

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re: The Adoption of: O.M.K.
and C.M.K.,

J.P.

Appellant-Petitioner,

v.

J.A.,

Appellee-Respondent.

August 10, 2022

Court of Appeals Case No.
22A-AD-425

Appeal from the Allen Superior
Court

The Honorable Lori K. Morgan,
Judge

The Honorable Beth A. Webber,
Magistrate

Trial Court Cause Nos.
02D08-2009-AD-145
02D08-2009-AD-146

Bradford, Chief Judge.

Case Summary

- [1] S.P. (“Mother”) is the biological mother of O.M.K. and C.M.K. (collectively, “the Children”). In February 2020, paternity for the Children was established, with J.A. (“Biological Father”) being determined to be the Children’s biological father. Mother’s husband, J.P. (“Stepfather”), subsequently filed petitions to adopt the Children. Biological Father contested the adoptions, indicating that he would not give his consent and that adoption was not in the Children’s best interests. The trial court dismissed Stepfather’s petitions after concluding that Biological Father’s consent to the adoptions was required. Stepfather appeals, arguing that the trial court’s decision is not supported by the facts at issue. Concluding otherwise, we affirm.

Facts and Procedural History

- [2] At all times relevant to this appeal, Mother and Biological Father were engaged in an on-again, off-again romantic relationship. O.M.K., born March 19, 2013, and C.M.K., born May 14, 2014, were born out-of-wedlock to Mother. Despite both parties knowing of the possibility that Biological Father could be the Children’s biological father, neither party took any steps to establish paternity.
- [3] On February 28, 2020, Mother filed verified petitions to establish Biological Father’s paternity of the Children. Genetic testing found Biological Father to be the Children’s biological father. Upon learning that he was the Children’s

biological father, Biological Father actively communicated with the Children and provided some measure of support for them.

- [4] On September 3, 2020, Stepfather filed petitions to adopt the Children, arguing that Biological Father’s consent to the adoption was not necessary. Around the time that Stepfather filed these petitions, Mother began restricting Biological Father’s contact with the Children. On September 30, 2020, Biological Father filed motions to contest the adoptions, objecting to the adoptions as not being in the Children’s best interests and asserting both that his consent was required and he did not consent to the adoptions. The trial court conducted an evidentiary hearing after which it dismissed Stepfather’s adoption petitions, concluding that Biological Father’s consent to the adoptions was required.

Discussion and Decision

- [5] Stepfather contends that the trial court erred in determining that Biological Father’s consent was necessary for the adoption of the Children.

We 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.” *E.B.F. v. D.F.*, 93 N.E.3d 759, 762 (Ind. 2018) (cleaned up). 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.* And we will not disturb that decision “unless the evidence leads to but one conclusion and the trial judge reached an opposite conclusion.” *In re Adoption of*

T.L., 4 N.E.3d 658, 662 (Ind. 2014). “We will not reweigh evidence or assess the credibility of witnesses.” *E.B.F.*, 93 N.E.3d at 762 (citation omitted). “Rather, we examine the evidence in the light most favorable to the trial court’s decision.” *Id.* (citation omitted).

Matter of Adoption of I.B., 163 N.E.3d 270, 274 (Ind. 2021).

[6] When, as in this case, the trial court has made findings of fact and conclusions of law, we apply a two-tiered standard of review: “we must first determine whether the evidence supports the findings and second, whether the findings support the judgment.” *In re Adoption of T.W.*, 859 N.E.2d 1215, 1217 (Ind. Ct. App. 2006); *see also* Ind. Trial Rule 52(A) (providing that where the trial court has made findings of fact and conclusions of law, “the court on appeal shall not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.”). Factual findings “are clearly erroneous if the record lacks any evidence or reasonable inferences to support them [and] ... a judgment is clearly erroneous when it is unsupported by the findings of fact and the conclusions relying on those findings.” *T.W.*, 859 N.E.2d at 1217.

In re Adoption of T.L., 4 N.E.3d at 662.

[7] Indiana Code section 31-19-9-8(a)(2) provides that a noncustodial parent’s consent to adoption of the noncustodial parent’s children by another is not required if “for a period of at least one (1) year the parent: (A) fails without justifiable cause to communicate significantly with the child[ren] when able to do so; or (B) knowingly fails to provide for the care and support of the child[ren] when able to do so as required by law or judicial decree.” In finding

that Biological Father's consent to the adoptions was necessary, the trial court found that there was justifiable cause for Biological Father's previous lack of communication with the Children and that Biological Father did not knowingly fail to provide care for the Children as required by law or a judicial decree.

[8] Specifically, the trial court found that while Biological Father knew of the possibility that he could be the Children's biological father, Mother's actions prior to and following the births of the Children led him to believe that he was not. The trial court noted Mother's refusal to have the Children subjected to DNA testing to establish paternity, act of moving away from Biological Father after announcing each pregnancy, failure to respond to attempts to communicate by Biological Father, and complete lack of communication with Biological Father for approximately five and one-half years. The trial court further found that since Mother reached out on February 2, 2020, Biological Father has consistently communicated with the Children and has provided some financial support. Biological Father has since moved from Florida to Fort Wayne to be closer to the Children.

[9] Based on its findings, the trial court concluded that Stepfather had not met his burden of proving that Biological Father's consent was not necessary. Specifically, the trial court concluded that Mother "held [Biological Father] out as the [C]hildren's father beginning in February of 2020" and, while separated from and pursuing a divorce from Stepfather, Mother initiated a paternity action against Biological Father. Appellant's App. Vol. II p. 127. The trial court further concluded that

15. [Mother] helped create a substantial relationship between [the Children] and [Biological Father].

17. [Mother] does not get to “unring” the bell that she rang by initiating the legal actions and significant contacts between [Biological Father] and [the Children] because she and [Stepfather] have reconciled.

21. Once [Biological Father] was aware that he was the biological father of [the Children], he took measures to communicate with and attempted to financially support the minor children, from February of 2020 until [Mother] cut off all communications and ties with him on or around September of 2020.

Appellant’s App. Vol. II pp. 128–29.

[10] In arguing that the trial court erred in finding that Biological Father’s consent to the adoption was necessary, Stepfather does not challenge the vast majority of the findings and conclusions, only challenging Findings Numbers 23–25, 28–31, 33, and 36–37 and Conclusion Number 19. The trial court’s unchallenged findings will be accepted as true. *Henderson v. Henderson*, 139 N.E.3d 227, 232 (Ind. Ct. App. 2019) (“We accept unchallenged findings as true.”). Thus, in order to determine whether the trial court erred, we must evaluate whether the challenged findings are supported by the evidence and whether the findings support the trial court’s conclusion.

I. The Challenged Findings

A. Finding Number 23

[11] Finding Number 23 reads “Prior to February of 2020, [Biological Father] did not believe that [the Children] were his biological children.” Appellant’s App. Vol. II p. 119. In challenging this finding, Stepfather points to evidence indicating that Biological Father knew it was possible he was the Children’s biological father prior to February of 2020 but did not force Mother to establish paternity or submit the Children to DNA testing to establish paternity. Biological Father does not contest that assertion that he was aware of the possibility that he was the Children’s biological father but testified that in light of Mother’s actions when he inquired into his possible paternity, he did not believe that he was the Children’s biological father until 2020. The trial court was in the best position to judge Biological Father’s credibility as a witness and ultimately found Biological Father to be credible. *See In re I.B.*, 163 N.E.3d at 274 (providing that the trial judge is in the best position to determine witness credibility). Stepfather’s challenge to this finding amounts to nothing more than a request for this court to reweigh the evidence, which we will not do. *Id.* (“We will not reweigh evidence or assess the credibility of witnesses.”)

B. Finding Number 24

[12] Finding Number 24 reads “The Court finds that [Biological Father] and [Mother] were not in a committed relationship when [Mother] learned that she was pregnant with either child. Instead, [they] were in an on-again, off-again

relationship that was not steady and ended on multiple occasions due to [Mother] seeing multiple other men.” Appellant’s App. Vol. II p. 119. Despite Stepfather’s allegation that this finding is not supported by the evidence, Biological Father testified that he and Mother had been involved in an “on-and-off-again” relationship since high school, that Mother had cheated on him multiple times during their relationship, and that he believed Mother had been with other men just prior to his learning of both of her pregnancies. Tr. Vol. II p. 34. Biological Father’s testimony is sufficient to support this finding. Stepfather’s challenge to this finding again amounts to nothing more than a request for this court to reweigh the evidence, which we will not do. *See In re I.B.*, 163 N.E.3d at 274.

C. Finding Number 25

[13] Finding Number 25 reads “When [Mother] announced she was pregnant the first time with [O.M.K.], she was living with another man who also had red hair.” Appellant’s App. Vol. II p. 119. Review of the record reveals that Biological Father testified that when Mother became pregnant with O.M.K., Mother “was spending a lot of time with another gentleman who looks very similar to me.” Tr. Vol. II p. 35. After a disagreement between Biological Father and this other man, Mother took the other man’s side in a manner which suggested to Biological Father in a manner that made him believe “that she was with him.” Tr. Vol. II p. 35. Biological Father’s testimony is sufficient to support the trial court’s finding and Stepfather’s challenge to the finding

amounts to nothing more than a request for this court to reweigh the evidence, which we will not do. *See In re I.B.*, 163 N.E.3d at 274.

D. Finding Number 28

[14] Finding Number 28 reads

The Court finds when [O.M.K.] was born, [Biological Father] was notified one day after his birth and when he tried to visit [Mother] and [O.M.K.] in the Hospital, he was denied the opportunity to see [O.M.K.]. [Biological Father] considered this refusal as yet another red flag and confirmation that he was not likely to be [O.M.K.]’s biological father.

Appellant’s App. Vol. II p. 120. In making this finding, the trial court appears to have mistakenly referred to O.M.K. rather than C.M.K. There appears to have been some initial confusion at trial as to which child Biological Father was denied the opportunity to see in the hospital. However, Biological Father clarified that he was in Florida at the time O.M.K. was born and was denied entry when he attempted to visit Mother and C.M.K. in the hospital one day after C.M.K.’s birth. Biological Father further testified that he took the denial of the opportunity to visit Mother and C.M.K. to mean that he “wasn’t the father.” Tr. Vol. II p. 37. Despite the fact that the trial court referred to the wrong child in this finding, given the confusion at trial regarding which child Biological Father was denied the opportunity to see in the hospital following birth coupled with Biological Father’s testimony, we conclude that the substance of this finding is supported by the evidence. Stepfather’s challenge to

the finding amounts to nothing more than a request for this court to reweigh the evidence, which we will not do. *See In re I.B.*, 163 N.E.3d at 274.

E. Finding Number 29

[15] Finding Number 29 reads “The Court finds that [Biological Father] questioned paternity and requested a DNA test of [O.M.K.], which requests were denied.” Appellant’s App. Vol. II p. 120. Biological Father testified that he requested a DNA test following O.M.K.’s birth but that request was denied by Mother. Biological Father’s testimony is sufficient to support the trial court’s finding and Stepfather’s challenge to the finding amounts to nothing more than a request for this court to reweigh the evidence, which we will not do. *See In re I.B.*, 163 N.E.3d at 274.

F. Finding Number 30

[16] Finding Number 30 reads “The Court finds that instead of cooperating with DNA testing, [Mother] continued to ask [Biological Father] to just trust her.” Appellant’s App. Vol. II p. 120. Biological Father testified to this fact, testifying that Mother rejected multiple requests for DNA tests and did not “say anything else other than [that Biological Father] need[ed] to trust [her].” Tr. Vol. II p. 36. Again, Biological Father’s testimony is sufficient to support the trial court’s finding and Stepfather’s challenge to the finding amounts to nothing more than a request for this court to reweigh the evidence, which we will not do. *See In re I.B.*, 163 N.E.3d at 274.

G. Finding Number 31

[17] Finding Number 31 reads “The Court finds that [Biological Father] believed [Mother]’s refusal to have a DNA test was confirmation that he could not be [O.M.K.]’s biological father.” Appellant’s App. Vol. II p. 120. The totality of Biological Father’s testimony made clear that he interpreted Mother’s refusal to submit the Children to DNA testing as confirmation that he was not the Children’s biological father. Stepfather’s challenge to this finding again amounts to nothing more than a request for this court to reweigh the evidence, which we will not do. *See In re I.B.*, 163 N.E.3d at 274.

H. Finding Number 33

[18] Finding Number 33 reads

The Court finds that for a short period of time, [Mother] and [Biological Father] decided to get back together again and [Mother] agreed to move to Florida to be with [him]. For a period of approximately a month or so, [Biological Father] and [Mother] lived together as a family, and [Biological Father] acted in ways that demonstrated that he was [O.M.K.]’s father because he wanted to be a father.

Appellant’s App. Vol. II p. 120. While Mother indicated that she had lived with Biological Father in Florida for approximately two months, Biological Father testified that she had lived with him in Florida for twenty-nine days. He further testified that despite the concerns regarding O.M.K.’s paternity, he had acted as O.M.K.’s father because he had wanted to be a father. Biological Father’s testimony supports the trial court’s finding. Stepfather’s challenge to

this finding is merely another request for this court to reweigh the evidence, which we will not do. *See In re I.B.*, 163 N.E.3d at 274.

I. Finding Number 36

[19] Finding Number 36 reads “The Court finds that when [Biological Father] learned that [C.M.K.] had been born, he renewed his request for a DNA test to confirm paternity of [the Children]. Once again, those requests were denied and refused by [Mother].” Appellant’s App. Vol. II p. 121. Again, Biological Father’s testimony is sufficient to support the trial court’s finding and Stepfather’s challenge to the finding amounts to nothing more than a request for this court to reweigh the evidence, which we will not do. *See In re I.B.*, 163 N.E.3d at 274.

J. Finding Number 37

[20] Finding Number 37 reads “The Court finds that [Mother]’s refusal to agree to paternity testing was confirmation to [Biological Father] that he could not be the biological father.” Appellant’s App. Vol. II p. 121. As was the case for Finding number 31, the totality of Biological Father’s testimony made clear that he interpreted Mother’s refusal to submit the Children to DNA testing as confirmation that he was not the Children’s biological father. Stepfather’s challenge to this finding again amounts to nothing more than a request for this court to reweigh the evidence, which we will not do. *See In re I.B.*, 163 N.E.3d at 274.

II. The Challenged Conclusion

[21] Conclusion Number 19 reads

[Biological Father] had justifiable cause for not paying support or communicating with [the Children] for a period of over one year because the actions of [Mother] and the arguments that the two had regarding DNA testing reasonably led [him] to believe that he was not the father of [the Children].

Appellant's App. Vol. II p. 128. Stepfather argues that the facts do not support the trial court's conclusions that Biological Father had justifiable cause for not communicating with the Children for a period of over one year due to Mother's actions. The trial court's numerous findings outline Mother's actions and Biological Father's interpretation of the meaning of Mother's repeated refusal to subject the Children to DNA testing. Mother's repeated refusals for DNA testing led Biological Father to believe that he was not the Children's biological father. The trial court's conclusion that Biological Father had justifiable cause for not communicating with the Children, who he believed were not his, is supported by the record.

[22] Stepfather also challenges the portion of Conclusion Number 19 which finds that Biological Father had justifiable cause for not paying support for the Children. Again, Indiana Code section 31-19-9-8(a)(2) provides that a noncustodial parent's consent to adoption of the noncustodial parent's children by another is not required if "for a period of at least one (1) year the parent: ... (B) knowingly fails to provide for the care and support of the child[ren] when

able to do so as required by law or judicial decree.” Given the General Assembly’s use of the word “knowingly,” we do not believe that the General Assembly intended for Indiana Code section 31-19-9-8(a)(2) to negate the need for consent when a custodial parent acted in a manner that left the noncustodial parent with a reasonable belief that he was not the child’s biological parent. Given the evidence before the trial court outlining why Biological Father did not believe he was the Children’s biological father, we cannot say that the trial court erred in reaching this conclusion.

III. The Findings Support the Conclusions

[23] As we stated above, “when reviewing an adoption case, we presume that the trial court’s decision is correct,” and “we will not disturb that decision unless the evidence leads to but one conclusion and the trial judge reached an opposite conclusion.” *In re I.B.*, 163 N.E.3d at 274 (internal quotations omitted). Upon review, “we examine the evidence in the light most favorable to the trial court’s decision.” *Id.* (internal quotation omitted). Looking to the evidence most favorable to the trial court’s decision, we conclude that the trial court’s findings are supported by the evidence and that said findings support the trial court’s conclusion that Biological Father’s consent to the Children’s adoption by Stepfather was required because his failure to communicate with and support the Children was justified.

[24] The judgment of the trial court is affirmed.

Najam, Sr.J., concurs.

Bailey, J., concurs in result without opinion.