MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

In re: The Adoption of: J.J.E. and M.E.,

J.E., Sr.,

Appellant-Respondent,

v.

T.E., K.H-J., and S.J.[1],

Appellees-Petitioners.

July 13, 2023

Court of Appeals Case No. 23A-AD-191

Appeal from the Monroe Circuit Court

The Honorable Stephen R. Galvin, Judge

Trial Court Cause Nos.
53C07-2112-AD-72
53C07-2112-AD-73
53C07-2203-AD-24

[1] Neither K.H-J. nor S.J. participate in the instant appeal. However, pursuant to Indiana Appellate Rule 17(A), a party of record in the trial court is a party on appeal.

Memorandum Decision by Judge Bradford
Judges Riley and Weissmann concur.

Bradford, Judge.

Case Summary

[1] J.J.E. and M.E. (collectively, "the Children") were removed from their parents' care and placed with their paternal uncle, T.E., in 2018, and have been there ever since. On December 27, 2021, T.E. petitioned to adopt the Children. S.E. ("Mother") consented to the adoption, but Father objected. Following an evidentiary hearing, the trial court found that Father's consent was not necessary and that adoption by T.E. was in the Children's best interests. As such, the trial court granted T.E.'s petitions to adopt the Children. We affirm.

Facts and Procedural History

[2] Father and Mother are the biological parents of J.J.E., born January 14, 2009, and M.E., born February 3, 2010. T.E. is Father's brother and the Children's uncle. At some point, Father suffered a stroke, which resulted in limited movement and mobility and cognitive issues. Mother "is a bad diabetic and she has had to have a leg amputated because of it." Tr. Vol. II p. 117. M.E. is severely autistic and requires specialized care.

[3] On January 19, 2018, M.E. was taken to the hospital. At the time, M.E. "was not breathing and had to be resuscitated. [She] … was not even on the weight chart for a child her age." Appellant's App. Vol. II p. 15. At the time, Parents

were homeless. Due to concerns of neglect and homelessness, the Department of Child Services ("DCS") removed the Children from Parents' care and placed them with T.E., who subsequently became the Children's legal guardian. Terri Francis was appointed to be the Children's guardian ad litem ("GAL") in the guardianship proceedings.

[4] In late 2018, at T.E.'s request, K.H-J., a teacher's aide at M.E.'s school, was appointed M.E.'s co-guardian after T.E. expressed concerns about his ability to provide for all of M.E.'s special needs. In the summer of 2019, K.H-J. was removed as M.E.'s co-guardian after DCS caseworker Shannon McBride reported that K.H-J.'s "house was unsanitary and chaotic. The house reeked of animal urine. All rooms were completely covered in trash. The house was unsanitary and unsafe for [M.E.]." Appellant's App. Vol. II p. 16. On the other hand, DCS had found that T.E.'s home was clean and sanitary. Further, since initially expressing concerns about his ability to adequately care for M.E., T.E. had made strides in that area and had become comfortable caring for M.E., with M.E.'s therapist describing T.E. as a "stellar" caregiver for M.E. Appellant's App. Vol. II p. 17.

[5] On December 27, 2021, T.E. petitioned to adopt the Children. Mother consented to T.E.'s adoption of the Children. On March 28, 2022, K.H-J. and her husband, S.J., petitioned to adopt M.E, but not J.J.E. Over Father's objection, GAL Francis was again appointed to be the Children's GAL in the adoption proceedings. Following an evidentiary hearing, the trial court found that Father's consent was not necessary, as he had failed to significantly

communicate with the Children for a period of more than one year and that adoption by T.E. was in the Children's best interests. As such, the trial court granted T.E.'s petitions to adopt the Children and denied K.H-J. and S.J.'s petition to adopt M.E.[2]

Discussion and Decision

[6] 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).

> 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

[2] As is indicated on the cover page, K.H-J. and S.J. do not appeal the trial court's denial of their petition to adopt M.E. or otherwise participate in this appeal.

> 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 T.L., 4 N.E.3d at 662.

I. GAL Appointment

[7] Father contends that the trial court abused its discretion by appointing GAL Francis to be the Children's GAL in the adoption proceedings over his objection. A GAL is an individual "who is appointed by a court to: (1) represent and protect the best interests of a child; and (2) provide the child with services requested by the court, including: (A) researching; (B) examining; (C) advocating; (D) facilitating; and (E) monitoring the child's situation." Ind. Code § 31-9-2-50(a). A non-attorney who is appointed to be a GAL is generally required to complete court-approved training. Ind. Code § 31-9-2-50(a). "[T]he appointment of a GAL … is left to the discretion of the trial court." *In re N.S.*, 908 N.E.2d 1176, 1179 (Ind. Ct. App. 2009); *see also* Ind. Code § 31-17-6-1 (providing that a trial court may appoint a GAL "for a child at any time"). Once appointed, the GAL "shall represent and protect the best interests of the

Child[ren]" and "serves until the court enters an order for removal." Ind. Code § 31-17-6-3.

[8] Prior to appointing GAL Francis to serve as the Children's GAL in the adoption proceedings, the trial court held a hearing to determine whether her appointment would be appropriate. When asked about her qualifications, GAL Francis indicated that she had "been working with, ah, families regarding custody, parenting time issues, child abuse and neglect, since about Nineteen Eighty-Eight. And I've been acting specifically as a [GAL] for about nine and a half years." Tr. Vol. I p. 38. With respect to the Children specifically, GAL Francis indicated that she had been serving as the Children's GAL in the guardianship proceedings since 2019. GAL Francis further indicated that while she had not served as a GAL in many adoption cases, that is at least partially due to the fact that she "work[ed] for an adoption agency doing the home studies. And so, typically, the Court does not utilize [her] for any adoptions knowing that [she] could potentially be involved with the home study. And that would be a conflict." Tr. Vol. I p. 29. GAL Francis reiterated, however, that she had not worked for any of the "agencies pertaining to this case." Tr. Vol. I p. 28. At the conclusion of the hearing, T.E.'s counsel argued that GAL Francis "has adequate qualifications and experience." Tr. Vol. I p. 38. Father did not argue at the hearing that GAL Francis did not have adequate qualifications or experience. Further, K.H-J.'s counsel acknowledged that counsel had "worked many, many cases with" GAL Francis and knew "her to be an excellent guardian ad litem." Tr. Vol. I p. 39. After considering the

evidence and arguments submitted by the parties, the trial court appointed GAL Francis to serve as the Children's GAL in the adoption proceedings.

[9] In challenging the appointment of GAL Francis, Father argues that despite the fact that GAL Francis had extensive experience serving as a GAL, "[t]here is no evidence that [she] has ever completed any training to be a GAL." Appellant's Br. p. 12. While nothing in the record explicitly stated that GAL Francis had, at any point, completed court-approved training, she had been working as a GAL for nearly a decade and had had decades of experience working with families in related manners. The record further indicated that at least some of the counsel involved had known her to be an experienced and good GAL, and the trial court had specifically found her to be "an extremely experienced" GAL. Appellant's App. Vol. II p. 16.

[10] Father also argues that GAL Francis was biased against him. Father, however, did not develop this argument beyond claiming that GAL Francis "only got [T.E.'s] side and not his." Appellant's Br. p. 11. For her part, GAL Francis testified that while she was frustrated that Father had refused to communicate with her, she did not consider herself to be biased against Father. The record does not support Father's assertion that GAL Francis was biased against him. Based on the record before us, we cannot say that the trial court abused its discretion in appointing GAL Francis to serve as the Children's GAL in the adoption proceedings.

II. Father's Consent

[11] A natural parent enjoys special protection in any adoption proceeding, and courts strictly construe our adoption statutes to preserve the fundamentally important parent-child relationship. *In re Adoption of N.W.*, 933 N.E.2d 909, 913 (Ind. Ct. App. 2010). But "even the status of a natural parent, though a material consideration, is not one which will void all others." *Id.* And "under carefully enumerated circumstances," the adoption statutes allow "the trial court to dispense with parental consent and allow adoption of the child." *Id. See* Ind. Code ch. 31-19-9 (the Consent-to-Adoption Statute).

In re I.B., 163 N.E.3d at 274. Indiana Code section 31-19-9-8(a)(2) provides that consent to adoption is not required from "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."

[12] The trial court found that while Father has had "extremely brief telephone contact" with the Children, he "has not seen [them] in over two years." Appellant's App. Vol. II p. 17. The trial court also found that T.E. had "provided [Father] with ample opportunities to see the [C]hildren" and "has never turned [Father] down if he asked to see" them. Appellant's App. Vol. II p. 19. The trial court further found that there was "no evidence that [T.E.] ha[d] prevented or inhibited [Father] from visiting with [the Children]." Appellant's App. Vol. II p. 20. Based on these findings, the trial court concluded as follows:

> 1. [T.E.] alleges that [Father's] consent to the adoption of [the Children] is not required. [Mother] consents to the adoption of the children by [T.E.].…
>
> 3. [T.E.] has been the legal guardian for the children since 2018 and the children have lived in his home for almost 5 years.
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> 4. Although he lives within a few miles of the children, [Father] has not seen [the Children] for approximately 2½ years. He has had minimal telephone contact. There is no credible evidence that [T.E.] has prevented [Father] from having contact with the children. To the contrary, [T.E.] and the [GAL] have both attempted to arrange contact between the children and [Father], but [Father] has failed to cooperate.
>
> 5. Clearly, [Father] has failed without justifiable cause to communicate significantly with the children when able to do so for least one year without justifiable cause. Therefore, the consent of [Father] to the adoption of [the Children] is not required.

Appellant's App. Vol. II pp. 20–21.

[13] In challenging the trial court's determination that his consent was not necessary, Father asserts that he "has always had a relationship with his children." Appellant's Br. p. 15. Father further asserts that although his telephone communication with the Children was described as "brief," for someone with his "physical and mental limitations, it suffices." Appellant's Br. p. 16. We cannot agree.

[14] Father has failed to communicate significantly with the Children despite being offered numerous opportunities to do so. GAL Francis testified that she had

reached out to Father in an attempt to work with Father to set up visitation but that Father had refused meet with her and had ignored her voicemails and text messages. GAL Francis also testified that Father had not seen either of the Children in more than two years and had not talked to either of the Children, apart from "some extremely brief" telephone contact with J.J.E. Tr. Vol. II p. 96. She further testified that with respect to Father's communication with the Children, there had "been other gaps of time prior to the guardianship." Tr. Vol. II p. 106. In addition, T.E. testified that Father had last had physical interaction with the Children "where he saw them face to face" two-and-one-half years prior to the evidentiary hearing. Tr. Vol. II p. 125.

[15] Father's claim that his minimal contacts should be considered to be significant communication 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. Review of the record reveals that the trial court's findings are supported by the evidence and its conclusions are supported by the findings. As such, we cannot say that the trial court erred in finding that Father's consent was not necessary. *In re T.L.*, 4 N.E.3d at 662.

III. Best Interests of Children

[16] "The primary concern in every adoption proceeding is the best interests of the child." *In re Adoption of M.S.*, 10 N.E.3d 1272, 1281 (Ind. Ct. App. 2014). "Even 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." *Id.*

[17] With regard to the Children's best interests, the trial court found that "[s]everal members of [T.E.'s] family are committed to helping raise the children. [GAL] Francis notes that they are all part of a 'village' that is raising these children." Appellant's App. Vol. II p. 18. The trial court also found that the Children are bonded to each other and that it is in their best interests to remain in the same household. Further, T.E. provides the Children with a safe, good, and stable home environment. Based on these findings, the trial court concluded as follows:

> 1. [The Children] were removed from their parents in January, 2018. On January 19, 2018, [M.E.] was taken to the hospital. She was not breathing and had to be resuscitated. She was in the bottom .03% of birthweight and was not even on the weight chart for a child her age. The children were removed from their parents by the [DCS] due to parental neglect. Neither parent was capable of providing the children with a safe and stable home.
>
> 2. [Father] resides with his sister. He has failed to maintain a relationship with the children. He has failed to establish that he can meet [M.E.'s] health needs as required by the guardianship order issued May 9, 2018. He has failed to demonstrate that he can meet the children's physical needs.
>
> 3. [Mother] cannot care for the children and has signed consents for the children to be adopted by [T.E.].
>
> 4. [K.H-J.] and [S.J.] wish to adopt [M.E.], but not [J.J.E.].

5. [K.H-J.'s] contact with [M.E.] was restricted in 2019 after the [DCS] substantiated neglect. [K.H-J. and S.J.'s] house was unsanitary and chaotic. The rooms were completely covered in trash. The house was not safe for [M.E.] [K.H-J.] was removed as [M.E.'s c]o-guardian. [K.H-J.] continues to minimize the danger that the home conditions posed to [M.E.].

6. [K.H-J.] recently reported that [M.E.] had bruising. An investigation by the [DCS] did not substantiate this allegation. The DCS caseworker investigating the allegation found no bruising whatsoever. The investigator stated she could not understand how anyone would think the child had been bruised.

7. [The Children] are bonded to each other. They love each other. Their relationship has been the one constant in their lives. As the [GAL] testified, it would not be in their best interest to separate them.

8. [T.E.] is the children's uncle. He has been their legal guardian since 2018. He has provided the children with a safe and stable home. [J.J.E.] states that he wants to be adopted by [T.E.].

9. Adoption by [T.E.] is obviously in the best interest of [the Children].

Appellant's App. Vol. II pp. 22–23.

[18] In challenging the trial court's determination that adoption by T.E. was in the Children's best interests, Father baldly asserts that "[t]his adoption does not serve the best interests of the child. Father does not see what interest it serves at all." Appellant's Br. p. 19. We disagree with Father's bald assertion and

instead conclude that the evidence supports the trial court's determination that the adoption of the Children by T.E. serves the Children's best interests.

[19] At the time of the hearing, T.E. and the Children were living in a four-bedroom, three-bathroom home which T.E. had owned for twenty-three years. J.J.E. was thirteen years old, was doing well in school, was active in sports, enjoyed spending time with his sister, and was "an all-around … good kid." Tr. Vol. II p. 92. M.E., who is severely autistic, was participating and was doing well in Applied Behavioral Analysis ("ABA") therapy. M.E.'s therapist reported to GAL Francis that she considered T.E. to be a "stellar caregiver for" M.E. Tr. Vol. II p. 95. J.J.E. also participated in therapy and "was doing extremely well" to the point that his therapist was considering ending his therapy "because he was doing so well." Tr. Vol. II p. 100. Further, although K.H-J. had made an allegation regarding bruising that she had claimed to have seen on M.E. after she had been in T.E.'s home, the allegation was "unsubstantiated" with the assessor being "very clear that there was no bruising whatsoever" and indicating "that she didn't understand why anybody would have thought that [there] was bruising." Tr. Vol. II pp. 98, 99.

[20] GAL Francis recommended that the Children

> remain together in the same household. [T.E.] has provided consistent care for both of them for years now. And these two kids are bonded to one another. There is no reason that they should be separated from one another. And [T.E.] is able, willing to provide that care for them.

Tr. Vol. II p. 97. She opined that "separating the two siblings is not in their best interests." Appellant's App. Vol. III p. 34. T.E. additionally testified that he believed that it would "destroy" J.J.E. and M.E. would be negatively affected if the Children were separated. Tr. Vol. II p. 130.

[21] Review of the record reveals that the trial court's findings are supported by the evidence and its conclusions are supported by the findings. As such, we cannot say that the trial court erred in finding that adoption by T.E. was in the Children's best interests. *In re T.L.*, 4 N.E.3d at 662. Father's claim to the contrary 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.

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

Riley, J., and Weissmann, J., concur.