

# MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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In the matter of the Adoptions of  
S.S. and A.S.

M.S. (Mother),

*Appellant-Respondent,*

v.

Dr.S. and De.S.,

*Appellees-Petitioners*

November 8, 2023

Court of Appeals Case No.  
23A-AD-1237

Appeal from the  
Morgan Superior Court

The Honorable  
Warren Haas, Senior Judge

Trial Court Cause Nos.  
55D01-2203-AD-44  
55D01-2203-AD-47

**Memorandum Decision by Judge Vaidik**  
Judges Bradford and Brown concur.

**Vaidik, Judge.**

## Case Summary

- [1] M.S. (“Biological Mother”) appeals the trial court’s issuance of an adoption decree for two of her children, arguing that several of the statutory requirements haven’t been completed. The children’s grandparents who are seeking the adoption agree. We therefore reverse and remand.

## Facts and Procedural History

- [2] Biological Mother and W.S. (“Biological Father”) were married in 2014 and have three children together, two of whom are the subject of this adoption case, S.S. (born in April 2015) and A.S. (born in June 2016) (collectively, “the Children”).<sup>1</sup>
- [3] Several months after A.S. was born, the Department of Child Services (DCS) got involved with the family due to Biological Mother’s drug use. As a result, Biological Mother and Biological Father consented to guardianships for the Children by Biological Father’s parents, Dr.S. (“Adoptive Grandfather”) and De.S. (“Adoptive Grandmother”) (collectively, “Adoptive Grandparents”). The

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<sup>1</sup> The third child is I.S. When I.S. was born in April 2018, she had methamphetamine withdrawals due to Biological Mother’s drug use, and DCS got involved again. Biological Father was awarded custody of I.S. when Biological Mother and Biological Father later divorced. At the time of the hearing in this case, I.S. was living at least part of the time with Biological Mother’s sister.

Biological Mother also has two older children, B. (born in 2005) and A. (born in 2007).

Children started living with Adoptive Grandparents in November 2016, and the guardianships were established in February 2017. *See* Cause Nos. 55D01-1612-GU-113, -114.

[4] No visitation order was issued in the guardianship cases, but Adoptive Grandparents allowed Biological Mother and Biological Father to see the Children at their house on the weekends. Through 2019, Biological Mother visited the Children several times a month. But at the beginning of 2020, Biological Mother's visits decreased to only once a month. Biological Mother's last regular visit with the Children at Adoptive Grandparents' house was on May 10. On May 19, Biological Mother and Biological Father separated (they later divorced). Since her last visit on May 10, Biological Mother hasn't seen the Children except for "a chance meeting lasting about 20 minutes" on December 25, 2020. Appellant's App. Vol. II p. 68.

[5] After that chance meeting on Christmas Day in 2020, Biological Mother sent Adoptive Grandparents three messages on Facebook Messenger asking to see the Children:

**March 11, 2021:** [I]t's [Biological Mother] I was just wondering if we could come out and see [the Children] this Sunday??

**April 30, 2021:** I was wondering if it's possible for me to start video chatting with the girls I would greatly appreciate it if I could? Please let me know Thank you

**November 22, 2021:** Hello I was just wondering what the girls were wanting for Christmas if you could please send me a list.....I would also love to see them I miss them a lot!!!

Ex. D-1. Adoptive Grandparents didn't respond to the messages.

[6] On November 25, 2021, another one of Biological Mother's children, B., sent Adoptive Grandfather the following text message:

Hey would it be okay if my mom and Matt [Biological Mother's new husband] come to thanksgiving to see the girls. I think it would be a good opportunity for you to see my mom[']s growth and how[] she's doing. If you['re] not comfortable with her or Matt going that's fine just let me know.

Ex. E. Adoptive Grandfather responded, "Sorry not this time." *Id.* Biological Mother also asked Biological Father to say something to his parents about her seeing the Children, but nothing ever came of that.

[7] In January 2022, Biological Mother sought visitation of the children in the guardianship cases, and a hearing was set for March 2022. Adoptive Grandparents moved to continue that hearing, which the court rescheduled for June 2022. In the meantime, in March 2022, Adoptive Grandparents filed petitions to adopt the Children, alleging that Biological Mother's consent to the adoptions was not required because she "has not had meaningful contact with [the Children] for a period of more than one (1) year prior to the date of the

filing of this petition.” Appellant’s App. Vol. II pp. 11-12, 35-36.<sup>2</sup> Biological Father consented to the adoptions.

[8] A hearing was held in January 2023. Biological Mother, Biological Father, Adoptive Grandmother, and Adoptive Grandfather testified. After setting forth the above dates of Biological Mother’s communication or attempted communication with the Children, the trial court found:

Even though Adoptive Grandparents have resided in Morgan County since 1995 and in the same home since Biological Parents married one another in 2014, Biological Mother claims she doesn’t know their phone number. Aside from infrequently asking Biological Father to speak with Adoptive Grandparents about letting her resume contact with the Children, Biological Mother did almost nothing to contact Adoptive Grandparents in an attempt to reestablish contact with the Children. She admitted that she didn’t attempt to learn their telephone number from any source and never went to their home even though she had both a vehicle and a valid driver’s license.

*Id.* at 69. The court then concluded:

Biological Mother has failed without justifiable cause to communicate significantly with the Children when able to do so for a period of at least one year. *See* Ind. Code § 31-19-9-8(a)(2)(A). Biological Mother has had no significant communication with the Children from May 10, 2020 [Biological Mother’s last visit with the children at Adoptive Grandparents’

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<sup>2</sup> Adoptive Grandparents also alleged, and the trial court found, that Biological Mother failed to support the Children for more than one year. But because we affirm the trial court’s determination that Biological Mother’s consent was not required based on her failure to communicate, we need not reach this issue.

house] through March 14, 2022 [when the adoption petitions were filed], and continuing at least through January 26, 2023 [the date of the hearing].

*Id.* at 70 (cleaned up). The court then issued an “Order Granting Petitions for Adoption,” ordering that Adoptive Grandparents are “declared to be the Children’s adoptive parents” and that “[t]he appropriate Health Department officials are to reissue the Children’s birth certificates with this updated information.” *Id.*

[9] Biological Mother filed a motion to correct error, noting that several of the statutory requirements for issuing an adoption decree have not been completed. The trial court denied the motion.

[10] Biological Mother now appeals.

## Discussion and Decision

[11] Biological Mother contends the trial court erred in granting Adoptive Grandparents’ petitions to adopt the Children. We give “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.” *In re Adoption of I.B.*, 163 N.E.3d 270, 274 (Ind. 2021) (quotation omitted). “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.* (quotation

omitted). “And we will not disturb that decision unless the evidence leads to but one conclusion and the trial judge reached an opposite conclusion.” *Id.* (quotation omitted). We will not reweigh evidence or assess witness credibility. *Id.* Rather, we examine the evidence in the light most favorable to the trial court’s decision. *Id.*

[12] Biological Mother first argues the trial court erred in granting Adoptive Grandparents’ adoption petitions because there are “[s]everal glaring procedural deficiencies” in this case, including “failure to file statutorily-compliant background searches, failure to submit a home study or request waiver of the same, and failure to give [maternal] grandparents notice.” Appellant’s Br. p. 8. For their part, Adoptive Grandparents concede that “issuance of a Decree of Adoption was premature.” Appellees’ Br. p. 7. Specifically, they claim they “had not expected to need to be in full compliance with the statutory provisions when consent was still at issue” and say we should remand the case to the trial court “with instructions that the remaining statutory requirements be completed prior to a Final Adoption Hearing.” *Id.* Based on Adoptive Grandparents’ concession, we vacate the order granting the adoptions and remand this case to the trial court. But because the issue of whether Biological Mother’s consent is needed will resurface on remand, the record on

this issue has already been made, and the parties briefed this issue on appeal, we now address that issue.<sup>3</sup>

[13] “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.” *I.B.*, 163 N.E.3d at 274. Generally, a trial court may grant an adoption petition only if both parents consent. *See* Ind. Code § 31-19-9-1(a)(2). But parental consent may be dispensed with under “carefully enumerated circumstances.” *I.B.*, 163 N.E.3d at 274. Section 31-19-9-8(a) provides consent is not required from:

(2) 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 . . . .

The petitioner must prove the parent’s consent is unnecessary by clear and convincing evidence. *I.B.*, 163 N.E.3d at 274 (citing I.C. §§ 31-19-10-0.5, -1.2(a)).

[14] Biological Mother argues the trial court erred in determining that for at least one year she failed without justifiable cause to communicate significantly with

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<sup>3</sup> The parties also address the trial court’s determination that adoption of the Children is in their best interests. But because the unfulfilled statutory requirements may impact the best-interests determination, we do not address that issue now.



the Children when able to do so under Section 31-19-9-8(a)(2)(A). “A determination on the significance of the communication is not one that can be mathematically calculated to precision.” *Id.* at 276 (quotation omitted). Indeed, “[e]ven multiple and relatively consistent contacts may not be found significant in context.” *Id.* (quotation omitted). But “a single significant communication within one year is sufficient to preserve a non-custodial parent’s right to consent to the adoption.” *Id.* (quotation omitted).

[15] Biological Mother claims that Adoptive Grandparents “thwart[ed]” her efforts to see the Children because they didn’t respond to the Facebook messages that she sent on March 11, April 30, and November 22, 2021. Appellant’s Br. p. 17. Efforts to hamper or thwart communication between parent and child are relevant in determining the ability to communicate. *Rust v. Lawson*, 714 N.E.2d 769, 772 (Ind. Ct. App. 1999), *trans. denied*. At the hearing, Adoptive Grandfather testified that he didn’t regularly check his Facebook messages or know when he saw the messages from Biological Mother. Tr. Vol. II p. 108. He also explained why he didn’t respond to the messages when he saw them: “On Facebook it’s once you respond to somebody, then they have access to look at your Facebook account. I didn’t feel comfortable doing that.” *Id.* at 109.<sup>4</sup>

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<sup>4</sup> Biological Mother notes that Adoptive Grandfather blocked her on Facebook. While Adoptive Grandfather testified that he blocked her on Facebook, it wasn’t until June 19, 2022, which is **after** the adoption petitions were filed. *See* Ex. 6; Tr. Vol. II p. 111.

[16] Adoptive Grandmother similarly testified about not regularly checking her Facebook messages or knowing when she saw the messages. *Id.* at 82. Adoptive Grandmother explained that she didn't respond to the messages because she "figured if [Biological Mother] was serious, that she would call [her] and make arrangements." *Id.* at 83. The fact that Adoptive Grandparents didn't respond to Biological Mother's Facebook messages did not impede her ability to contact them in other, more reliable ways. As the trial court found, Biological Mother knew where Adoptive Grandparents lived yet didn't go to their house. Biological Mother also could have gotten their phone numbers (assuming she didn't already have them) and called or texted them. *See id.* at 78 (Adoptive Grandmother testifying that Biological Mother knew her phone number).

[17] As for whether Biological Mother failed to communicate significantly with the children for at least one year, we agree with the trial court that she failed to do so. Biological Mother saw the Children on May 10, 2020, for a regular visit but did not see them again until a chance meeting on Christmas Day in 2020, more than seven months later. After that chance meeting, Biological Mother sent the three Facebook messages to Adoptive Grandparents on March 11, April 30, and November 22, 2021. Then, in January 2022, Biological Mother sought visitation with the Children in the guardianship cases. As Adoptive Grandparents put it, "[Biological] Mother had at least some contact information for [them] and her sole direct efforts to communicate with the children were three (3) unanswered Facebook messages for one (1) year and eight (8) months [from May 2020 to January 2022]." Appellee's Br. p. 8. The

court did not err in concluding that Adoptive Grandparents proved by clear and convincing evidence that for at least one year Biological Mother failed without justifiable cause to communicate significantly with the Children when able to do so.

[18] Reversed and remanded.

Bradford, J., and Brown, J., concur.