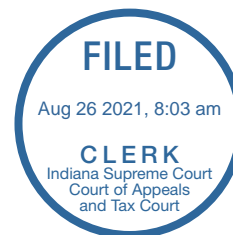


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

In Re: The Adoption of H.A.
and J.A.;

E.D.A.,

Appellant-Defendant,

v.

R.M. and J.M.,

Appellees-Plaintiffs.

August 26, 2021

Court of Appeals Case No.
21A-AD-469

Appeal from the Clark Circuit
Court

The Honorable Vicki L.
Carmichael, Judge

Trial Court Cause Nos.
10C04-1912-AD-69
10C04-1912-AD-70

Pyle, Judge.

Statement of the Case

- [1] E.D.A. (“Father”) appeals the trial court’s order granting R.M. (“Guardian R.M.”) and J.M.’s (“Guardian J.M.”) (collectively, “the Guardians”) petitions

to adopt Father’s seven-year-old daughter, H.A., (“H.A.”), and his five-year-old son, J.A., (“J.A.”), (collectively, “the Children”).¹ Father specifically argues that the trial court erred in concluding that his consent to the adoptions was not required. Concluding that the trial court did not err, we affirm the trial court’s judgment.

[2] We affirm.

Issue

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

Facts

[3] Father and Mother (collectively, “the Parents”) are the parents of fifteen-year-old M.A., twelve-year-old Jo.A., seven-year-old H.A., and five-year-old J.A. When J.A. was born in December 2015, he was addicted to opiates because Mother had used drugs while she was pregnant. The Department of Child Services (“DCS”), which had previously been involved with the family because of the Parents’ drug use, removed J.A. from the Parents. After spending three weeks in the newborn intensive care unit being treated for Neonatal Abstinence Syndrome, J.A. was discharged from the hospital and placed in foster care with the Guardians.

¹ The Children’s Mother, A.A. (“Mother”), is not a party to this appeal.

[4] One year later, in December 2016, DCS ordered that J.A. be returned to the Parents and closed the case. After having spent the first year of his life with the Guardians, J.A. had difficulty making the transition to the Parents' home. For example, J.A. was anxious and had difficulty sleeping. He frequently cried and called for Guardian J.M. When this happened, the Parents telephoned the Guardians and asked them to temporarily take J.A. back to their home. The Guardians would take J.A. back to their home and keep him there for a few days before re-attempting the transition. On the days that J.A. was scheduled to attempt another transition back into the Parents' home, the Parents frequently asked the Guardians to keep J.A. even longer.

[5] In July 2017, following the death of the Children's maternal grandmother, Mother asked the Guardians, who still had J.A. at their house, if they would keep then-three-year-old H.A. at their home during the grandmother's funeral. The Guardians, who had previously met H.A. during the attempts to transition J.A. back into the Parents' home, agreed. When H.A. arrived at the Guardians' home the day of the funeral, H.A. had head lice and flea or bedbug bites over her entire body. Although the Guardians had been expecting to keep H.A. for only the day of the funeral, the Parents left H.A. at the Guardians' home for three weeks without contacting the Guardians. During that time, the Guardians bought clothing and other essentials for H.A. because the Parents had dropped her off with nothing more than the clothes that she was wearing.

[6] Although the Parents eventually picked up their daughter from the Guardians' home, H.A. soon began returning to the Guardians' home every few days with

her brother, J.A. During these visits, the Guardians noticed that H.A. exhibited developmental delays and asked the Parents if they could enroll H.A. in a preschool. The Parents agreed, and H.A. began spending a few days each week at the Guardians' home so that she could attend the preschool. During that time, the Guardians also had J.A. in their home "most all the time." (Tr. Vol. 2 at 35). When the Guardians planned to return the Children to the Parents' home, the Parents frequently asked the Guardians to keep both children longer.

[7] The Guardians also began taking the Children to their medical appointments. For example, the Guardians took J.A. to a therapist for treatment of his sensory processing issues. They also took J.A. to an ear, nose, and throat specialist for treatment of his chronic ear infections. Guardian J.M. frequently invited Parents to attend the medical appointments, but they rarely accepted J.M.'s invitations. During one appointment that Mother did attend, the ear, nose, and throat specialist advised Mother to stop smoking cigarettes in the presence of J.A. Mother, however, told Guardian J.M. that it was just "too hard" to do that. (Tr. Vol. 2 at 74).

[8] In late 2017, the Guardians asked the Parents if the Guardians could become the Children's legal guardians to facilitate enrolling the Children in school and taking them to medical appointments. Father admitted that he worked a lot and that Mother was not able to take care of the Children, and both parents agreed to the guardianships. In December 2017, each parent signed a consent to the guardianships. The consents provided that the Parents' visitation with the Children would be at the discretion of the Guardians. In January 2018, the

trial court issued orders appointing J.M. and R.M. as the legal guardians of H.A. and J.A.

[9] Following the issuance of the guardianship orders, the Parents had visits with the Children in their home. However, two incidents prompted the Guardians to question the suitability of the Parents' home for visits. First, during one scheduled visit, the Parents were not at home when the Guardians arrived with the Children. The Guardians texted the Parents, who responded that they were at Waffle House. The Guardians noticed several other people in the Parents' home, one of whom was the Children's maternal aunt. Because DCS had previously ordered that the Children were not to be in the presence of this aunt, the Guardians returned home with the Children. During another visit in the Parents' home, then-five-year-old H.A. was sexually abused by a member of Mother's family. Mother had known that the relative had a history of inappropriate sexual behavior but had nevertheless left him to care for H.A. in her absence.

[10] Following these two incidents, in July 2018, the Guardians offered the Parents weekly Sunday afternoon visits with the Children in the Guardians' home, which was located fifteen to twenty minutes from the Parents' home. The Guardians also invited the Children's older siblings to attend the visits. The Parents agreed to visits in the Guardians' home but rarely attended them. Instead, the Parents typically texted the Guardians, sometimes as late as the day of the visit, that "something had come up[.]" (Tr. Vol. 2 at 46). Parents visited the Children only five or six times during a six-month period.

- [11] At the end of 2018, the Guardians noticed that H.A.'s behavior had begun to deteriorate after visits with the Parents. For example, H.A. demonstrated intense screaming to the point of rupturing Guardian J.M.'s ear drum. H.A. also demonstrated behavioral issues at school the Monday after her visits with the Parents. The teacher frequently called the Guardians to report that H.A. was screaming, rolling on the floor, and throwing shoes.
- [12] Concerned about H.A.'s behavior following a January 2019 visit with the Parents, Guardian J.M. took H.A. to therapist Susan Robinson ("Therapist Robinson") in February 2019. Therapist Robinson, who attributed H.A.'s behavioral issues to the Parents' infrequent and often-cancelled visits, recommended that the Guardians stop holding the visits in their home. When the Guardians told the Parents about Therapist Robinson's recommendation, Father requested to speak with Therapist Robinson. The Guardians gave Father the therapist's name and telephone number. Father, however, neither contacted Therapist Robinson nor requested visits in another setting.
- [13] Shortly thereafter, during a meeting between the Guardians and the Parents, Father again told the Guardians that he worked all the time and that Mother was not capable of taking care of H.A. and J.A. Father told the Guardians that the Children "need[ed] to be with [the Guardians]." (Tr. Vol. 2 at 53). After this meeting, the Guardians decided that they wanted to adopt the Children. During a subsequent meeting with the Parents, the Guardians told the Parents about their desire to adopt the Children. Father seemed "agreeable" to the

adoptions but said that he would want the Children back if anything happened to the Guardians. (Tr. Vol. 2 at 73).

- [14] In December 2019, the Guardians filed petitions to adopt H.A. and J.A. The petitions alleged, among other things, that, for a period of at least one year, Father had knowingly failed to provide for the Children's care and support when able to do so as required by law or judicial decree. Shortly thereafter, the Parents hired an attorney and filed an objection to the adoptions.
- [15] The trial court held a hearing on the Guardians' petitions in December 2020 and heard testimony regarding the facts as set forth above. Testimony at the hearing further revealed that the Guardians have four adult children and thirteen grandchildren. Guardian R.M. is a veterinarian, and Guardian J.M. is a retired teacher and a retired child therapist. Guardian R.M. testified that the Guardians had "never anticipated having children at th[eir] age[.]" but that he loved H.A. and J.A. "more than [he had] ever imagined [he] could." (Tr. Vol. 2 at 91).
- [16] Father testified that he had been employed full-time at a flooring distributor for the previous five years. Father further testified that he earns \$15.50 per hour and often works overtime. According to Father, his income paid the family's bills and "ke[pt] a roof over [the family's] head." (Tr. Vol. 2 at 168). Father also testified that he had hired an attorney to represent the Parents in the adoption case. When asked "how much [he had] contributed to the support of [H.A. and J.A.] in the last five years[.]" Father responded that he "didn't

provide no support.” (Tr. Vol. 2 at 178). Father also acknowledged that, at the time of the hearing, he had not seen or spoken with the Children in almost two years and that he had not attempted to call them or send them letters, cards, or gifts.

[17] Shortly after the hearing, the trial court issued a detailed twelve-page order granting the Guardians’ petitions to adopt H.A. and J.A. In its order, the trial court specifically concluded that Father’s consent to the adoptions was not required because Father: (1) had abandoned the Children; (2) had failed without justifiable cause to communicate significantly with the Children when able to do so; (3) had failed to provide for the care and support of the Children when able to do so as required by law or judicial decree; and (4) was unfit to parent the Children. The trial court also concluded that adoption was in the Children’s best interests.

[18] Father now appeals.

Decision

[19] Father argues that the trial court erred in granting the Guardians’ petitions to adopt H.A. and J.A. Father specifically contends that the trial court erred in concluding that his consent to the adoptions was not required.

[20] 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 the parent's relationships with his children. *In re Adoption of M.S.*, 10 N.E.3d 1272, 1281 (Ind. Ct. App. 2014).

[21] The version of INDIANA CODE § 31-19-9-8 in effect at the time that the Guardians filed their petitions in December 2019 provides, in relevant part, as follows:²

(a) 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

² The Indiana General Assembly amended INDIANA CODE § 31-19-9-8, effective July 2020. However, the provisions of the statute relevant to this appeal remained unchanged.

(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.

* * * * *

(11) A parent if:

(A) a petitioner for adoption proves by clear and convincing evidence that the parent is unfit to be a parent; and

(B) the best interests of the child sought to be adopted would be served if the court dispensed with the parent's consent.

* * * * *

(b) If a parent has made only token efforts to support or to communicate with the child the court may declare the child abandoned by the parent.

The Guardians, as the petitioners, had the burden of proving by clear and convincing evidence that Father's consent to the adoptions was not required.

See In re Adoption of M.L., 973 N.E.2d 1216, 1222 (Ind. Ct. App. 2012).

[22] Here, Father argues that the trial court erred in concluding that his consent to the adoptions was not required because he had failed for a period of at least one year to provide for the care and support of the Children when able to do so as required by law or judicial decree.³ Father specifically contends that the

³ Father also challenges the trial court's conclusions that his consent to the adoptions was not required because he had abandoned the Children, had failed without justifiable cause to communicate significantly with the Children when able to do so, and was unfit to parent the Children. However, the provisions of

Guardians failed to prove that he had the ability to provide for the care and support of H.A. and J.A.

[23] Indiana law imposes upon a parent the duty to support his children. *Irvin v. Hood*, 712 N.E.2d 1012, 1014 (Ind. Ct. App. 1999). This duty exists apart from any court order or statute. *Id.* A court must look at the totality of the circumstances to determine a parent's ability to support his children. *Matter of Adoption of I.B.*, 163 N.E.3d 270, 277 (Ind. 2021).

[24] Here, our review of the evidence reveals that, for the past five years, Father has worked full-time at a flooring distributor. He earns \$620 per week at his full-time hourly rate and frequently works overtime. Father supports his family and is also financially able to purchase cigarettes for Mother and meals at Waffle House. In addition, he was financially able to hire an attorney in the adoption case. We further note that Father offered no reason why he had been unable to provide even minimal support for the Children. This evidence is sufficient to support the trial court's conclusion that Father knowingly failed for a period of at least one year to provide for the care and support of the Children when able to do so as required by law or judicial decree. Accordingly, Father's consent to

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 to provide for the care and support of the Children when able to do so as required by law or judicial decree rendered his consent unnecessary, we need not address his additional challenges to the trial court's order.

the adoptions was not required, and the trial court did not err in granting the Guardians' petitions to adopt H.A. and J.A.⁴ See *Irvin*, 712 N.E.2d at 1014.

[25] Affirmed.

Bailey, J., and Crone, J., concur.

⁴ Father also makes a cursory argument that there is insufficient evidence that the adoptions were in the Children's best interests. However, because he has failed to further develop this argument and offers no authority in support of it, he has waived appellate review of this issue. See *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1156 n. 4 (Ind. Ct. App. 2013) (explaining that a parent's failure to support arguments with cogent reasoning results in waiver on appeal), *trans. denied*; see also Ind. Appellate Rule 46(A)(8) (requiring that each contention be supported by cogent reasoning with citations to authority).