message to advise Father: “[Mother] doesn’t need that money, you can keep it and wipe your ass with it for all we care.” (Tr. Vol. II, pg. 95.) Father made some attempts to contact Mother, but she declined to respond to most of the messages. At one point, Mother advised Father that “they were arguing too much” and that they “just needed to end things in court.” (*Id.* at 47.)
- [5] On June 9, 2022, Father filed his “Petition to Determine Paternity and Incidents Thereof,” (App. Vol. II, pg. 36), in Crawford County, Illinois. One month later, Mother filed a petition in Gibson County, Indiana to establish paternity and determine parenting time and child support. On November 9,

2022, Grandmother filed her petition to adopt Child, with Mother's consent. The Illinois paternity case was transferred, by agreement, to Indiana. On November 23, Father filed his objection to the petition for adoption. On November 30, the trial court consolidated the matters and ordered that a pre-adoptive home study be conducted.

[6] Over one year later, on January 30, 2024, a hearing was conducted. By that time, Father had not seen Child or provided support for four and one-half years. He testified that he had not intentionally abandoned Child, and he desired that Child have a relationship with him and with her three half-siblings. He testified that he had possessed the ability to support Child since her birth and acknowledged that Mother remained at the same address used during their cohabitation.

[7] Mother and Grandmother testified that Child's needs were met without a father-child relationship. Grandmother described herself as a "co-parent" with Mother and testified that she filed her petition for adoption because "I would like my rights and ... I would like [Father] not to have the rights." (Tr. Vol. II, pg. 100.) According to Mother, the purpose of the adoption petition was "just to keep [Father] from being able to come into [Child's] life now." (*Id.* at 166.)

[8] On February 23, 2024, the trial court issued its findings of fact, conclusions thereon, and order denying the petition for adoption. On March 13, the trial court issued a second order to address paternity, custody, parenting time, and child support. Among the findings of fact relative to Father's parental fitness

and the allegation of abandonment, are the following: Father has no criminal history or substantiated history with the Department of Child Services; he is employed; he lives with his other children, with whom he has a positive relationship; Mother had thwarted Father's efforts at contact, and he "had no way to contact [Child] other than through [Mother]." Appealed Order at 5. The trial court concluded that Grandmother had failed to establish, by clear and convincing evidence, that Father was unfit or that he had abandoned Child by intentionally failing to support her or contact her. The trial court entered the following order: "[Father]'s consent to the Adoption of [Child] is necessary. Granting the adoption is not in the best interest of [Child]. The Court hereby denies the Petition for Adoption in all respects." (Appealed Order at 13.) The trial court ordered Father to pay \$224 weekly as child support, to be reduced to \$182 weekly consistent with phased-in parenting time increases; however, the order did not address retroactive child support. Grandmother and Mother now appeal.

Discussion and Decision

Denial of Petition for Adoption

[9] Indiana Code Section 31-19-10-6 governs the determination of a contested adoption. The trial court may dismiss the petition on procedural grounds. Alternatively, if an evidentiary hearing is conducted, the trial court shall, after hearing evidence:

(A) dismiss the petition for adoption if the court:

(i) finds that the person who filed the motion to contest the adoption has established that it is in the best interests of the child that the motion to contest the adoption be granted;

(ii) finds that a required consent to adoption has not been obtained in writing or has not been implied under IC 31-19-9; or

(iii) permits a necessary consent to adoption to be withdrawn; or

(B) deny the motion to contest the adoption.

I.C. § 31-19-10-6(2).

[10] In family law matters, we generally accord considerable deference to the trial court's decision and presume that the decision is correct. *J.W. v. D.F. (In re E.B.F.)*, 93 N.E.3d 759, 762 (Ind. 2018). "The primary concern in every adoption proceeding is the best interests of the child." *In re Adoption of M.S.*, 10 N.E.3d 1272, 1281 (Ind. Ct. App. 2014). When reviewing the trial court's ruling in an adoption proceeding, we will not disturb that ruling unless the evidence leads to but one conclusion, and the trial court reached the opposite conclusion. *Id.* at 1282. We do not reweigh the evidence on appeal, but instead examine the evidence most favorable to the trial court's decision, together with reasonable inferences drawn therefrom. *Id.*

[11] In addition, because Grandmother had the burden of proof on her petition for adoption, she now appeals from a negative judgment. *See J.P. v. M.D. (In re*

Adoption of S.P.), 172 N.E.3d 344, 351 (Ind. Ct. App. 2021). “We will reverse a negative judgment only if the decision of the trial court is contrary to law.” *Id.*

[12] Moreover, “[a] natural parent enjoys special protection in any adoption proceeding,” and we “strictly construe our adoption statutes to preserve the fundamentally important parent-child relationship.” *J.B. v. V.B. (In re Adoption of I.B.)*, 163 N.E.3d 270, 274 (Ind. 2021). 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 biological father of the child if the father’s paternity has been established by: ... a paternity affidavit executed under IC 16-37-2-2.1.” Ind. Code § 31-19-9-1(a)(2)(B). “[U]nder carefully enumerated circumstances,” however, the adoption statute allows “the trial court to dispense with parental consent and allow adoption of the child.” *I.B.*, 163 N.E.3d at 274.

[13] Grandmother focuses her appeal on Indiana Code Section 31-19-9-8(a), which provides:

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

(1) A parent or parents if the child is adjudged to have been abandoned or deserted for at least six (6) months immediately preceding the date of the filing of the petition for adoption.

(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.

[14] “If a petition for adoption alleges that a natural parent’s consent is unnecessary under these circumstances, and the natural parent contests the adoption, the petitioner carries the burden of proving that the natural parent’s consent is unnecessary.” *I.B.*, 163 N.E.3d at 274 (citing I.C. § 31-19-10-1.2(a)). “The party bearing this burden must prove his or her case by clear and convincing evidence.” *Id.* “Indiana Code section 31-19-9-8(a) is written in the disjunctive, so each of the sub-sections provides an independent ground for dispensing with consent.” *Id.* at 275.

[15] Grandmother contends that she established, by clear and convincing evidence, that Father’s consent to the adoption is unnecessary because he failed, for the requisite statutory period of time, to significantly communicate with Child, and because he knowingly failed to support Child when able to do so. She points to the uncontroverted evidence that Father had not seen Child or supported her for four and one-half years. Grandmother acknowledges that no child support order was in place but points out that there exists a common law duty to support one’s child. *See In re A.K.S.*, 713 N.E.2d 896, 899 (Ind. Ct. App. 1999) (recognizing that parents “have a common law duty to support their children which exists apart from any court order or statute”). Additionally,

Grandmother points to evidence that Father did not advise Mother of his permanent relocation to Illinois or his temporary relocation to Texas for employment. Grandmother claims that she presented “uncontroverted evidence that Father abandoned Child” and that the trial court’s determination regarding the necessity of Father’s consent is clearly erroneous. Appellant’s Brief at 25.

[16] We acknowledge that the evidence of abandonment points, almost exclusively, to a conclusion opposite that reached by the trial court. However, that is not outcome determinative. Even in cases in which a court determines that a natural parent’s consent is not required, the court must still determine whether adoption is in the child’s best interests. *See* Indiana Code Section 31-19-11-1 (providing, among other things: “Whenever the court has heard the evidence and finds that: (1) the adoption requested is in the best interest of the child the court shall grant the petition for adoption and enter an adoption decree.) *See also, Matter of Adoption of E.M.M.*, 164 N.E.3d 779, 782 (Ind. Ct. App. 2021). Indeed, “a court *cannot* grant an adoption petition unless it is in the child’s best interests” because that represents the “primary concern” in each adoption proceeding. *Id.* (emphasis added.)

[17] Here, the trial court found that adoption by Grandmother is not in Child’s best interests. Grandmother points to Father’s absence from Child’s life and contends that he has shown no “defense.” Appellant’s Brief at 23. But such is a request to reweigh the evidence; this we cannot do. *In re M.S.*, 10 N.E.3d at 1281. The trial court found Father to be a fit parent; he has three other children

with whom he would like Child to have a relationship. Father also has extended family members desiring a relationship with Child. Grandmother and Mother admitted that their motivation in filing the adoption petition was removing Father from Child's life. We cannot say that the trial court abused its discretion when it found that adoption is not in Child's best interests and denied the adoption petition.

Retroactive Child Support

- [18] Mother contends that the trial court erroneously failed to order Father to pay retroactive child support pursuant to Indiana Code Section 31-14-11-5, which provides that in a paternity action,

The support order:

(1) may include the period dating from the birth of the child; and

(2) must include the period dating from the filing of the paternity action.

- [19] An award of retroactive support for the period dating from the latter of the two dates listed in the statute is mandatory. *Matter of Paternity of A.D.W.*, 693 N.E.2d 576, 578 (Ind. Ct. App. 1998). Generally, however, "the trial court is not required to award retroactive child support from a date prior to the filing of the paternity action. Rather, such an award is discretionary." *C.A.M. ex rel. Robles v. Miner*, 835 N.E.2d 602, 606 (Ind. Ct. App. 2005). For example, we have found that a trial court did not abuse its discretion when it entered an

order that was retroactive only to the filing of the petition, based upon clearly articulated reasons – the family had been intact for a decade; the father had provided financial support; and the child had received benefits based upon the father’s retirement account. *Barrad v. Martin*, 120 N.E.3d 565, 573 (Ind. Ct. App. 2019), *trans. denied*.

[20] Here, the trial court made no provision for retroactive child support in any amount, but simply ignored Father’s common law or statutory duty of support during the first several years of Child’s life. “It is in the best interests of all citizens of Indiana that parents meet their obligations to support their children.” *Paternity of L.A. ex rel. Eppinger v. Adams*, 803 N.E.2d 1196, 1201 (Ind. Ct. App. 2004). Accordingly, we remand for a determination that establishes the period of time that should encompass retroactive child support.

Conclusion

[21] Grandmother has not shown that the trial court clearly erred in denying the petition for adoption. However, it is clear that the trial court failed to comply with Indiana Code Section 31-14-11-5. We affirm the denial of the petition for adoption and remand for further proceedings on child support consistent with this opinion.

[22] Affirmed in part and remanded with instructions.

Kenworthy, J., and Felix, J., concur.

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