MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

L.L.,

Appellant,

v.

J.G. and K.G.,

Appellees.

June 9, 2023

Court of Appeals Case No. 23A-AD-105

Appeal from the DeKalb Superior Court

The Honorable Monte L. Brown, Judge

Trial Court Cause No. 17D02-2108-AD-19

Memorandum Decision by Judge Bailey
Judges Tavitas and Kenworthy concur.

Bailey, Judge.

Case Summary

[1] L.L. ("Biological Father") appeals the trial court's order granting a petition to adopt T.L. ("Child") filed by J.G. ("Adoptive Father"). Biological Father raises one issue, which we revise and restate as whether the court violated Biological Father's due process rights when it granted Adoptive Father's adoption petition. We affirm.

Facts and Procedural History

[2] K.G. ("Mother") married Biological Father on December 2, 2009, and gave birth to Child on August 15, 2010. Thereafter, on November 25, 2011, the court dissolved Mother and Biological Father's marriage, and Mother was granted legal and physical custody of Child. Biological Father was granted parenting time with Child, which he exercised sporadically, and he was ordered to pay child support.

[3] In July 2017, Mother entered into a relationship with Adoptive Father. The two dated for a brief period of time before Adoptive Father moved in with Mother and Child. On December 31, Biological Father, who was in a new relationship, "beat" his girlfriend "until [she] was unconscious." Tr. at 37. As a result, officers arrested Biological Father, and the State charged him with various offenses. Biological Father ultimately pleaded guilty to aggravated battery, as a Level 3 felony, and battery, as a Level 5 felony, and was sentenced to thirteen years in the Department of Correction. Father's earliest possible

release date is October 28, 2027. *See* Ex. at 73. Following his incarceration, Biological Father had his child support obligation reduced to zero.

[4] Mother and Adoptive Father married on July 4, 2021. Then, on August 27, Adoptive Father filed a petition to adopt Child, to which Mother joined and consented. In his petition, Adoptive Father asserted that Biological Father's consent was not needed because Biological Father "has not seen the [C]hild in more than one year and has not paid child support for more than one year." Appellant's App. Vol. 2 at 24. Adoptive Father also asserted that Biological Father "has been in jail since the fall of 2017" and will remain "completely unavailable to parent his son or support his son until the [C]hild is almost an adult." *Id*. Adoptive Father also contended that the adoption would be in Child's best interest, and Adoptive Father asked for Child's name to be changed to reflect Adoptive Father's. On September 7, Biological Father sent a letter to the court in which he stated that he does "not consent to [Child's] adoption." *Id*. at 34.

[5] The court held a hearing on Adoptive Father's petition on December 28 at which Biological Father appeared without counsel. At the beginning of that hearing, the court discussed with Biological Father his options for representation. Biological Father expressed his desire for an attorney, and the court appointed one for him. The court then rescheduled the matter for a future date.

[6] On January 19, Adoptive Father filed a motion for leave to amend his adoption petition. In that motion, Adoptive Father additionally asserted that the court "can dispense with" Biological Father's consent because Biological Father is "unfit to be a parent[.]" *Id*. at 53. The court granted Adoptive Father's motion.

[7] On August 31, the court held a hearing on the question of whether Biological Father's consent to the adoption was required. During the hearing, Adoptive Father and Mother both testified about Biological Father's contact with Child. Adoptive Father testified that, following Biological Father's incarceration, Biological Father had paid "[n]othing" to assist with Child, had only sent eight letters to Child, and had only attempted to call "very sporadically." Tr. at 13, 16. Mother then testified that there had been "[n]ot much" contact between Biological Father and Child, that there were a few "sporadic" letters "in the beginning," and that the last letter Biological Father had sent was on November 20, 2019. *Id*. at 60. Mother further testified that, prior to the filing of the adoption petition, Biological Father had not called Child "for a few years." *Id*. at 63.

[8] Following the hearing, the court found that Biological Father "has an extensive criminal history"; that, between the date of Biological Father's incarceration and the date of the adoption petition, Biological Father had "wholly failed to provide any support for" Child; and that, while incarcerated, Biological Father only wrote "8 letters to his son and sent 2 cards to him" prior to the date the adoption petition was filed. Appellant's App. Vol. 2 at 59-61. The court also found that Biological Father's last letter to Child was on November 20, 2019,

which resulted in "a period of no communication for more than one year." *Id.* at 62. The court further found that the "prison phone records . . . show very limited telephone contact" between Biological Father and Child. *Id.* The court concluded that Biological Father had "failed to communicate with his child for more than one year" and that he had "failed to support his child for more than one year." *Id.* at 67. Accordingly, the court concluded that Father's consent was not required.

[9] On November 29, the court held a hearing to determine whether the adoption was in Child's best interest. At that hearing, Mother, Adoptive Father, and Child all testified that they believed the adoption to be in Child's best interests. Adoptive Father testified that he "absolutely" loves Child and is bonded with him. Tr. at 130. Mother testified that Adoptive Father is the "best role model [Child] could ever have." *Id.* at 134. And Child testified that he wanted the adoption to proceed because Adoptive Father has "been there" for him "as long as [he] can remember." *Id.* at 138.

[10] Following the hearing, the court entered its findings of fact and conclusions thereon. In particular, the court found that Adoptive Father "has been properly caring for and supporting the [C]hild for a period now in excess of five years[.]" Appellant's App. Vol. 2 at 14. The court also found that Biological Father's "position in life has not changed," that Biological Father "is still incarcerated with an earliest possible release date of October 28, 2027," and that Child "will be over 17 years old" at that point. *Id.* The court further found that Adoptive Father loves Child and "has demonstrated that he is able to properly care for,

support, and educate the [C]hild." *Id*. at 16. Accordingly, the court concluded that the adoption was in Child's best interests and granted Adoptive Father's petition. This appeal ensued.

Discussion and Decision

[11] Biological Father contends that the court violated his due process rights when it granted Adoptive Father's adoption petition. Here, the court entered findings of fact and conclusions thereon following an evidentiary hearing. Generally, in such appeals,

> we review the court's judgment under our clearly erroneous standard. *E.g. Salyer v. Washington Regular Baptist Church Cemetery*, 141 N.E.3d 384, 386 (Ind. 2020). We "neither reweigh evidence nor judge witness credibility." *R.L. v. Ind. Dep't of Child Servs. & Child Advocates, Inc.*, 144 N.E.3d 686, 689 (Ind. 2020). Rather, a judgment is clearly erroneous only when there are no record facts that support the judgment or if the court applied an incorrect legal standard to the facts. *Id*.

Jones v. Gruca, 150 N.E.3d 632, 640 (Ind. Ct. App. 2020).

[12] However, Biological Father does not contest any of the trial court's findings or conclusions regarding either the necessity of his consent or whether the adoption is in Child's best interests. Rather, Adoptive Father contends that the court failed to follow specific statutory requirements. Thus, this appeal presents a pure question of law, which we review de novo. *See M.S. v. C.S.*, 938 N.E.2d 278, 282 (Ind. Ct. App. 2010).

[13] On appeal, Biological Father asserts that the court "disregarded several statutory provisions" when it granted Adoptive Father's petition. Specifically, Biological Father contends that the record "is devoid of any notice of adoption serviced upon Biological Father, let alone a notice of adoption that complied with the requirements set forth in Ind. Code § 31-19-4.5-3." Appellant's Br. at 11. Biological Father also contends that there "is no indication" that he was "served immediately," that he "was allowed to make provisions for adequate representation," or that he "received notice and was given an opportunity to retain counsel," all of which he contends was in violation of Indiana Code Section 31-19-2.5-6. *Id*. at 11-12. And Biological Father asserts that neither Adoptive Father's petition nor the amended petition were "verified as required by" Indiana Code Section 31-19-2-5 and Trial Rule 11(B). *Id*. at 12.

[14] However, we note that the trial court held three separate hearings following the date Adoptive Father filed his first petition, and Biological Father was represented by counsel at two of them. But at no point did Biological Father bring any of these alleged issues to the attention of the trial court. Rather, Biological Father raises them for the first time on appeal. As such, Biological Father has waived any allegation of error with regard to the substance or service of the adoption petition. *See In re K.S.*, 750 N.E.2d 832, 834 n.1 (Ind. Ct. App. 2001) (holding that the mother had waived any issue concerning an alleged violation of her due process rights based on the court's alleged noncompliance with statutory requirements because she raised it for the first time on appeal).

[15] Waiver notwithstanding, we hold that any error was harmless. Regarding Biological Father's claim that the record is devoid of evidence that he received any notice of the adoption, we observe that Biological Father not only received notice of Adoptive Father's initial adoption petition but responded to it. Indeed, Biological Father acknowledges that he "was served with a Summons and the Petition for Adoption on or about September 1, 2021." Appellant's Br. at 11. Biological Father then promptly wrote a letter to the court on September 7 stating that he does "not consent" to Child's adoption. Appellant's App. Vol. 2 at 34. The record also shows that Adoptive Father received the amended petition. Both the motion to amend and the court's order granting that motion show that they were served on Biological Father's attorney. *See id*. at 54, 56. To the extent Biological Father contends that the adoption petition "did not include the mandatory language" required by Indiana Code Section 31-19-4.5-3, Biological Father has not demonstrated that he was harmed by any such omission.[1]

[16] As for Biological Father's assertion that he was not served immediately or provided with any notice of his right to retain counsel, we again note that Father received notice of the adoption petition and wrote a letter to the court contesting the adoption very shortly after the petition was filed. As for his right to counsel, even if he was not explicitly advised of such right in the petition

[1] That statute provides a draft form and requires any notice to be given in "substantially" the same form. Ind. Code § 31-19-4.5-3. While Biological Father provides a copy of the draft form from that statute, he has not detailed what language he believes was omitted from the adoption petition.

itself, the court discussed that option with Biological Father at a hearing, appointed counsel for Biological Father on his request, and rescheduled the hearing for a later date. And Biological Father was represented by counsel at both the hearing on the necessity of his consent and the hearing regarding the best interests of Child. Thus, Biological Father has not shown that he was harmed on that ground either.

[17] Finally, Biological Father contends that neither the initial nor amended adoption petition contained a verification statement. Indiana Code Section 31-19-2-5(c) provides that the "original copy of a petition for adoption must be verified by the oath or affirmation of each petitioner for adoption." And the Trial Rules provide that, when

> it is required that any . . . petition . . . be verified, or that an oath be taken, it shall be sufficient if the subscriber simply affirms the truth of the matter to be verified by an affirmation or representation in substantially the following language:
>
> "I (we) affirm, under the penalties for perjury, that the foregoing representation(s) is (are) true."

Ind. Trial Rule 11(B).

[18] First, contrary to Biological Father's contention, there is nothing in Indiana Code Section 31-19-2-5(c) that details the manner in which a document must be verified. And, while Trial Rule 11 does provide an example of an oath or affirmation, it does not require that precise language. Indeed, the rule plainly allows a verification to contain similar, not exact, language. And, here, the

initial petition contained a statement in the recital paragraph that said: "[Mother] and [Adoptive Father], *who being duly sworn upon their oaths*, respectfully petition the Court to adopt [Child.]" Appellant's App. Vol. 2 at 23. Biological Father does not acknowledge that language, let alone make any argument as to how it does not fulfill the requirements of either the Indiana Code or our Trial Rules. In any event, the language contained in the initial petition is sufficient to demonstrate that the petition was verified. Further, at all subsequent hearings, Mother and Adoptive Father both testified under oath regarding the allegations contained in the original and amended adoption petitions. As such, Biological Father has not demonstrated reversible error on this ground.

Conclusion

[19] Biological Father waived his allegations of error regarding the adoption petition for failing to raise them to the trial court. Waiver notwithstanding, Biological Father has not demonstrated that he was harmed by the error, if any, in the substance or service of the petition. We therefore affirm the trial court.

[20] Affirmed.

Tavitas, J., and Kenworthy, J., concur.