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IN THE  
COURT OF APPEALS OF INDIANA

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In the Matter of the Adoption of  
E.M.M.;

C.G. and D.G.,

*Appellants,*

v.

O.M.,

*Appellee.*

February 17, 2021

Court of Appeals Case No.  
20A-AD-1474

Appeal from the St. Joseph Probate  
Court

The Honorable Jason A.  
Cichowicz, Judge

Trial Court Cause No.  
71J01-1908-AD-87

**Najam, Judge.**

**Statement of the Case**

- [1] C.G. and D.G. (collectively, “Grandparents”) appeal the trial court’s denial of their petition to adopt their grandchild E.M.M. (“Child”). Grandparents present a single issue for our review, namely, whether the trial court abused its discretion when it found that adoption is not in Child’s best interests.

[2] We affirm.

### **Facts and Procedural History**

[3] C.P. (“Mother”) and O.M. (“Father”) have never been married and have a son together, Child, born December 7, 2010, in Arizona. Mother, Father, and Child lived together for approximately two years after Child’s birth. In 2012, Father filed a paternity petition, and his paternity of Child was established when the court granted that petition. From 2012 until 2017, Mother and Child lived with a relative. In 2017, C.G., who had moved to Indiana in 2015, drove to Arizona, picked up Child and a half-sibling, M.W., and drove them home with her to Indiana. In late 2017, Child began living with Mother and her new husband, N.P. (“Stepfather”), and M.W. in St. Joseph County, Indiana.

[4] In November 2017, the Indiana Department of Child Services (“DCS”) investigated a report that Mother and Stepfather had physically abused Child. DCS did not know how to contact Father at that time. Child and M.W. were found to be Children in Need of Services (“CHINS”), but they were only briefly placed in foster care before being returned home to Mother and Stepfather. On February 1, 2018, M.W. was taken to the hospital to treat a broken leg, and she was found to have bruises on her face. On February 5, DCS placed Child, M.W., and Mother’s newborn baby with Grandparents. Mother and Stepfather were ultimately convicted of domestic battery and sentenced.

[5] In April 2019, DCS filed a petition to terminate Mother’s and Father’s parental rights over Child. Then, “[t]hrough a comprehensive national search, DCS was

able to locate [Father] in Arizona.” Appellee’s App. Vol. II at 8. In May, Father appeared at a hearing in the termination proceeding. DCS then moved to dismiss the termination petition, and the trial court granted that motion in June. In July, DCS changed its permanency plan for Child to reunification with Father.

[6] In August, Grandparents filed a petition to adopt Child, with Mother’s consent. Grandparents timely notified Father of the petition. Father did not respond to the petition within the statutorily required thirty days. Still, in October, both Father and DCS filed motions to contest the adoption. In December, the trial court closed the CHINS case and ordered that Child be placed with Father in Arizona.

[7] The trial court ultimately dismissed Father’s motion to contest the adoption because he had not timely responded to the adoption petition. The trial court also dismissed DCS’ motion to contest the adoption. Still, at a hearing on June 9, 2020, the court heard evidence to determine whether adoption was in Child’s best interests. The court heard testimony from C.G. and from the Court Appointed Special Advocate (“CASA”).<sup>1</sup> At the conclusion of the hearing, the court stated its intention to conduct an in camera interview with Child. On

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<sup>1</sup> Grandparents objected to the CASA’s testimony, but the trial court permitted her to testify. Grandparents do not challenge the court’s ruling on that issue on appeal.

August 10, the trial court issued its order denying Grandparents' adoption petition. This appeal ensued.

## Discussion and Decision

[8] Grandparents appeal the trial court's denial of their petition to adopt Child.

Our standard of review is well settled:

In family law matters, we generally give considerable deference to the trial court's decision 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."

*MacLafferty v. MacLafferty*, 829 N.E.2d 938, 940 (Ind. 2005).

Accordingly, 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. [*N.R. v. K.G. and C.G.*], [(*In re Adoption of O.R.*)], 16 N.E.3d 965, 972-73 (Ind. 2014).

*J.W. v. D.F. (In re E.B.F.)*, 93 N.E.3d 759, 762 (Ind. 2018). We will not disturb the trial court's decision in an adoption proceeding unless the evidence at trial leads to but one conclusion and the trial court reached the opposite conclusion.

*R.K.H. v. Morgan Cty. Ofc. of Fam. and Children (In re Adoption of M.W.)*, 845 N.E.2d 229, 238 (Ind. Ct. App. 2006), *trans. denied*. We will neither reweigh the evidence nor assess the credibility of witnesses, and we will examine only the evidence most favorable to the trial court's decision. *Id.*

[9] Initially, we note that the majority of Grandparents' brief on appeal focuses on the issue of whether Father's consent to the adoption was irrevocably implied

under Indiana Code Section 31-19-9-18 (2020).<sup>2</sup> However, the trial court ruled in favor of Grandparents on that issue and, as a result, dismissed Father’s motion to contest the adoption. Accordingly, we need not address that issue here.<sup>3</sup>

[10] However, as the trial court observed, and as Grandparents acknowledge, “[e]ven if a court determines that a natural parent’s consent is not required for an adoption, the court must still determine whether adoption is in the child’s best interests.” *In re Adoption of O.R.*, 16 N.E.3d at 974 (quoting *C.L.S. v. A.L.S (In re Adoption of M.S.)*, 10 N.E.3d 1272, 1281 (Ind. Ct. App. 2014)). Indiana Code Section 31-19-11-1(a)(1) provides that a court cannot grant an adoption petition unless it is in the child’s best interests. To put it succinctly, “[t]he primary concern in *every* adoption proceeding is the best interests of the child.” *In re Adoption of M.S.*, 10 N.E.3d at 1281 (emphasis added).

[11] Here, Grandparents maintain that the evidence shows that adoption is in Child’s best interests because Father was absent from Child’s life for many years and Child had a stable home with Grandparents. But Grandparents’ contentions on appeal are merely a request that we reweigh the evidence, which we cannot do. The CASA testified, unequivocally, that adoption is not in

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<sup>2</sup> Under the statute, Father was required to respond to Grandparents’ adoption petition within thirty days. I.C. § 31-19-9-18. Grandparents presented evidence that Father received notice of the adoption petition in August 2019 and filed his motion to contest in October.

<sup>3</sup> We note that Father does not bring a cross-appeal challenging the trial court’s dismissal of his motion to contest the adoption.

Child's best interests. The CASA described Child as being happy living with Father and his extended family in Arizona. And the CASA testified that Child was doing well in school and enjoyed sports. Further, the trial court conducted an in camera interview with Child. We cannot say that the trial court abused its discretion when it found that adoption is not in Child's best interests and denied Grandparents' adoption petition.

[12] Affirmed.

Riley, J., and Crone, J., concur.