

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Adoption of
N.S.E.;

B.A.E.,

Appellant-Respondent,

v.

D.J.R.,

Appellee-Petitioner.

June 14, 2021

Court of Appeals Case No.
21A-AD-155

Appeal from the Clinton Circuit
Court

The Honorable Donald E. Currie,
Senior Judge

Trial Court Cause No.
12C01-2007-AD-15

Najam, Judge.

Statement of the Case

- [1] B.A.E. (“Father”) appeals the trial court’s grant of D.J.R.’s (“Adoptive Father”) petition for adoption of Father’s minor child, N.S.E. (“Child”).

Father presents a single issue for our review, namely, whether the adoption court erred when it concluded that his consent to the adoption was not required.

[2] We affirm.

Facts and Procedural History

[3] Child was born on March 16, 2015, to T.S. (“Mother”) and Father, who were not married. The parties submitted to the trial court a voluntary petition to establish Father’s paternity and child support obligation. The court approved the petition and ordered Father to pay \$51 per week in child support, commencing January 16, 2016. The trial court granted Mother custody of Child and awarded Father supervised parenting time. Father exercised supervised parenting time with Child until he moved to Florida in December 2016. Father moved back to Indiana a few months later, but he did not resume parenting time with Child, and he did not attempt meaningful communication with Child.

[4] On July 7, 2020, Adoptive Father, who had been in a romantic relationship with Mother since Child was six months old, filed a petition to adopt Child. Mother filed her consent to the adoption. Thereafter, the adoption court held a hearing on the petition. During the hearing, Adoptive Father presented evidence that, between October 2017 and January 2019, Father was employed and able to pay child support but failed to do so. Adoptive Father also

presented evidence that Father had not seen or had meaningful communication with Child since December 2016.

- [5] Following the hearing, the adoption court concluded that Father's consent to the adoption was not required. In particular, the court found and concluded in relevant part as follows:

The father's consent is not required as the [Adoptive Father] met his burden establishing, by clear and convincing evidence, that for over one (1) year Father failed, without justifiable cause, to communicate significantly with [Child]. I.C. § 31-19-9-8(a)(2)(A) and [sic] knowingly failed to provide for the care and support of [Child] when able to do so. I.C. § 31-19-9-8(a)(2)(B). Specifically, the Court finds that the Father has not seen or communicated with [Child] since December of 2016, at which time she was only six (6) months of age; that the Father failed to pay any child support from October 2017 to January 2019, during which time period Father was not incarcerated and had the ability through employment to pay his child support; and that the Father accumulated a support arrearage, as of September 23, 2019 (prior to his current incarceration) in the amount of \$6,205.

Appellant's App. Vol. II at 28. Accordingly, the adoption court issued an adoption decree granting Adoptive Father's petition. This appeal ensued.

Discussion and Decision

- [6] Father contends that the adoption court erred when it concluded that his consent to the adoption was not required. As our Supreme Court has stated:

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.

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.

The trial court's findings and judgment will be set aside only if they are clearly erroneous. A judgment is clearly erroneous when there is no evidence supporting the findings or the findings fail to support the judgment. We will not reweigh evidence or assess the credibility of witnesses. Rather, we examine the evidence in the light most favorable to the trial court's decision.

J.W. v. D.F. (In re Adoption of E.B.F.), 93 N.E.3d 759, 762 (Ind. 2018) (quotation marks and citations omitted).

- [7] Generally, a trial court may grant a petition for adoption only if both the mother and father of the child consent. Ind. Code § 31-19-9-1 (2020). However, Indiana Code Section 31-19-9-8(a) provides in relevant part that consent to an adoption is not required from a parent of a child in the custody of another person if, for a period of at least one year, the parent fails without justifiable cause to communicate significantly with the child when able to do so or knowingly fails to provide for the care and support of the child when able to do so as required by law or judicial decree. Because this statute is written in the disjunctive, we need only address the trial court's finding that Father knowingly failed to provide for the care and support of Child for at least one year when he was able to do so as required by the trial court's child support order. *See C.L.S. v. A.L.S. (In re Adoption of M.S.)*, 10 N.E.3d 1272, 1279 (Ind. 2014).

- [8] As our Supreme Court has held, the relevant time period for determining whether a noncustodial parent has supported his or her child “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.” *Id.* (quoting *In re Adoption of J.T.A.*, 988 N.E.2d 1250, 1255 (Ind. Ct. App. 2013). Here, the trial court found that Father failed to pay child support from October 2017 to January 2019, “during which time period Father was not incarcerated and had the ability through employment to pay his child support[.]” Appellant’s App. Vol. II at 28.
- [9] On appeal, Father contends that “when he was not incarcerated and [not abusing drugs], he worked at Coomer and Sons Sawmill at \$11.00 per hour and paid child support.” Appellant’s Br. at 8. And he asserts that he “managed to pay a total amount of \$2,198.32 [in child support] from October 2015 through August 21, 2019.” *Id.* But Father does not direct us to evidence other than his self-serving testimony to show that he paid any child support between October 2017 and January 2019, and he does not dispute either that he was employed or that he was able to pay during that period of time.
- [10] Adoptive Father’s Exhibit 1 shows a gap in child support payments from October 2017 to January 2019. Father’s argument on appeal is simply a request that we reweigh the evidence, which we cannot do. The adoption court did not err when it concluded that Father’s consent to Child’s adoption was not required.

[11] Affirmed.

Pyle, J., and Tavitas, J., concur.