MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Cara S. Wieneke
Wieneke Law Office, LLC
Brooklyn, Indiana

ATTORNEY FOR APPELLEES

Marylyn K.L. Ernsberger
Ernsberger & Helmer, P.C.
Angola, Indiana

IN THE
COURT OF APPEALS OF INDIANA

In re the Adoption of S.K.D.T.:

K.P.,

Appellant-Respondent,

v.

L.J. and J.J.,

Appellees-Petitioners

May 30, 2023

Court of Appeals Case No. 23A-AD-65

Appeal from the Steuben Circuit Court

The Honorable Allen N. Wheat, Judge

Trial Court Cause No. 76C01-2207-AD-8

Memorandum Decision by Judge Mathias
Judges Vaidik and Pyle concur.

Mathias, Judge.

[1] K.P. ("Mother") appeals the Steuben Circuit Court's order granting a petition for adoption filed by L.J. and J.J. ("the Guardians") over minor child S.K.D.T. ("the Child"). K.P. raises the following two issues for our review:

> 1. Whether the trial court clearly erred when it found that Mother's consent to the adoption was not necessary.
>
> 2. Whether the trial court's order omits statutorily required findings on the Child's best interest and the Guardians' ability to rear the Child and furnish suitable support and education for him.

[2] We affirm in part and reverse and remand in part.

Facts and Procedural History

[3] In May 2021, Mother gave birth to the Child.[1] For the first two weeks after the Child's birth, Mother and the Child lived in the home of L.J., Mother's mother, and J.J., Mother's step-father. Mother then left the home without the Child.

[4] Soon thereafter, L.J. and J.J. petitioned to be appointed guardians over the Child, which the trial court granted. Between July 2021 and July 2022, Mother met with the Child a total of six times for approximately fifteen minutes each time. On some occasions when visits between Mother and the Child had been arranged with the Guardians, Mother did not appear.

---

[1] The Child's father, D.T., filed a paternity affidavit, but he did not participate in the adoption proceedings, and he does not participate in this appeal.

[5] In April 2022, Mother became aggressive with L.J. at the Guardians' home. Thereafter, the Guardians limited Mother's contact with the Child at their home, but the Guardians were willing to transport the Child to visits with Mother.

[6] In July 2022, the Guardians petitioned the court for their adoption of the Child. After an evidentiary hearing, the trial court found that Mother's consent to the adoption was not necessary "because of her failure, without justifiable cause, to significantly communicate with [the Child] for a period of at least one (1) year." Appellant's App. Vol. 2, p. 107. More specifically, the court found:

> 11. For the year preceding the filing of the adoption petition[, Mother] had contact with [the Child] on five (5) or six (6) occasions[,] each lasting for a period of approximately fifteen (15) minutes.
>
> 12. The court concludes that there existed no justifiable cause for [Mother] to parent [the Child] for only ninety (90) minutes during the course of an entire year.

Id. The court then granted the Guardians' adoption petition, and this appeal ensued.

Standard of Review

[7] Mother appeals the trial court's order granting the Guardians' petition for adoption. As our Supreme Court has made clear:

> 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." *MacLafferty v. MacLafferty*, 829 N.E.2d 938, 940 (Ind. 2005). 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. *In re Adoption of O.R.*, 16 N.E.3d 965, 972-73 (Ind. 2014).
>
> The trial court's findings and judgment will be set aside only if they are clearly erroneous. *In re Paternity of K.I.*, 903 N.E.2d 453, 457 (Ind. 2009). "A judgment is clearly erroneous when there is no evidence supporting the findings or the findings fail to support the judgment." *Id.* We will not reweigh evidence or assess the credibility of witnesses. *In re Adoption of O.R.*, 16 N.E.3d at 973. Rather, we examine the evidence in the light most favorable to the trial court's decision. *Id.*

E.B.F. v. D.F., 93 N.E.3d 759, 762 (Ind. 2018).

1. The trial court did not clearly err when it concluded that Mother's consent to the adoption was not necessary.

[8] We first address Mother's argument that the trial court erred when it concluded that her consent to the adoption was not necessary. As our Supreme Court has explained:

> Indiana law generally provides that a petition for adoption of a child born out of wedlock requires written consent from the mother of the child and, if paternity had been established by a paternity affidavit, written consent from the father is required too. Ind. Code § 31-19-9-1. Parental consent may, however, be dispensed with under certain enumerated circumstances. One such circumstance is where, for a period of at least one year, "[a]

> parent of a child in the custody of another person . . . fails without justifiable cause to communicate significantly with the child when able to do so . . . .” Ind. Code § 31-19-9-8(a)(2)(A).
>
> A determination on the significance of the communication is not one that can be mathematically calculated to precision. Our Court of Appeals was correct in stating that significance of the communication cannot be measured in terms of units per visit. *In re Adoption of J.P.*, 713 N.E.2d 873, 876 (Ind. Ct. App. 1999). Even multiple and relatively consistent contacts may not be found significant in context. *Id.* But a single significant communication within one year is sufficient to preserve a non-custodial parent's right to consent to the adoption. *In re Adoption of Subzda*, 562 N.E.2d 745, 749 (Ind. Ct. App. 1990).

Id. at 763. Or, as our Supreme Court has summarized:

> A parent who meets society's expectations by maintaining a connection with her child and by financially supporting her child cannot have her legal relationship with the child severed without her consent. Conversely, when a parent fails to maintain a meaningful relationship with, or fails to financially support, that child, she loses her right as a natural parent to withhold consent to adoption. Of course, what constitutes failure is a fact-intensive inquiry.

In re Adoption of I.B., 163 N.E.3d 270, 276 (Ind. 2021).

[9] Mother contends that the record does not support either the court's finding that she failed to communicate significantly with the Child or that she lacked a justifiable cause for her limited communication. We do not agree. The record shows that Mother left the Child at two weeks old. The record further shows that, between the Child's ages of about two-months old and about fourteen-

months old, Mother had a total of ninety minutes of time spent with the Child, which was divided out into six fifteen-minute intervals over those twelve months. And, as the Guardians note in their brief on appeal, there is no evidence that Mother was incarcerated or suffering from a drug addiction during that time.

[10] Still, Mother asserts that her limited communication is supported by the Parenting Time Guidelines, which state that "[i]t is . . . best if scheduled parenting time in infancy be minimally disruptive . . . ." Ind. Parenting Time Guidelines Rule II(C)(1). But nothing in the Parenting Time Guidelines implies that ninety minutes divided out over six fifteen-minute intervals over twelve months is significant parenting time. Thus, we conclude that the trial court's finding that Mother failed to have significant communication with the Child is supported by the record.

[11] We likewise conclude that the court's finding that Mother lacked a justifiable cause for her limited communication is supported by the evidence. Mother asserts that she attempted to communicate more frequently with the Child, but she was thwarted by the Guardians. But the record shows that the Guardians were willing to transport the Child to be with Mother; that part of the reason they limited her contact with the Child was due to her aggression toward them; and that, on some occasions where time with the Child had been arranged, Mother failed to show up. And the record does not suggest that Mother sought to have a court enter a parenting time order to establish regular communication or visitation between her and the Child. We cannot say that the trial court

clearly erred when it found that Mother lacked a justifiable cause for her limited communication with the Child. Thus, we affirm the trial court's conclusion that Mother's consent to the adoption was not necessary.

2. The trial court failed to make two required statutory findings before granting the Guardians' petition for adoption.

[12] Indiana Code section 31-19-11-1 (2021) requires a trial court to find that "the adoption requested is in the best interest of the child" and also that the "petitioners for adoption are of sufficient ability to rear the child and furnish suitable support and education" for the Child before the court may grant a petition for adoption. Here, the trial court made neither of those required findings. *See* Appellant's App. Vol. 2, pp. 103-08; *see also O.R.*, 16 N.E.3d at 974.

[13] The Guardians assert that we can assume the trial court found those statutory prerequisites to be satisfied given both this record and the trial court's ultimate judgment. But the Guardians' argument, in its operation and effect, is for this court to act as a fact-finder, which we will not do.

[14] During the underlying proceedings here, the parties and the trial court were focused on whether Mother's consent to the adoption was required. The parties did not argue the issues of the Child's best interest and whether the Guardians have sufficient ability to rear the Child and furnish suitable support and education for him. Accordingly, we reverse the trial court's entry of the adoption decree and remand for the trial court to determine whether the

adoption will be in the Child's best interest and whether the Guardians have sufficient ability to rear the Child and furnish suitable support and education for him.

[15] Affirmed in part, reversed in part, and remanded for further proceedings.

Vaidik, J., and Pyle, J., concur.