

## 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

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In re the Adoption of A.S.M.M.  
and A.N.L.M. (Minor Children)

A.M.,

*Appellant-Respondent,*

v.

M.R.F. and D.L.W.,

*Appellees-Petitioners*

June 24, 2022

Court of Appeals Case No.  
21A-AD-2836

Appeal from the Allen Superior  
Court

The Honorable Lori Morgan,  
Judge

The Honorable Sherry A. Hartzler,  
Magistrate

Trial Court Cause Nos.  
02D08-1807-AD-89  
02D08-1807-AD-90

**Crone, Judge.**

## Case Summary

- [1] A.M. (Father) appeals the trial court's order granting the petitions of M.R.F. and D.L.W. (the Adoptive Parents) to adopt two of his children, A.S.M.M. and A.N.L.M. (the Children). He contends that the trial court erred in concluding that his consent to the adoptions of the Children was unnecessary. We disagree with Father and affirm.

## Facts and Procedural History

- [2] Father and A.Y. (Mother) were married in November 2014 and divorced in November 2016. Although the dissolution decree does not reference any children, the parties are the biological parents of two children, A.S.M.M., born in August 2014,<sup>1</sup> and A.N.L.M., born during the course of the marriage in September 2015. A.S.M.M. was adjudicated a child in need of services (CHINS) in March 2015, and A.N.L.M. was adjudicated a CHINS in August 2016. The Children have remained outside of their parents' care since the CHINS proceedings began, and have been in the care of the Adoptive Parents, who are licensed foster care providers, since June 2018.
- [3] During the course of the CHINS proceedings, Father was ordered to participate in visitation with the Children. His visitation was sporadic at best from the

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<sup>1</sup> Father's paternity of A.S.M.M. is undisputed.

beginning until he was incarcerated sometime in 2016 through October 2017.<sup>2</sup> During his incarceration, Father had no visits with the Children. After his release in 2017, Father participated in only two visits with the Children. He did not begin visitations with the Children until July 2018, when a referral was made to the Bowen Center for supervised visits. In May 2019, Father was discharged unsuccessfully from the Bowen Center due to his failure to attend. Visitation services were then referred to Lifeline, but Father was subsequently discharged again in September 2019 for failure to attend consistently.

[4] In July 2018, the Adoptive Parents filed verified petitions for adoption. The notices of adoption alleged that Father and Mother failed without justifiable cause to communicate significantly with the Children when able to do so and/or knowingly failed to provide for the care and support of the Children when able to do so as required by law. The notices further alleged that each parent is unfit, and the best interests of the Children would be served by adoption. In March 2019, Father filed a motion to contest the adoptions. Mother did not file a motion to contest.

[5] While the petitions for adoption were pending, in September 2019, the Indiana Department of Child Services (DCS) referred Father to Lutheran Social Services so that he could exercise supervised visitation with the Children twice per week. Those visits were changed to virtual supervised visits in March 2020

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<sup>2</sup> Father was also incarcerated from the end of 2013 through November 17, 2014. Both periods of incarceration were related to his convictions for driving while suspended and receiving stolen property.

due to the COVID-19 pandemic. Of the sixty-seven virtual visits that were to occur, Father attended only twenty-three, or thirty-four percent of the visits. Children would often log on to the computer for a visit and Father simply would not appear. Father was seen out driving around during one of the scheduled virtual visits that he failed to attend. Father did not and does not have a valid driver's license. In June 2020, in-person visits resumed. Father claimed to be quarantining at various times due to exposure to COVID-19 and stated that he could not attend visits. However, Father continued to install equipment on boats and hosted a party with several individuals during that same time period. On another occasion, Father claimed to be unable to attend a visit because he had a child in the hospital. On that same date, Father posted a request on Facebook for others to join him on a motorcycle ride that afternoon. Father missed nearly another week of visits in August 2020 claiming that he was working. However, he was actually in Las Vegas with his girlfriend. Another excuse involved alleged car trouble. Father was actually out of town joyriding his motorcycle in the Cumberland Mountains. Father's false excuses for missing visits with his Children continued through February 2021.

[6] The record indicates that Father has owned his own business since 2017 and that he has twelve employees who work for him. He rents a 4,200-square-foot home, and owns sport utility vehicles, a boat, and a motorcycle. Father lives with his fiancée and their three children. Father admits that he has the financial means to support the Children. However, Father did not contribute or provide any level of support to the Children in 2017, 2018, or 2019. In late 2020, when

Father began exercising community supervised visitation with the Children, he took the Children shopping once at the mall and provided drinks and chips. He bought some outfits for the Children, but he took most of those items to his home and did not let the girls keep them. Father sometimes gives the Children birthday and Christmas gifts.

[7] Both Children attend regular therapy and have been diagnosed with post-traumatic stress disorder. In addition, A.S.M.M. has special medical needs. She was diagnosed with a heart murmur and seizure disorder for which she receives special liquid medication produced at a compounding pharmacy. She is given this medication twice per day at certain times. Medicaid does not cover these expenses. Father does not know what this medication is or how it is administered to A.S.M.M. A.S.M.M. has also been diagnosed with medication-resistant epilepsy and has three to five seizures per month. A.S.M.M. must be monitored after a seizure due to concerns of “sudden unexpected death” after the seizure is over. Appealed Order at 6. Father attended only one medical appointment in late 2020 for A.S.M.M., and that was only due to court order. He has missed all of the other numerous appointments despite being given advance notification of each appointment.

[8] A.S.M.M. struggles in school, attends speech therapy twice per week, and has been recommended to repeat kindergarten. Father is unaware of these educational issues and has never attended a parent-teacher conference or an individualized education plan meeting despite being given notice.

[9] An adoption consent hearing was held in March 2021.<sup>3</sup> The Adoptive Parents presented evidence regarding Father’s failure to support or significantly communicate with Children. In addition, the guardian ad litem (GAL) opined that adoption was in the best interests of the Children. She noted that she had been involved with the Children since the outset of the CHINS case. She stated that Father’s interest and involvement in the Children’s lives has been “really, really limited” and that she did not believe that any bond has ever been formed between Father and the Children. Tr. Vol. 2 at 25. She noted that the Children were in several different foster care placements before being placed with the Adoptive Parents and that the Adoptive Parents have been absolutely “[g]odsends” for the Children. *Id.* at 23. The GAL further noted that the Adoptive Parents are very bonded with the Children and are able to provide stability as well as attend to their medical and educational needs. Two DCS caseworkers also opined that adoption by the Adoptive Parents was in the Children’s best interests.

[10] Following the presentation of all evidence, the trial court concluded by clear and convincing evidence that, despite having the ability, Father knowingly has not provided material, financial, or in-kind support for the benefit of the Children when required by law to do so. The trial court further concluded by clear and convincing evidence that Father has failed without justifiable cause to communicate significantly with the Children for a period of at least one year

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<sup>3</sup> The original hearing was continued and rescheduled several times due to the COVID-19 pandemic.

when able to do so. Finally, the trial court concluded that it is in the best interests of the Children to be adopted by the Adoptive Parents. Accordingly, the court determined that Father's consent to adoption was not required and dismissed the motion to contest. A decree of adoption was subsequently issued for each child in November 2021. This appeal ensued.

## Discussion and Decision

[11] Father contends that the trial court clearly erred in concluding that his consent to the Children's adoption by the Adoptive Parents was not required. Our supreme court recently reiterated our standard of review:

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).

*In re Adoption of I.B.*, 163 N.E.3d 270, 274 (Ind. 2021).

[12] Moreover, we will set aside the trial court’s findings and judgment only if they are clearly erroneous, which means that there is no evidence to support the findings, or the findings fail to support the judgment. *In re Adoption of O.R.*, 16 N.E.3d 965, 973 (Ind. 2014). In conducting our review, we neither reweigh evidence nor reassess witness credibility but rather examine the evidence and reasonable inferences most favorable to the decision and determine whether sufficient probative evidence supports it. *In re Adoption of D.M.*, 82 N.E.3d 354, 358 (Ind. Ct. App. 2017). The trial court’s decision is presumed to be correct, and the appellant has the burden of overcoming the presumption. *Id.*

[13] Generally, courts may not grant a petition for adoption without the written consent of the child’s biological parents. Ind. Code § 31-19-9-1(a). However, Indiana Code Section 31-19-9-8(a) provides, in relevant part:

(a) Consent to adoption, which may be required under section 1 of this chapter, is not required from any of the following:

...

(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; or

(B) knowingly fails to provide for the care and support of the child when able to do so as required by law or judicial decree.



It is the petitioner’s burden to prove by clear and convincing evidence that a natural parent’s consent is not required. *In re Adoption of T.W.*, 859 N.E.2d 1215, 1217 (Ind. Ct. App. 2006). Subsection (a)(2) is written in the disjunctive, “such that the existence of any one of the circumstances provides sufficient ground to dispense with consent.” *O.R.*, 16 N.E.3d at 973. Because we conclude that clear and convincing evidence supports the trial court’s conclusion as to at least one statutory provision—namely, that Father knowingly failed to provide for the care and support of the Children although he was able to do so as required by law, *see* Ind. Code § 31-19-9-8(a)(2)(B)—we need not address other provisions on which the trial court may also have relied. *See id.*

[14] While there was no court order requiring Father to provide financial support to the Children, it is well established that “fathers have a common law duty to support their children which exists apart from any court order or statute.” *In re Adoption of A.K.S.*, 713 N.E.2d 896, 899 (Ind. Ct. App. 1999) (quoting *Moody v. Moody*, 565 N.E.2d 388, 391 (Ind. Ct. App. 1991), *trans. denied.*). Under some circumstances, a parent’s non-monetary, in-kind support to children can satisfy that common law duty. For example, in *In re Adoption of N.W.*, another panel of this Court found that although the mother lacked the ability to provide financial support to her child, her in-kind contributions to her child in the form of housing, food, clothing, and other necessities established that she did not fail to provide support; she was doing the best she could under the circumstances, so her consent to the adoption of her child was necessary. 933 N.E.2d 909, 914

(Ind. Ct. App. 2010). On the other hand, in a case where the evidence indicated that the father clearly had sufficient resources to provide financial support to his child but mostly provided only in-kind support, we held that the father failed to provide adequate support to his child and his consent to the adoption was therefore unnecessary. *In re Adoption of M.A.S.*, 815 N.E.2d 216, 220-21 (Ind. Ct. App. 2004).

[15] Father’s situation here more resembles that of the Father in *M.A.S.* because he had ample financial resources to support his Children but did not do so. Specifically, the trial court found that Father “owned a company, employed twelve (12) people, traveled across the United States on business, rented a 4,000 square foot home, owned sport utility vehicles, and owned a boat and a motorcycle.” Appealed Order at 9. Under the circumstances, it was reasonable for the trial court to conclude that Father knowingly failed to provide for the care and support of his children when able to do so.

[16] Below and on appeal, Father attempts to excuse his failure to support the Children by arguing that “he was never asked by [the Adoptive Parents] or DCS to provide support for the Children[,]” and that when he did ask the Adoptive Parents what he could do “to contribute to the care of the Children[,]” they told him that “no support from his was needed.” Reply Br. at 10. However, even assuming Father’s attempts to financially support the Children were somehow thwarted, this did not impede Father’s ability to provide non-monetary, in-kind support. The trial court noted that the only credible evidence of Father’s in-kind support for the Children involved “a few

items of clothing for which he took a majority back to his home after the visitation.” Appealed Order at 9. The court concluded that Father’s “inconsistent and occasional provision of clothing, a gift, and other various items are merely token efforts that are not sufficient to preserve the requirement for Father’s consent to the adoption.” *Id.* This is a reasonable conclusion based on the evidence, and we will not second-guess this determination by the trial court. Father’s contentions on appeal amount to a request that we reweigh the evidence, which we cannot do. Again, we give “considerable deference” to the trial court’s decision. *I.B.*, 163 N.E.3d at 274. Clear and convincing evidence supports the trial court’s finding that Father failed to provide for the care and support of the Children when he could do so and as required by law. Accordingly, the trial court did not err in concluding that Father’s consent to adoption was unnecessary.

[17] Father also challenges the trial court’s conclusion that adoption was in the Children’s best interests. 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. *O.R.*, 16 N.E.3d at 974. Indeed, 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). While the adoption statutes do not provide guidance regarding the factors a court is to consider when determining the best interests of the child, this Court has noted that there are strong similarities between the adoption statute and the termination-of-parental-rights statute in this respect. *Id.* In determining what is

in the best interests of a child, the trial court is required to look at the totality of the evidence. *Z.B. v. Ind. Dep't of Child Servs.*, 108 N.E.3d 895, 903 (Ind. Ct. App. 2018), *trans. denied*. Relevant factors include, among others, a parent's historical and current inability to provide a suitable environment for the child; the recommendations of the child's case worker or guardian ad litem; and the child's need for permanence and stability. *M.S.*, 10 N.E.3d at 1281-82 (citations omitted).

[18] The record here shows that Father has historically and currently put little effort into supporting or maintaining a relationship with the Children. The GAL and two DCS case workers opined that adoption by the Adoptive Parents was in the Children's best interests. As noted by the trial court, these two young girls have "languished without permanency" for far too long, and the Adoptive Parents, unlike Father, can provide them with the level of attention and stability that they need. Appealed Order at 11.<sup>4</sup> In light of the foregoing, we conclude that the trial court did not clearly err in determining that adoption by the Adoptive Parents is in the Children's best interests. The adoption decrees are affirmed.

[19] Affirmed.

Vaidik, J., and Altice, J., concur.

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<sup>4</sup> At the time of the consent hearing, A.S.M.M. had been in foster care for more than five years and A.N.L.M. had been in foster care for more than four years.