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IN THE
COURT OF APPEALS OF INDIANA

In Re the Adoption of A.G:

A.S.,
Appellant-Respondent,

v.

J.T. and M.T.,
Appellees-Petitioners

November 22, 2022

Court of Appeals Case No.
22A-AD-1178

Appeal from the Madison Circuit
Court

The Honorable Andrew Hopper,
Judge

The Honorable Christopher Cage,
Commissioner

Trial Court Cause No.
48C03-2104-AD-000026

May, Judge.

[1] A.S. (“Mother”) appeals the adoption of her biological child, A.G. (“Child”) by J.T. and M.T. (collectively, “Guardians”). She presents two arguments for our review, which we restate as:

1. Whether the trial court erred when it granted Guardians' motion to dispense with Mother's consent to Child's adoption based on Mother's failure to pay child support when she was able to do so during the relevant time frame; and
2. Whether the trial court erred when it determined Guardians' adoption of Child was in Child's best interests.

We affirm.

Facts and Procedural History

- [2] Mother and R.G. ("Father") are the biological parents of Child, who was born on April 8, 2013. In 2016, the Department of Child Services ("DCS") removed Child from Mother's care because Mother was using illegal drugs. M.T. is Father's sister, and Child was placed in relative care with Guardians upon removal from Mother's care. Child had lived with Guardians since her removal from Mother. Over the years, Guardians allowed Child to visit with her maternal grandmother on a regular basis, and sometimes Mother would be present during these visits.
- [3] In June 2017, Guardians established guardianship of Child. Father died on October 16, 2018. At some point during this time the trial court ordered Mother to pay \$74.00 a week in child support with an additional \$10.00 to pay an arrearage. On May 2, 2019, a trial court terminated Guardians' guardianship of Child at Mother's request. However, that evening, Mother was

arrested for driving while intoxicated and Child was returned to Guardians' care.

[4] On April 24, 2021, Guardians filed for adoption of Child. In that petition, Guardians alleged Mother “has had little meaningful contact with [Child] since placement to [sic] [Guardians] and Guardianship was also granted to [Guardians]; and that [Mother] has failed to provide any sort of financial support or pay child support for [Child].” (App. Vol. II at 10.) On June 16, 2021, Mother filed a motion to contest the adoption of Child, in which she argued she “has not failed to have significant communication with [Child]” and “has provided for the care or support of [Child] when able to do so as required by law or judicial decree.” (*Id.* at 13.) On September 13, 2021, Guardians filed a motion to dispense with Mother’s consent to Child’s adoption that alleged “no financial or monetary support for [Child] was received from March 2020 until after the date of filing June 2021, even though she was gainfully employed and able to do so while working at IHOP [sic] from April 2020 to April 2021[.]” (*Id.* at 15.)

[5] On October 19, 2021, the trial court held a hearing regarding Guardians’ motion to dispense with Mother’s consent. On October 26, 2021, the trial court issued an order in which it found:

[Mother] has without justifiable cause, failed to meaningfully or otherwise significantly support [Child] herein when able to do so. . . . The evidence clearly and convincingly establishes that even considering a brief period of unemployment due to Covid-19 [sic], Mother was gainfully employed and otherwise failed to

provide any support whatsoever in excess of the statutory period for at least two significant periods between June, 2018 and October, 2019 and also between March, 2020 and April, 2021. Her testimony further was that even when a student; she continued to work and was able to provide support; but did not.

(*Id.* at 17-8.) Based thereon, the trial court concluded “the best interests of [Child] would be served if the court dispensed with [Mother’s] consent [to Child’s adoption by Guardians].” (*Id.* at 17.)

[6] On February 11, 2022, the trial court held a hearing on Guardians’ adoption petition. On March 14, 2022, the trial court granted Guardians’ petition to adopt Child and issued a Decree of Adoption. In that decree, the trial court noted M.T.’s occupation as a bank teller and J.T.’s employment as an IT systems administrator. The trial court found Child had been in Guardians’ care since she was three years old and was, at the time of the decree, almost nine years old. Regarding Child’s best interests, the trial court found:

And [Guardians] have shown the Court that they have cared for [Child] in their home, maintain and support [Child] in all ways, love[] [Child] as their own, and [Child] has become harmoniously well integrated and adjusted in her home since June 2016 at 3 years of age by a Guardianship since June 2017[.]

(*Id.* at 19-20.) The trial court’s decree also granted maternal grandmother two overnight visits with Child each month.

[7] On April 14, 2022, Mother filed a motion to correct error in which she alleged there were “numerous errors of fact” in the home study submitted to the trial

court. (*Id.* at 23.) On April 18, 2022, Guardians filed their response to Mother’s motion to correct error. On April 27, 2022, the trial court denied Mother’s motion to correct error.

Discussion and Decision

[8] We will not disturb a decision in an adoption proceeding unless the evidence leads to but one conclusion and the trial judge reached an opposite conclusion. *In re Adoption of M.A.S.*, 815 N.E.2d 216, 218 (Ind. Ct. App. 2004). We will not reweigh the evidence or judge the credibility of witnesses. *Id.* Instead, we examine the evidence most favorable to the decision together with reasonable inferences drawn therefrom to determine whether there is sufficient evidence to sustain the decision. *Id.* The decision of the trial court is presumed correct, and it is the appellant’s burden to overcome that presumption. *Id.*

[9] When, as here, the trial court *sua sponte* enters findings of fact and conclusions of law pursuant to Indiana Trial Rule 52(A), we apply a two-tiered standard of review. *In re Adoption of A.S.*, 912 N.E.2d 840, 851 (Ind. Ct. App. 2009), *trans. denied*. We determine first whether the evidence supports the findings and second whether the findings support the trial court’s conclusions. *Id.* The trial court’s findings or conclusions will be set aside only if they are clearly erroneous. *Id.* A finding of fact is clearly erroneous if the record lacks evidence or reasonable inferences from the evidence to support it. *Id.* Issues on which the trial court makes no findings will be reviewed as a general judgment. *C.B. v. B.W.*, 985 N.E.2d 340, 344 (Ind. Ct. App. 2013), *trans. denied*. A “general

judgment will be affirmed if it can be sustained upon any legal theory by the evidence introduced at trial.” *Id.*

1. Mother’s Consent

[10] Generally, courts may not grant a petition for adoption without the consent of the child’s biological parents. Ind. Code § 31-19-9-1(a). There are, however, exceptions to that general rule. The exception at issue herein provides:

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

* * * * *

(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.

Ind. Code § 31-19-9-8(a)(2)(B) (2016). When considering whether a parent has knowingly failed to support a child for one year, we note “the relevant time period is not limited to either the year preceding the hearing or the year preceding the petition for adoption, but is any year in which the parent had an obligation and the ability to provide support, but failed to do so.” *In re Adoption of J.T.A.*, 988 N.E.2d 1250, 1255 (Ind. Ct. App. 2013), *reh’g denied, trans. denied.*

[11] Mother argues¹ the trial court erred when it dispensed with her consent because the trial court’s findings² do not support its conclusion that she failed to financially support Child during the relevant time frames despite the ability to do so. As noted supra, the trial court found Mother was consistently employed except for a “brief period of unemployment due to Covid-19 [sic][.]” (App. Vol. II at 17.) Similarly, the trial court found Mother “was able to provide support; but did not” from June 2018 to October 2019 and March 2020 to April 2021. (*Id.* at 17-8.) We conclude those findings support the trial court’s conclusion Mother failed to financially support Child during the relevant time frames despite her ability to do so. *See In re Adoption of I.B.*, 163 N.E.3d 270, 278 (Ind. 2021) (trial court concluded mother was able to support child during the relevant time and did not do so; while she did not make very much money during the relevant year, she also did not have rent or living expenses because she lived with her father).

2. Child’s Best Interests

[12] Mother argues Child’s adoption by Guardians is not in Child’s best interests because of her “continued good faith efforts towards sobriety, her success at

¹ Mother also argues Guardians did not prove Mother had failed to substantially communicate with Child for over a year. However, Indiana Code section 31-19-9-8 is written in the disjunctive and therefore only one of the elements must be proven to dispense with a parent’s consent to an adoption. *See, e.g., In re L.S.*, 717 N.E.2d 204, 209 (Ind. Ct. App. 1999) (because statute written in disjunctive, court needs to find only one requirement to terminate parental rights), *trans. denied, cert. denied* 534 U.S. 1161 (2002).

² Mother does not challenge the trial court’s findings, and unchallenged findings “must be accepted as correct.” *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1991).

achieving 9 months of sobriety, being gainfully employed, obtaining her own housing, and continuously having visitation with her Child while paying support[.]”³ (Mother’s Br. at 15.) To grant an adoption, the trial court is required to find, among other things, “the adoption requested is in the best interest of the child” and “proper consent, if consent is necessary, to the adoption has been given[.]” Ind. Code § 31-19-11-1. Mother contends the trial court’s findings are not supported by the evidence.

[13] In its order regarding Mother’s consent, the trial court concluded Mother’s consent was not necessary because she had failed to support Child financially during the relevant time frames despite her ability to do so. In its adoption decree, the trial court found adoption was in Child’s best interests because Guardians had cared for Child for almost six years. In addition, the trial court found Guardians “maintain and support [Child] in all ways, love[] [Child] as their own, and [Child] has become harmoniously well integrated and adjusted in her home[.]” (App. Vol. II at 19-20.) During the adoption hearing, M.T. testified she thought it would be in Child’s best interests for her and J.T. to adopt Child because M.T. “love[s] [Child] as [her] own daughter[;]” and “raise[s] [Child] like [her] own daughter[.]” (Tr. Vol. II at 19.) Regarding integration into Guardians’ household, M.T. explained Child and Guardians’ daughter are “like best friends. They absolutely love each other.” (*Id.*)

³ As noted *supra*, the trial court determined Mother did not financially support Child despite the ability to do during the relevant time frames.

Additionally, M.T. related, “Um, [Child], she made our old dog fetch when nobody else could do that. And she, she confides in us and she feels safe with us. And she feels loved with us.” (*Id.* at 19-20.) Mother’s arguments regarding her alleged progress and involvement in Child’s life are invitations for us to reweigh the evidence, which we cannot do. *See In re Adoption of M.A.S.*, 815 N.E.2d at 218 (appellate court cannot reweigh evidence or judge the credibility of witnesses). Therefore, we conclude the evidence supports the trial court’s finding that adoption was in Child’s best interests. *See In re Adoption of O.R.*, 16 N.E.3d 965, 975 (Ind. 2014) (adoption in child’s best interests because child had been in adoptive parents’ care for six years, adoptive parents provided a “caring, safe, and stable home” for child, and child is part of adoptive parents’ family).

Conclusion

[14] The trial court did not err when it granted Guardians’ motion to dispense with Mother’s consent to Guardians’ adoption of Child because the trial court’s conclusion that Mother had failed to provide financial support to Child during the relevant time frames despite being able to do so was supported by the trial court’s findings. Additionally, evidence supports the trial court’s finding in its adoption decree that adoption was in Child’s best interests. Accordingly, we affirm the decision of the trial court.

[15] Affirmed.

Crone, J., and Weissmann, J., concur.