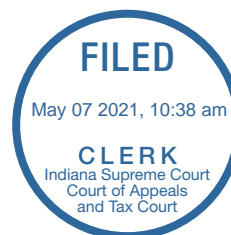


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

In Re the Adoption of B.D.H.,
J.M.,
Appellant,

v.

T.W. and D.H.,
Appellees.

May 7, 2021

Court of Appeals Case No.
20A-AD-788

Appeal from the Henry Circuit
Court

The Honorable Bob A. Witham,
Judge

Trial Court Cause Nos.
33C01-1810-AD-32
33C01-1003-JP-12

Brown, Judge.

[1] J.M. appeals the trial court’s decree of adoption. We affirm in part and remand.

Facts and Procedural History

[2] B.D.H. was born to J.M. and T.W. (“Mother”) in March 2009. In October 2010, the trial court entered an order under cause number 33C01-1003-JP-12 (“Cause No. 12”) establishing paternity, awarding Mother custody, ordering that J.M. have parenting time as agreed or pursuant to the Indiana Parenting Time Guidelines, and ordering J.M. to pay \$86 per week in child support. In August 2017 Mother filed an emergency petition to modify parenting time, the following month J.M. filed a petition for citation, and in March 2018 the court granted Mother’s motion. It noted J.M.’s continued use of methamphetamine and suspended J.M.’s parenting time until he provided verification that he successfully completed substance abuse treatment, completed the terms of supervised probation under cause number 33C02-1603-F6-84 (“Cause No. 84”), and passed all drug screens administered while on probation.

[3] Mother and D.H. were married in February 2019. Meanwhile, in October 2018, D.H. and Mother filed a petition for adoption under cause number 33C01-1810-AD-32 (“Cause No. 32”). In December 2018, J.M. filed a motion to contest the adoption. In April 2019, J.M. filed a petition to set visitation under Cause No. 12.

[4] On January 29, 2020, the trial court held a hearing under Cause Nos. 12 and 32. The court admitted pleadings and orders from Cause No. 84, text messages

between Mother and J.M., Mother's voicemail log, a letter from Meridian Health Services, and Father's support payment history.

- [5] With respect to Cause No. 84, J.M. was convicted of possession of methamphetamine as a level 6 felony and committed to the Henry County Jail for confinement for two years on June 16, 2016, and the court suspended 724 days to probation. The State filed a petition to revoke his suspended sentence in March 2017 alleging he tested positive for amphetamine and methamphetamine. The court issued an order on August 24, 2017, stating J.M. admitted to a violation, revoking 164 days of his suspended sentence, and stating that J.M. was entitled credit for days served in jail from March 17, 2017, through March 20, 2017, and from June 8, 2017, through August 24, 2017. An April 19, 2018 order states that he admitted to violating the terms of his probation, the court revoked 560 days of his suspended sentence to be served on home detention, and that probation was terminated as unsuccessful. On August 8, 2018, the State filed a petition to revoke J.M.'s placement on home detention. On September 14, 2018, the court entered an Order of Release from Lawful Detention for Purposes of Inpatient Treatment stating that J.M. shall travel to Meridian Services on September 17, 2018, and remain at the facility until released. A letter dated March 4, 2019, from Meridian Health Services states J.M. successfully completed an Addictions and Recovery Residential Treatment Program, was admitted on September 17, 2018, and was successfully discharged on October 15, 2018. An order on December 13, 2018, states J.M. admitted to violating the terms of his home detention and the court revoked 560

days to be served at the Henry County Jail. The admitted voicemail log shows J.M. left a voicemail of fourteen seconds on January 12, 2018. The admitted text messages show messages sent by J.M. to Mother on June 4, 2017, October 30, 2018, and March 18, 21, and 28, 2019.

[6] Mother testified that she lived with D.H., B.D.H., and her step-children and that, throughout B.D.H.'s life, she had been her physical custodian. She testified J.M. lived with his parents, he used to exercise visitation every other weekend, and he was arrested in 2016 for methamphetamine. She testified that J.M. told her in April 2017 that he would leave after B.D.H. went to sleep. She identified her phone number and J.M.'s phone number and indicated that to her knowledge the numbers were still the same. She indicated that she received a text message from J.M. on June 4, 2017, she sent him a text message on June 8, 2017, regarding whether he went to his revocation hearing, she did not receive a response, and she did not receive another text message from him until October 30, 2018.

[7] Mother further testified that she received one voicemail on her phone from J.M. on January 12, 2018, which stated “[m]y attorney instructed me to call you about my visitation with [B.D.H.]” and then the message ended. Transcript Volume II at 27. She indicated that J.M. did not call her before June 4, 2017. She indicated J.M. had been served with the petition for adoption before he sent his October 30, 2018 text message and she received three text messages since October 30, 2018. She indicated the court issued an order following a hearing on visitation and she never received any verification that J.M. had enrolled in

and completed substance abuse treatment or that he successfully completed the terms of his probation. Mother also testified that she is a registered nurse, that D.H. had been in B.D.H.'s life for six years, and when asked about their activities, she testified that they make videos, make up funny songs, have inside jokes, and constantly want to be together. Mother further testified that D.H. takes B.D.H. to gymnastics, that they are very bonded, and that the court's order did not prohibit J.M. from sending gifts, attending gymnastics or school events, or calling.

[8] J.M. testified he was arrested for possession of methamphetamine in March 2016 and the State filed a petition to revoke in March 2017 because he failed a couple of drug screens. He indicated he was having his daughter over for the weekend while he was testing positive for methamphetamine on probation. He indicated the last text message he sent was on June 4, 2017, and he was in jail from June 8 through August 24, 2017, when he was released to probation. When asked "[w]e got jail logs of other phone calls you were capable of making," he said "[o]kay," and when asked "[y]ou made other phone calls from the jail, correct," he replied "I did yes," and he indicated he had money put on his commissary. *Id.* at 45. When asked if he had contacted Mother from jail, he testified "I think I did try to call once. She told me she wouldn't accept calls from the jail," and that he did not have evidence of the call. *Id.* at 46. When asked "[y]ou did not say thank god I am out because I haven't seen my daughter for three (3) months," he said "[i]f I recall I think I did try to get a hold of her. It doesn't show it in this record right here no, but I am pretty sure

that I did try to get a hold of her.” *Id.* When asked “[d]id you at any point of that time text or call mom according to those records,” he answered “[n]ot according to these records no.” *Id.* at 48.

[9] J.M. acknowledged that he left a voicemail for Mother on January 12, 2018, and said “I don’t have any records of when I called, but I called multiple times. I don’t have the exact dates. She has never once answered or called or text back or anything.” *Id.* at 50. He agreed the record shows he did not text her until October 30, 2018. He testified that he “tested diluted” on January 11, 2018, that he called to ask for a visit on the 12th, and he was still using methamphetamine at that point. *Id.* at 51. He testified he did not successfully complete the terms and conditions of his supervised probation. He indicated he lived with his parents, and that the last time he was in jail was from December 4, 2018 through February 13, 2019. He indicated he was at the treatment center for twenty-eight days and he went back to jail after that in December 2018. He also testified he had been employed for “a year in June” and “I am not currently using drugs. I am working everyday full time. I am always trying to better myself.” *Id.* at 65, 67.

[10] D.H. testified that he was employed full time as a Sheriff’s Deputy and a K-9 officer, he had been filling the role of a father figure for B.D.H. for two and one-half to three years, he and B.D.H. are inseparable, he had never missed a gymnastics event, he takes her to private lessons, he had become her D.A.R.E. officer, and they have ice cream and rides bikes. He testified he was financially capable of raising B.D.H.

[11] On March 2, 2020, the trial court entered an order, which contained 133 numbered findings and conclusions, finding that J.M.'s consent to the adoption was not required due to his failure to communicate significantly with the child when able to do so for at least one year and because he is unfit to be a parent. The court found and granted the petition for adoption:

67. The Court waived the agency report (commonly referred to as the adoption home study) required by Ind. Code § 31-19-8-5(a).

* * * * *

76. In this case, [Adoptive Parents] proved by clear and convincing evidence that there was an absence of significant communication between [J.M.] and [B.D.H.] for a period of at least a year.

77. [J.M.] last saw or communicated with [B.D.H.] on June 4th, 2017.

78. From June 5, 2017, until [Adoptive Parents] filed their adoption on October 12, 2018, [J.M.] attempted one (1) communication with [Mother] regarding [B.D.H.].

* * * * *

88. [J.M.'s] sole communication for more than (16) months was a voicemail message about visiting with [B.D.H.] because his lawyer instructed him to do so.

* * * * *

91. [J.M.] also cannot assert that his lack of communication was the fault of the order suspending his parenting time, being incarcerated, or mother's failure to initiate communication or return his single telephone call.

* * * * *

98. The Paternity Court ordered [J.M.] to complete specific conditions before the restoration of his parenting time, and [J.M.] did not appeal that order.

99. The plain language of the Paternity Court's order suspending [J.M.'s] parenting time in no way prohibited [him] from communicating with [B.D.H.]. . . .

* * * * *

104. As for his incarceration, [J.M.] admitted that he was able to communicate with people by telephone and send mail.

* * * * *

109. [Mother's] telephone number never changed, she never blocked or restricted [J.M.'s] communications, and she updated her physical address with the clerk when she moved, making that address available to him.

* * * * *

111. Even though [Mother's] telephone number did not change, [J.M.] did not send a single text message regarding [B.D.H.] and only made one telephone call between June 5, 2017, and October 12, 2018, a period of more than (16) months.

* * * * *

115. For almost the entire year before the adoption hearing, [J.M.] again made no attempt to communicate.

116. Collectively, [J.M.] went almost (4) years without significant communication with [B.D.H.].

* * * * *

121. The record clearly demonstrates that [J.M.] has a serious substance abuse issue with methamphetamine as his drug of choice.

122. [J.M.'s] failure to comply with probation in his [c]riminal [c]ase, his numerous probation violation[s] and failed drug screens over a significant period of time, his unsuccessful discharge from probation after completing inpatient treatment, and an executed sentence all demonstrate a lack of insight and unwillingness to follow recommended treatment.

123. Also, [J.M.] was using illegal drugs while continuing to demand to have parenting time with his daughter, showing a further lack of insight into his situation. . . .

* * * * *

125. [J.M.] seemed completely unaware that the [c]riminal [c]ourt found he was unsuccessfully discharged from probation.

126. Although [J.M.] appears to have stability in housing, he has always lived in his mother's home when not in jail and admitted that he would leave at night when he exercised parenting time with [B.D.H.] in order to use drugs.

127. Dispensing with [J.M.'s] consent based on his parental unfitness is in [B.D.H.'s] best interests.

128. On the other hand, [D.H.] is gainfully employed and a law-abiding citizen....

* * * * *

130. Furthermore, [D.H.] fulfills the emotional role of father to [B.D.H.] by being actively engaged in her life, such as attending gymnastics and school activities. [J.M.] does not attend or participate at all in such activities.

* * * * *

132. If [J.M.] truly wanted to be a fit father to [B.D.H.], the record, in this case, would be quite different.

Appellant's Appendix Volume II at 28-36. The court found it is in B.D.H.'s best interest to be adopted by D.H.

Discussion

[12] J.M. argues he “fell to the disease of methamphetamine addiction from approximately 2016 until October 15, 2018,” and he “has justifiable cause for failing to maintain significant contact with the Child because of his addiction and his good-faith and ultimately successful attempt at recovery.” Appellant's Brief at 16, 21. He contends that he does not have a significant criminal history, previously exercised regular parenting time, has received treatment and is in recovery, is employed, and has stable housing with his parents. He asserts the adoption is not in B.D.H.'s best interest and he “appreciates that his drug addiction has caused much heartache to the Child, Mother and to himself, but he has changed and desires to take an active role again as the Child's father.” *Id.* at 27. He also argues the adoption decree should be vacated as B.D.H.'s paternal grandparents were not served with notice of the adoption petition, the required home study was not completed or waived, and a licensed child placing agency did not conduct the required background check. Adoptive Parents argue the evidence shows J.M.'s consent to the adoption was not required, his argument is a request to reweigh the evidence, there is sufficient evidence that adoption is in B.D.H.'s best interest, and J.M. waived his remaining arguments.

[13] 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, and obtain a feel for the family

dynamics and 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). 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. *Id.*

[14] 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 judge reached an opposite conclusion. *In re Adoption of T.L.*, 4 N.E.3d 658, 662 (Ind. 2014). The trial court's findings and judgment will be set aside only if they are clearly erroneous. *E.B.F.*, 93 N.E.3d at 762. A judgment is clearly erroneous when there is no evidence supporting the findings or the findings fail to support the judgment. *Id.* We will not reweigh evidence or assess the credibility of witnesses. *Id.* Rather, we examine the evidence in the light most favorable to the trial court's decision. *Id.*

[15] Ind. Code § 31-19-11-1 provides that the trial court shall grant a petition for adoption if it hears evidence and finds that the adoption requested is in the best interest of the child and proper consent, if consent is necessary, to the adoption has been given. A petition to adopt a child may be granted if written consent to the adoption was executed by the father whose paternity was established. *See* Ind. Code § 31-19-9-1. However, Ind. Code § 31-19-9-8(a) provides that consent to an adoption 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; . . .

* * * * *

(11) A parent if:

(A) a petitioner for adoption proves by clear and convincing evidence that the parent is unfit to be a parent; and

(B) the best interests of the child sought to be adopted would be served if the court dispensed with the parent's consent.

If a petition for adoption alleges that a parent's consent to adoption is unnecessary under Ind. Code § 31-19-9-8(a)(2) and the parent files a motion to contest the adoption, the petitioner for adoption has the burden of proving that the parent's consent to the adoption is unnecessary under Ind. Code § 31-19-9-8. Ind. Code § 31-19-10-1.2(a). If a petition for adoption alleges a parent's consent to adoption is unnecessary under Ind. Code § 31-19-9-8(a)(11) and the parent files a motion to contest the adoption, the petitioner has the burden of proving the requirements of Ind. Code § 31-19-9-8(a)(11) are satisfied and the best interests of the child are served if the court dispenses with the parent's consent to adoption. Ind. Code § 31-19-10-1.2(e). Ind. Code § 31-19-10-0.5 provides: "The party bearing the burden of proof in a proceeding under this chapter must prove the party's case by clear and convincing evidence."

[16] The clear and convincing evidence standard is an intermediate standard of proof greater than a preponderance of the evidence and less than proof beyond a reasonable doubt. *See T.D. v. Eskenazi Health Midtown Cmty. Mental Health Ctr.*,

40 N.E.3d 507, 510 (Ind. Ct. App. 2015). In order to be clear and convincing, the existence of a fact must be highly probable. *Id.* “The clear and convincing standard is employed in cases where the wisdom of experience has demonstrated the need for greater certainty, and where this high standard is required to sustain claims which have serious social consequences or harsh or far reaching effects on individuals.” *Civil Commitment of T.K. v. Dep’t of Veterans Affairs*, 27 N.E.3d 271, 276 (Ind. 2015) (citation and quotations omitted).

[17] One petitioning to adopt without parental consent has the burden of proving both a lack of communication for the statutory period and that the ability for communication during that time period existed. *Rust v. Lawson*, 714 N.E.2d 769, 772 (Ind. Ct. App. 1999), *trans denied*. The reasonable intent of the statute is to encourage non-custodial biological parents to maintain communication with their children and to discourage such parents from visiting their children just often enough to thwart the adoptive parents’ efforts to provide a settled environment. *Id.* In order to preserve the consent requirement for adoption, the level of communication by the biological parent with the child must not only be significant, but it also must consist of more than token efforts at communication. *Id.*

[18] While the term “unfit” as used in Ind. Code § 31-19-9-8(a)(11) is not statutorily defined, this Court has defined “unfit” as “[u]nsuitable; not adapted or qualified for a particular use or service” or “[m]orally unqualified; incompetent.” *K.H. v. M.M.*, 151 N.E.3d 1259, 1267 (Ind. Ct. App. 2020) (citing *In re Adoption of M.L.*, 973 N.E.2d 1216, 1223 (Ind. Ct. App. 2012) (quoting Black’s Law Dictionary

1564 (8th ed. 2004))), *trans. denied*. We have also noted that cases concerning the termination of parental rights can provide useful guidance in determining whether a parent is unfit, that termination cases have considered factors such as a parent's substance abuse, mental health, willingness to follow recommended treatment, lack of insight, instability in housing and employment, and ability to care for a child's special needs, and that we have consistently held in the termination context that the court need not wait until children are irreversibly harmed such that their physical, mental, and social development are permanently impaired before terminating the parent-child relationship. *See id.* at 1267-1268. A parent's criminal history is relevant to whether the parent is unfit to be a parent under Ind. Code § 31-19-9-8(a)(11). *In re Adoption of D.M.*, 82 N.E.3d 354, 359 (Ind. Ct. App. 2017).

[19] 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). The adoption statute does not provide guidance for which factors to consider when determining the best interests of a child, but we have noted there are strong similarities between the adoption statute and the termination of parental rights statute in this respect. *Id.* In termination cases, we have held the trial court is required to look to the totality of the evidence to determine the best interests of a child. *Id.* Relevant factors include, among others, a parent's historical and current inability to provide a suitable environment for the child and the child's need for permanence and stability. *Id.*

[20] Here, the trial court made numerous findings regarding the parties' testimony. To the extent J.M. does not challenge the court's findings, the unchallenged facts stand as proven. *See In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (failure to challenge findings by the trial court resulted in waiver of the argument that the findings were clearly erroneous), *trans. denied*.

[21] The evidence supports the court's findings that, from June 4, 2017, until the petition for adoption was filed in October 2018, J.M. attempted one communication with Mother regarding B.D.H. when he left a voicemail in January 2018 stating that his lawyer told him to call and ask for a visit with B.D.H. The court found the one phone call over the sixteen-month period to be a token effort. J.M. was not incarcerated for a significant portion of the period between June 2017 and October 2018, and he was permitted to make telephone calls while incarcerated and did call persons other than Mother and B.D.H. Mother indicated J.M. was not prohibited from sending gifts, attending gymnastics or school events, or calling. With respect to his methamphetamine use and treatment, the court found that, when J.M. exercised parenting time, he would leave at night to use drugs, and his numerous violations and failed drug screens over a significant period of time and unsuccessful discharge from probation after completing inpatient treatment demonstrate a lack of insight and unwillingness to follow recommended treatment. The trial court was in the best position to judge the facts, and we will not reweigh the evidence or assess

the credibility of the witnesses. We cannot say that the evidence leads to but one conclusion and the trial court reached the opposite conclusion.¹

[22] To the extent J.M. seeks reversal arguing B.D.H.’s paternal grandparents were not given notice of the adoption petition, we note he acknowledges that the issue was not raised before the trial court. Ind. Code § 31-19-2.5-3(a) provides that “notice must be given to a: . . . (3) grandparent described in IC 31-19-4.5-1(3) of a child sought to be adopted,” and Ind. Code § 31-19-4.5-1(3) states “[t]his chapter . . . applies to a grandparent who: (A) is the grandparent of a child sought to be adopted; and (B) has: (i) an existing right to petition for visitation under IC 31-17-5; and (ii) a right to visitation that will not be terminated after the adoption under IC 31-17-5-9; at a time prior to the date of

¹ J.M. cites *Adoption of E.B.F. v. D.F.*, 93 N.E.3d 759 (Ind. 2018), and *Adoption of D.H.*, 135 N.E.3d 914 (Ind. Ct. App. 2019). In *E.B.F.*, the Indiana Supreme Court reversed the trial court’s finding that the mother’s consent was not necessary even though she failed to have significant communication with the child for a period of one year. It observed that the mother, who had struggled with substance abuse, had voluntarily relinquished primary physical custody of her child after recognizing the harm that her personal problems were having on him, made a good-faith effort at recovery and made noticeable progress, ended her abusive relationship, found a job, secured adequate housing, ended her dependency on drugs, and “turned her life around in what we find was a reasonable amount of time—less than one year,” and the Court additionally noted the father and stepmother had thwarted the mother’s attempts to communicate with the child in violation of the agreed-upon custody modification order. 93 N.E.3d at 763-765. In *D.H.*, this Court cited *E.B.F.* and found under the totality of the circumstances that the trial court erred in dispensing with the mother’s consent and pointed to her progress toward achieving sobriety, employment record, stable home environment, lack of contacts with law enforcement, favorable assessment from DCS regarding her youngest child, and record of visitation and child support for her other three children. 135 N.E.3d at 924. In contrast, J.M. would leave at night to use drugs while exercising parenting time, the court suspended his parenting time until he completed substance abuse treatment and supervised probation and passed drug screens, he was still using methamphetamine when he left a message for Mother in January 2018, he did not successfully complete the terms of his supervised probation, in September 2018 the court ordered that he complete inpatient treatment, and he was again incarcerated from December 2018 through February 2019. Under the totality of the circumstances, we find J.M. did not have justifiable cause for his lack of communication with B.D.H., and we find *E.B.F.* and *D.H.* distinguishable.

the filing of the petition.” However, Ind. Code § 31-19-4.5-1.5 provides: “A notice to a grandparent required under IC 31-19-2.5-3(a)(3) is [] limited to the issue of visitation and may not be used to contest an adoption;” To the extent B.D.H.’s paternal grandparents had an existing right to petition for visitation, we note J.M. does not assert they had done so and, in any event, J.M. is not entitled to the relief he seeks and any notice to a grandparent may not be used to contest the adoption. *See* Ind. Code § 31-19-4.5-1.5. We cannot say reversal is warranted on this basis.

[23] With respect to J.M.’s argument the home study and background check requirements in Ind. Code § 31-19-8-5 were not satisfied, the statute provides:

(a) Except as provided in subsection (c), not more than sixty (60) days from the date of reference of a petition for adoption to each appropriate agency:

- (1) each licensed child placing agency, for a child who is not adjudicated to be a child in need of services; or
- (2) if the child is the subject of an open child in need of services action, each local office;

shall submit to the court a written report of the investigation and recommendation as to the advisability of the adoption.

* * * * *

(c) A court hearing a petition for adoption of a child may waive the report required under subsection (a) if one (1) of the petitioners is a stepparent or grandparent of the child and the court waives the period of supervision.

(d) If the court waives the reports required under subsection (a), the court shall require the licensed child placing agency for a child who

is not adjudicated to be a child in need of services or, if the child is the subject of an open child in need of services action, each local office to:

- (1) ensure a criminal history check is conducted under IC 31-19-2-7.5; and
- (2) report to the court the results of the criminal history check.

Ind. Code § 31-19-2-7.5(b) provides that every petitioner for adoption “shall submit the necessary information, forms, or consents for: (1) a licensed child placing agency . . . that conducts the inspection and investigation required for adoption of a child under IC 31-19-8-5 to conduct a criminal history check (as defined in IC 31-9-2-22.5) of the petitioner as part of its investigation.” Ind. Code § 31-9-2-22.5 in turn defines “Conduct a criminal history check” to include a request that the state police department conduct a national and state fingerprint based criminal history background check or national name based criminal history record check; collection of each substantiated report of child abuse or neglect reported in certain jurisdictions; a check of the national sex offender registry; and a check of local criminal records in every jurisdiction where a person has resided within the previous five years, unless the court grants an exception to conducting the check.

[24] Here, Mother has had physical custody of B.D.H. since she was born in 2009, Mother and D.H. were married in February 2019 and lived together as a family for over two years prior to the marriage, D.H. and Mother filed the petition for adoption, and the trial court specifically “waived the agency report (commonly

referred to as the adoption home study) required by I.C. § 31-19-8-5(a).”

Appellant’s Appendix Volume II at 28. In light of Ind. Code § 31-19-8-5(c), we cannot say remand for a home study is required.

[25] However, we reach a different conclusion with respect to the required background check. At the hearing, when asked “I filed or I should have filed earlier today your background check,^[2] but no question you have no crimes against children, sexual abuse, domestic battery, no disqualifiers for the purpose of adoption,” D.H. answered “No Sir,” and when asked “[y]ou got a squeaky, clean background,” he answered affirmatively. Transcript Volume II at 72. Ind. Code § 31-19-8-5(d) specifically provides that, even if the court waives the home study, the court shall require a licensed child placing agency to ensure a criminal history check is conducted and report the results to the court. This Court has observed:

Our General Assembly has required that every adoption case—whether done by stepparent, blood relative, or a nonrelative—involve either a licensed child placing agency or DCS. In general, every petitioner must have such an agency complete the period of supervision along with a report. I.C. § 31-19-8-1. Although the supervisory period and report can be waived for stepparents or grandparents, I.C. § 31-19-8-5(c), exercising that waiver then obligates the court to order an agency to conduct a criminal history check and complete a report. I.C. § 31-19-8-5(d). In sum, the

² The appellant’s appendix contains a records check from the Henry County Sheriff’s Department dated December 30, 2019, and file-stamped January 29, 2020, which indicated there was no record on D.H.

absence of any child placing agency or DCS in this case means an error has occurred.

In re Adoption of S.O., 56 N.E.3d 77, 81 (Ind. Ct. App. 2016), *trans. denied*. Also, Ind. Code § 31-19-2-7.3 provides “[a] court may not waive any criminal history check requirements set forth in this chapter.” We cannot say the court complied with Ind. Code § 31-19-8-5 in this respect or that a background check as defined by Ind. Code § 31-9-2-22.5 was filed by a child placing agency. Accordingly, we remand to the trial court with instructions to stay the adoption order pending submission and review of the statutorily required background check. *See In re Adoption of S.O.*, 56 N.E.3d at 84 (remanding with instructions to order a statutorily compliant background check).³ The trial court’s ruling in all other respects is affirmed.

[26] Affirmed in part and remanded.

Robb, J., and Crone, J., concur.

³ We do not find Adoptive Parents’ assertion there was no reversible error because J.M. did not raise the issue below to be persuasive. In *In re Adoption of S.O.*, we rejected that argument and held that the background check under Ind. Code § 31-9-2-22.5 is vitally necessary for the safety of adoptive children, an adoption is about more than the rights of the biological parent and is about the safety and best interests of the adopted child, and the General Assembly has explicitly instructed that no part of an Ind. Code § 31-9-2-22.5 check can be waived. *See* 56 N.E.3d at 82.