

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Adoption of A.J.T.:

F.G.,

Appellant-Respondent,

v.

D.K. and W.K.,

Appellees-Petitioners.

January 17, 2024

Court of Appeals Case No.
23A-AD-1902

Appeal from the St. Joseph Probate
Court

The Honorable Graham C.
Polando, Magistrate

Trial Court Cause No.
71J01-2203-AD-17

Memorandum Decision by Judge Bradford
Judges Vaidik and Brown concur.

Bradford, Judge.

Case Summary

- [1] D.K. and W.K. (collectively, “Appellees”) petitioned to adopt A.J.T. (“Child”), which petition F.G. (“Father”) contested. The probate court conducted an evidentiary hearing after which it granted Appellees’ petition. Father contends on appeal that there was insufficient evidence to dispense with his consent to Child’s adoption. We affirm.

Facts and Procedural History

- [2] Child was born to Father and T.T. (“Mother”) on January 20, 2021. Appellees have cared for Child “essentially since birth” due to Mother’s and Father’s incarceration. Appellant’s App. Vol. II p. 65. On March 17, 2022, after nearly one year serving as Child’s guardians, Appellees petitioned the probate court to adopt Child. At the time of this filing, Mother and Father were incarcerated. In April of 2022, both Mother and Father contested Child’s adoption. On May 25, 2023, after various continuances, the probate court conducted an evidentiary hearing on Appellees’ adoption petition. Just before this hearing, Mother consented to the adoption. On July 20, 2023, the probate court granted Appellees’ adoption petition.

Discussion and Decision

- [3] “When reviewing the trial court’s ruling in an adoption proceeding, we will not disturb that ruling unless the evidence leads to but one conclusion and the trial court reached an opposite conclusion.” *Rust v. Lawson*, 714 N.E.2d 769, 771

(Ind. Ct. App. 1999), *trans. denied*. We presume that the trial court’s decision is correct and consider the evidence in the light most favorable to that decision. *Id.* at 771–72. In other words, we refuse to reweigh the evidence or assess the credibility of witnesses. *E.B.F. v. D.F.*, 93 N.E.3d 759, 762 (Ind. 2018).

[4] Indiana law generally requires a natural parent to consent to his child’s adoption. Ind. Code § 31-19-9-1. However, pursuant to Indiana Code section 31-19-9-8(11), a parent’s consent is not required if the adoption petitioner proves by clear and convincing evidence that the parent is unfit to be a parent and that the court’s dispensing of the parent’s consent would serve the adoptive child’s best interests. While the term “unfit” is not statutorily defined, we have previously noted that “statutes concerning the termination of parental rights and adoption ‘strike a similar balance between the parent’s rights and the child’s best interests’” and thus termination cases provide guidance in determining whether a parent is unfit. *In re Adoption of D.M.*, 82 N.E.3d 354, 358 (Ind. Ct. App. 2017) (quoting *In re Adoption of M.L.*, 973 N.E.2d 1216, 1223 (Ind. Ct. App. 2012)).

[5] Father argues that there was insufficient evidence before the probate court to support its decision to dispense with his consent to Child’s adoption. Specifically, Father asserts that Appellees produced insufficient evidence to sustain a finding that he is unfit to parent Child. For their part, Appellees argue that the probate court did not abuse its discretion when it found that Father was unfit to be a parent and that disposing of the consent requirement would serve Child’s best interests. We agree.

[6] The probate court concluded that Father “is ‘unfit to be a parent[,]’ and that ‘the best interests of [Child] would be served if the court dispensed with [his] consent.’” Appellant’s App. Vol. II p. 66 (quoting Ind. Code § 31-19-9-8(11)). Specifically, the probate court found that Father has repeatedly “committed acts of domestic violence against Mother[,]” including “particularly severe violence” such as “hit[ting] Mother with his car.” Appellant’s App. Vol. II p. 66. The probate court further found that “Father’s criminal history is not limited to domestic violence, as he has five total criminal convictions, one of which was for Operating While Intoxicated soon after his release on other offenses.” Appellant’s App. Vol. II p. 66. At the time of the adoption hearing, Father was incarcerated with an expected release date of mid-2024, by which point Child will be three-and-one-half years old.¹ Further, given Father’s history, the probate court found it likely that his “criminal history will continue apace upon his release from his current charges.” Appellant’s App. Vol. II p. 67. We have previously concluded that “individuals who pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with their children.” *In re Adoption of K.T.*, 172 N.E.3d 326, 337 (Ind. Ct. App. 2021), *trans. denied*. Based on the record before us, we cannot say that the probate court abused its discretion in finding Father’s criminal history sufficient to support a conclusion that Father is unfit to parent Child.

¹ Father argues in his brief, without citation to the record, that Appellees “thwarted his ability to” communicate with Child. Appellant’s Br. p. 6. However, this argument ignores the probate court’s findings regarding Father’s protracted and ongoing criminal history and therefore does not change our conclusion that the probate court did not abuse its discretion in dispensing with Father’s consent requirement.

[7] Moreover, testimony from various witnesses supports the probate court's determination that dispensing with the consent requirement served Child's best interests. Father himself testified that Appellees are "very good people" and have provided "a safe home" for Child. Tr. Vol. II p. 44. The probate court noted evidence that Appellees "have been in all but name the Child's parents, and give every indication of being both willing and able to continue to do so" and that Child has "been doing quite well with [Appellees]." Appellant's App. Vol. II p. 65, 67. Mother also testified to her belief that putting Child in Appellees' care "would be in the Child's best interests." Appellant's App. Vol. II p. 67. Given this testimony, Father's criminal history, and Child's status with Appellees, we cannot say that the probate court abused its discretion in dispensing with Father's consent requirement. *See M.H.C. v. Hill*, 750 N.E.2d 872, 875 (Ind. Ct. App. 2001) ("Because the ultimate purpose of the law is to protect the child, the parent-child relationship must give way when it is no longer in the child's best interest to maintain the relationship.").

[8] The judgment of the probate court is affirmed.

Vaidik, J., and Brown, J., concur.