

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In Re the Adoption of N.A.

K.A. (*Father*),
Appellant-Respondent,

v.

K.O.,
Appellee-Petitioner,

July 5, 2022

Court of Appeals Case No.
21A-AD-2743

Appeal from the Vanderburgh
Superior Court

The Honorable Renee A.
Ferguson, Magistrate

Trial Court Cause No.
82D04-2101-AD-5

Robb, Judge.

Case Summary and Issues

- [1] K.A. (“Father”) is the biological father of N.A. (“Child”). In 2013, a paternity action regarding Child was opened. In 2021, K.O. (“Petitioner”) filed a petition to adopt Child. The trial court concluded Father’s consent was not required and entered an Order of Adoption in favor of Petitioner. Father now appeals, raising multiple issues for our review which we restate as: (1) whether the trial court had subject matter jurisdiction over Petitioner’s petition for adoption; (2) whether the trial court erred by determining Father’s consent to the adoption of Child was unnecessary; and (3) whether the trial court erred by failing to consolidate the adoption and paternity proceedings.
- [2] We conclude the trial court had subject matter jurisdiction and Father’s consent to the adoption was not necessary. However, we also conclude the trial court should have consolidated the paternity and adoption proceedings prior to issuing the Order of Adoption. Accordingly, we vacate the Order of Adoption and remand with instructions to consolidate the adoption and paternity proceedings prior to reissuing the Order of Adoption.

Facts and Procedural History

- [3] Father and B.O. (“Mother”) are the biological parents of Child. Father and Mother were never married.¹ In 2013, a paternity action was opened, and Father petitioned to establish, in part, child custody and visitation. Father was granted parenting time with Child.² Subsequently, Mother married Petitioner.
- [4] In 2019, Father was exercising summer parenting time with Child when he was incarcerated for domestic violence. Child stayed with his grandparents until Mother discovered that Father was in prison. In March 2020, Mother sent Father a text message informing him she would not be sending Child to him for spring break parenting time due to COVID-19 and Father has not exercised parenting time since.
- [5] On January 19, 2021, Petitioner filed a petition to adopt Child and claimed Father’s consent was not necessary. Mother filed her consent to the adoption the same day. *See Appellant’s Appendix, Volume II at 22.*³ Father was served with notice of the petition and timely objected. The paternity and adoption proceedings were not consolidated. In February, the trial court appointed Amy

¹ Mother and Father filed a paternity affidavit when Child was born in 2009. *See Appellant’s Appendix, Volume II at 44.*

² Father testified that initially he was granted parenting time every other weekend, part of spring break, and every other holiday. *See Transcript, Volume II at 95.* His parenting time was then switched to the first weekend of every month and then switched back to every other weekend. *See id.* at 97, 100. Further, at some point Father was ordered to call Child at 6:00 p.m. every Thursday but refuses to comply with that order. *See id.* at 46.

³ The Table of Contents in Father’s appendix shows an entry for “Notice of Appeal” beginning on page 9 and the next entry is for “Order of Adoption” beginning on page 112. Appellant’s App., Vol. I at 2. We direct counsel to Indiana Appellate Rule 50(C), which provides that the table of contents for an appendix “shall specifically identify each item contained in the Appendix[.]”

Brandsasse to serve as Guardian Ad Litem (“GAL”) to oversee the best interests of Child.

[6] At the consent hearing, Father testified he communicated with Child through Facetime, texts, and messages through a phone application called WhatsApp.⁴ Father stated he communicated with Child like this almost daily for four or five months. Father also testified that at different times Mother would keep Child away from him and not let him exercise parenting time.⁵ *See* Transcript, Volume II at 98-99. However, GAL Brandsasse testified that based on her investigation she did not believe Mother was unreasonably withholding Child from Father and that Father had “no accountability” regarding his lack of visitation since the summer of 2019. *Id.* at 47.

[7] Following the consent hearing, the trial court concluded Father “has failed to have any significant and meaningful contact with the child, in excess of two (2) years.” Appealed Order at 1. The trial court noted:

Online contact has taken place between the child and [F]ather. . . . [However, t]he calls never go beyond superficial layers of conversation. [F]ather has the ability to see the child in person and engage in at least the child’s therapy to facilitate

⁴ Father does not include his text communications with Child in the Appellant’s Appendix. However, they were admitted as exhibits to the trial court. Given the exhibits’ relevance to Father’s appeal, we take judicial notice of them under Indiana Evidence Rule 201(a)(2)(C).

⁵ Based on Father’s testimony and the age of Child, all the instances of Mother being uncooperative or refusing to allow Father to exercise his parenting time occurred before 2020.

meaningful communication between the two, yet [F]ather has done nothing to promote healthy meaningful communication.

Id. at 1-2. Therefore, the trial court determined “[F]ather’s consent is not necessary and that it is in the best interest for the child to be adopted by the Petitioner[.]” *Id.* at 1. Accordingly, the trial court granted the petition for adoption. Father now appeals. Additional facts will be provided as necessary.

Discussion and Decision

I. Subject Matter Jurisdiction

[8] Subject matter jurisdiction involves the power of the court to hear and determine a general class of cases to which the proceedings belong. *Matter of Adoption of H.S.*, 483 N.E.2d 777, 780 (Ind. Ct. App. 1985). The question of subject matter jurisdiction may be raised at any time, in any manner, even on appeal. *Id.* A judgment where no subject matter jurisdiction exists is void. *Id.*

[9] Father argues “[t]he trial court did not have subject matter jurisdiction as a result of the Petitioner’s failure to plead items required by statute[.]”

Appellant’s Brief at 7. However,

subject matter jurisdiction does not depend upon the sufficiency or correctness of the averments in the complaint, the stating of a good cause of action, the validity of the demand, or the plaintiff’s right to relief. It does not depend upon the regularity of the proceedings or the correctness of the decision. It is only dependent upon the subject matter to which it relates.

Matter of Adoption of H.S., 483 N.E.2d at 780.

[10] Further, we have held the trial court does not lose subject matter jurisdiction because of “deficiencies in the petition or errors in proceedings.” *Id.* at 781. In *Matter of Adoption of H.S.*, the respondents cited no specific authority to support their argument that deficiencies in the petition for adoption deprived the trial court of subject matter jurisdiction other than the “general proposition that statutory procedures must be followed.” *Id.* Similarly, Father contends the Petitioner’s petition for adoption fails to comply with Indiana Code section 31-19-2-6 (specifying the contents of a petition for adoption), which he claims “deprives the trial court of subject matter jurisdiction.”⁶ Appellant’s Br. at 8. However, he cites no case law to support this contention. Therefore, we conclude the trial court had subject matter jurisdiction.

II. Father’s Consent to Adoption

A. Standard of Review

[11] We will not disturb the trial court’s decision in an adoption proceeding unless the evidence leads only to a conclusion opposite that reached by the trial court. *In re Adoption of Childers*, 441 N.E.2d 976, 978 (Ind. Ct. App. 1982). We will not reweigh the evidence; rather, we will examine the evidence most favorable to the trial court’s decision, together with reasonable inferences drawn

⁶ Father does not appear to have challenged the petition for adoption for failure to comply with Indiana Code section 31-19-2-6 during the adoption proceeding.

therefrom, to determine whether sufficient evidence exists to sustain the decision. *Id.* Further, 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 M.L.*, 973 N.E.2d 1216, 1222 (Ind. Ct. App. 2012). A petitioner for adoption without parental consent has the burden of proof to establish, by clear and convincing evidence, one of the statutory criteria for dispensing with consent. *In re Adoption of M.A.S.*, 815 N.E.2d 216, 220 (Ind. Ct. App. 2004).

[12] Moreover, where, as here, the trial court enters specific findings of fact and conclusions thereon, we apply a two-tiered standard of review: we first determine whether the evidence supports the 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). “The trial court’s findings of fact 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.” *Id.*

B. Consent

[13] Father argues the trial court erred in determining that his consent to the adoption was not necessary. *See* Appellant’s Br. at 12. Generally, a petition to adopt a minor child may be granted only if written consent to adopt has been provided by the biological parents. *See* Ind. Code § 31-19-9-1. However, Indiana Code section 31-19-9-8(a) states consent to adoption is not required in a variety

of circumstances,⁷ including from the “parent of a child in the custody of another person if for a period of at least one (1) year the parent . . . fails without justifiable cause to communicate significantly with the child when able to do so[.]” Ind. Code § 31-19-9-8 (a)(2)(A). One petitioning to adopt without parental consent must prove both a lack of communication for the statutory period and that the parent had the ability for communication during that time period. *Rust v. Lawson*, 714 N.E.2d 769, 772 (Ind. Ct. App. 1999), *trans denied*.

[14] Father contends the trial court failed to consider “whether Father’s failure to maintain significant or meaningful contact with the Child was justifiable.”⁸ Appellant’s Br. at 14. Specifically, Father argues Mother’s actions have “hampered and denied [his] ability to have parenting time and communication with the Child.” *Id.* at 15. On appeal, we must consider the facts and circumstances of the particular case, including, for example, “the custodial parent’s willingness to permit visitation as well as the natural parent’s financial and physical means to accomplish his obligations.” *In re Adoption of C.E.N.*, 847 N.E.2d 267, 271-72 (Ind. Ct. App. 2006). Further, “[e]fforts of a custodial parent to hamper or thwart communication between a parent and child are

⁷ Regardless of which provision is relied upon, adoption is granted only if it is in the best interests of the child. Ind. Code § 31-19-11-1(a). However, Father does not challenge the trial court’s determination that adoption was in Child’s best interest.

⁸ Father communicated with Child through “Facetime, texts, and messages through the app called WhatsApp.” Appellant’s Br. at 14. Father does not argue this communication constituted significant and meaningful contact, and we note the “significance of the communication is not measured in terms of units of visits[.]” *E.W. v. J.W.*, 20 N.E.3d 889, 896 (Ind. Ct. App. 2014) (quotation omitted), *trans. denied*, so the natural parent must have made “more than token efforts” to communicate with his child, *Rust*, 714 N.E.2d at 772 (internal quotation omitted).

relevant in determining the ability to communicate.” *In re Adoption of A.K.S.*, 713 N.E.2d 896, 899 (Ind. Ct. App. 1999), *trans. denied*.

[15] Here, Father testified Mother kept Child away from him and did not let him exercise parenting time. *See* Tr., Vol. II at 98-99. However, most, if not all, of the instances that Father claims Mother thwarted communications occurred prior to the time period the trial court determined Father failed to have significant and meaningful contact with Child. Further, GAL Brandsasse testified that she investigated the matter and did not believe Mother was unreasonably withholding Child from Father. Instead, GAL Brandsasse believed Father had “no accountability” regarding his lack of visitation since the summer of 2019. *See id.* at 47.

[16] Father’s argument is merely a request for us to reweigh evidence which we will not do. *In re Adoption of Childers*, 441 N.E.2d at 978. We conclude the trial court’s determination that Father failed without justifiable cause to communicate significantly with Child for more than one year was not clearly erroneous. Therefore, the trial court did not err by finding that Father’s consent was unnecessary.

III. Consolidation

[17] Father argues the “trial court was required to consolidate the paternity case with the present adoption, and failure to do so constitutes reversible error.” Appellant’s Br. at 11.

[18] Even after paternity is established, the paternity action remains pending. *See, e.g., In re Adoption of A.N.S.*, 741 N.E.2d 780, 785 n.6 (Ind. Ct. App. 2001) (stating the paternity court “retains jurisdiction to the extent the judgment demands, *e.g.*, the court could modify custody, child support, and visitation”). Pursuant to Indiana Code section 31-19-2-14(a),

If a petition for adoption and a paternity action are pending at the same time for a child sought to be adopted, the court in which the petition for adoption has been filed has exclusive jurisdiction over the child, and the paternity proceeding must be consolidated with the adoption proceeding.

[19] The paternity action needs to be consolidated with the adoption proceeding because a successful adoption petition severs the parental rights and obligations of the biological parents and therefore the paternity action should close. *In re Adoption of S.O.*, 56 N.E.3d 77, 84 (Ind. Ct. App. 2016); Ind. Code § 31-19-15-1. If not consolidated, the paternity action will exist in limbo with no court able to close it.⁹ *In re Adoption of S.O.*, 56 N.E.3d at 84. Instead, the adoption court should consolidate the paternity action so the adoption court will be able to close the paternity action if it grants the adoption petition. *Id.*

[20] Here, the trial court failed to consolidate the adoption proceeding and paternity action before it issued its Order of Adoption.⁹ Thus, the trial court erred. Accordingly, we vacate the trial court’s Order of Adoption and remand with

⁹ Father does not argue the failure to consolidate affected the outcome of the adoption proceeding.

instructions to consolidate the adoption and paternity proceedings prior to reissuing an adoption order and closing the paternity action.¹⁰

Conclusion

[21] We conclude the trial court had subject matter jurisdiction over this proceeding and the Petitioner proved by clear and convincing evidence Father's consent to the adoption was not necessary. However, we also conclude the trial court should have consolidated the paternity and adoption proceedings prior to issuing the Order of Adoption. Accordingly, we vacate the Order of Adoption and remand with instructions to consolidate the adoption and paternity proceedings prior to reissuing the Order of Adoption.

[22] Affirmed and remanded.

Pyle, J., and Weissmann, J., concur.

¹⁰ No further hearing is necessary.