MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Michael H. Michmerhuizen
Barrett McNagny LLP
Fort Wayne, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Adoption of G.J., Minor Child,

D.A.,

Appellant-Petitioner,

v.

D.J.,

Appellee-Respondent.

July 5, 2023

Court of Appeals Case No. 22A-AD-2828

Appeal from the LaGrange Circuit Court

The Honorable William R. Walz, IV, Judge

Trial Court Cause No. 44C01-2108-AD-14

Memorandum Decision by Judge Foley
Judges Vaidik and Tavitas concur.

Foley, Judge.

[1] D.A. contests the trial court's conclusion that the consent of D.J. ("Father") was required for the adoption of G.J. ("Child"). D.A. has not overcome the presumption that a trial court's ruling in an adoption case is correct, and we find evidence in the record supporting the trial court's conclusion. Accordingly, we affirm.

Facts and Procedural History

[2] D.A. is the stepfather of Child[1] and filed a petition to adopt Child on August 3, 2021. As part of the petition, D.A. alleged Father was not required to consent to the adoption. D.A. asserted that Father had unjustifiably failed to meaningfully communicate with or visit the child for a period of more than a year. Child's Mother filed a written consent to the adoption.

[3] Three weeks after the initial petition was filed, Father appeared to contest the adoption. The trial court held a contested hearing on May 10, 2022. In the hearing, it was revealed that Child suffered from "regressive behavior issues" and was receiving counseling from staff at the Bowen Center. Ex. Vol. II pp. 4-5. As part of a prior paternity action initiated by Father, Father was ordered to contact the Bowen Center and arrange for one hour of supervised parenting time per week.[2] Mother was ordered to "coordinate appointments with the

---

[1] The Child's biological mother ("Mother") is married to D.A.

[2] We note that the order did not concern communication with Child generally; it only pertained to visitation. We see nothing in the record to suggest that Father was constrained by court order from communicating with Child outside of supervised parenting time, though we do note that Child was only three years old at the time of the order.

Bowen Center Staff." *Id*. at 5. Records from the Bowen Center show that Father completed his initial intake and evaluation on March 11, 2021, despite the fact that the court order directing supervised visitation was issued on November 1, 2019.

[4] Father submitted the deposition of Amanda Venters ("Venters") into evidence during the trial.[3] Venters was a Bowen Center employee: the assistant director of the facility. She testified that Father was "cooperative" with respect to visitation and the organization thereof. *Id*. at 29–30. She also described frequent contact with Father regarding arranging visitation, testifying that Father would sometimes contact Venters multiple times in a given week. Venters described her limited interactions with Mother—she was only in contact with Venters twice[4]—and described Mother's reluctance to make Child available for visitation with Father.[5] Finally, Venters described her initial contact with Father in summer of 2021, followed by three dates on which Father met with Child's therapist at the request of the Bowen Center.

[5] Mother testified that Father had been ordered to schedule visitation with Child through the Bowen Center, but that she received no communication from either

---

[3] Venters was expecting a child and was unable to testify.

[4] Mother testified that there were actually three phone calls.

[5] D.A. devotes some briefing to the import of Venters's testimony that Mother cited Child's unavailability past 5 p.m. as a reason to withhold him from visitation. The record supports the conclusion that Child was unavailable past 5 p.m., but it also supports the trial court's finding that Mother gave Venters no other reasons for withholding Child. To the extent that the trial court's finding is ambiguous, we find the ambiguity of no moment.

Father or the Bowen Center regarding visitation prior to the filing of the petition for adoption: testimony which conflicted with that of Father and Bowen Center staff. Mother subsequently testified that she was aware of her court-ordered obligation to coordinate the visitation, and that she responded to Bowen Center's calls three times (though the calls did not result in visitation) but made no other attempts to coordinate visitation.

[6] Father testified and expressed his desire to build a relationship with Child. He testified that he had never fallen behind in child support payments but had not seen Child in approximately three years. He testified that the initial delay in scheduling visitation was a result of difficulties coordinating with the Bowen Center and his insurance company in an attempt to have insurance coverage for the costs of the visits, which would be $235 per visit in the absence of insurance. Specifically, he explained that he went to the Bowen Center shortly after receiving the court order, though his formal intake was not completed until much later. Father attributes the initial delay in scheduling visitation to difficulties in securing insurance coverage, but also admitted on cross-examination that his income would have permitted him to pay for at least one session per month *without* insurance coverage, and he did not successfully schedule any sessions.

[7] Eventually the insurance situation was resolved, and, after another delay in which Father discovered he had been coordinating with the wrong Bowen Center facility, Father engaged with the correct Bowen Center facility in an attempt to schedule visitation. He asserted that the Bowen Center viewed

Mother's "timeframe" to be the scheduling roadblock. Tr. Vol. II p. 101. He also explained that he attempted to speak with Mother directly regarding visitation and his inability to pay the fees required, but that she merely directed him to the Bowen Center. And, while Father testified that there were time periods during which he "could" have had visitation, the record does not clarify whether he believed that he could have engaged in visitation despite the various roadblocks, or if he could have done so only if those obstacles had been removed. *Id*. at 112–13. Father also testified that, even prior to the resolution of the insurance issue, he "texted her and all [sic] kinds of different occasions" but that Mother would not allow him to speak with Child, ignoring FaceTime calls, requests for information about Child such as clothing sizes, and requests for pictures of Child competing in martial arts. *Id*. at 101-04. On August 30, 2022, the trial court found in Father's favor. D.A. filed a motion to correct errors on September 21, 2022. The trial court denied that motion on November 18, 2022. This appeal followed.

Discussion and Decision[6]

[8] Father did not file a brief. "[W]here, as here, the appellees do not submit a brief on appeal, the appellate court need not develop an argument for the

[6] D.A. makes a passing suggestion that the trial court "committed reversible error in *de facto* . . . failing to make an adoption determination with regard to the best interests" of Child. Appellant's Br. p. 31. D.A. does not develop this argument, however, and fails to support it with either cogent reasoning or citations to authority. In accordance with our appellate rules, the argument is, therefore, waived. *See* Ind. Appellate Rule 46(A)(8); *Loomis v. Ameritech Corp.*, 764 N.E.2d 658, 668 (Ind. Ct. App. 2002) (holding that the failure to present a cogent argument waives the issue for appellate review), *trans. denied.*

appellees but instead will 'reverse the trial court's judgment if the appellant's brief presents a case of prima facie error.'" *Salyer v. Washington Regular Baptist Church Cemetery*, 141 N.E.3d 384, 386 (Ind. 2020) (quoting *Front Row Motors, LLC v. Jones*, 5 N.E.3d 753, 758 (Ind. 2014)). "Prima facie error in this context means 'at first sight, on first appearance, or on the face of it.'" *Id*. This less stringent standard of review "relieves [us] of the burden of controverting arguments advanced in favor of reversal where that burden properly rests with the appellee." *Jenkins v. Jenkins*, 17 N.E.3d 350, 352 (Ind. Ct. App. 2014) (citing *Wright v. Wright*, 782 N.E.2d 363, 366 (Ind. Ct. App. 2002)). We are obligated, however, to correctly apply the law to the facts in the record in order to determine whether reversal is required. *Id*. (citing *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006)).

[9] For adoption appeals, "[w]e presume the trial court's decision is correct, and we consider the evidence in the light most favorable to the decision." *In re Adoption of T.L.*, 4 N.E.3d 658, 662 (Ind. 2014) (citing *Rust v. Lawson*, 714 N.E.2d 769, 771–72 (Ind. Ct. App. 1999). "'When reviewing a 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 C.A.H.*, 136 N.E.3d 1126, 1128 (Ind. 2020) (quoting *T.L.*, 4 N.E.3d at 662). "[W]e do not reweigh the evidence on appeal, but instead examine the evidence most favorable to the trial court's decision, together with reasonable inferences drawn therefrom." *In re Adoption of M.S.*, 10 N.E.3d 1272, 1282 (Ind. Ct. App. 2014) (citing *In re Adoption of M.L.*, 973 N.E.2d 1216, 1222 (Ind. Ct.

App. 2012)). We give considerable deference to the trial court with respect to family law claims, "as we recognize that the trial court 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." *Id.*

[10] > When, as in this case, the trial court has made findings of fact and conclusions of law, we apply a two-tiered standard of review: "we must 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); *see also* Ind. Trial Rule 52(A) (providing that where the trial court has made findings of fact and conclusions of law, "the court on appeal shall not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."). Factual findings "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." *T.W.*, 859 N.E.2d at 1217.

T.L., 4 N.E.3d at 662.

[11] "In an adoption proceeding, the petitioner is required to prove by clear and convincing evidence that a non-custodial parent's consent is not required for the adoption." *M.S.*, 10 N.E.3d at 1279 (citing *In re Adoption of K.S.*, 980 N.E.2d 385, 388 (Ind. Ct. App. 2012)). Under Indiana law, a parent's consent to the adoption of his or her child is not required if: "[F]or 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." Ind. Code § 31-19-9-8(a)(2).

[12] As we have frequently held in the context of Indiana Code Section 31-19-9-8(a)(2)(B), the plain language of the statute dictates that "'the relevant time period 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." *In re Adoption of A.G.*, 199 N.E.3d 1220, 1224 (Ind. Ct. App. 2022) (quoting *In re Adoption of J.T.A.*, 988 N.E.2d 1250, 1255 (Ind. Ct. App. 2013), *trans. denied*) (emphasis added). That understanding applies with no less force to the provision of the code relating to the noncustodial parent's communication with a child, given that "for a period of at least one year" precedes and attaches to both provisions.

[13] D.A. first argues that the trial court's findings are a "mere recapitulation" of Father's proposed findings and are therefore "not the product of considered judgment." Appellant's Br. p. 19. As we have previously explained:

> Trial Rule 52(C) encourages trial courts to request that parties submit proposed findings of fact and conclusions of law[,] and it is not uncommon or per se improper for a trial court to enter findings that are verbatim reproductions of submissions by the prevailing party. *Clark v. Crowe*, 778 N.E.2d 835, 841 n.3 (Ind. Ct. App. 2002) (citing *A.F. v. Marion Cnty. Off. of Fam. and Children*, 762 N.E.2d 1244, 1249 (Ind. Ct. App. 2002), *trans. denied*). When a party prepares proposed findings, they "should take great care to [e]nsure that the findings are sufficient to form a proper factual basis for the ultimate conclusions of the trial court." *Marathon Oil Co. v. Collins*, 744 N.E.2d 474, 477 n.2 (Ind.

> Ct. App. 2001) (citing *Maloblocki v. Maloblocki*, 646 N.E.2d 358, 361 (Ind. Ct. App. 1995)). Moreover, "the trial court should remember that when it signs one party's findings, it is ultimately responsible for their correctness." *Id*. As noted by this court in *Clark*, we urge trial courts to scrutinize parties' submissions for mischaracterized testimony and legal argument rather than the findings of fact and conclusions of law as contemplated by the rule. 778 N.E.2d at 841 n.3.
>
> We encourage such scrutiny for good reason. As our supreme court has observed, the practice of accepting verbatim a party's proposed findings of fact "weakens our confidence as an appellate court that the findings are the result of considered judgment by the trial court." *Cook v. Whitsell-Sherman*, 796 N.E.2d 271, 273 n.1 (Ind. 2003) (citing *Prowell v. State*, 741 N.E.2d 704, 708–09 (Ind. 2001)). However, as the court also noted, verbatim reproductions of a party's submissions are not uncommon, as "[t]he trial courts of this state are faced with an enormous volume of cases and few have the law clerks and other resources that would be available in a more perfect world to help craft more elegant trial court findings and legal reasoning." *Prowell*, 741 N.E.2d at 708. The need to keep the docket moving is properly a high priority for our trial bench. *Id*. at 709. For this reason, the practice of adopting a party's proposed findings is not prohibited. *Id*. Thus, although we by no means encourage the wholesale adoption of a party's proposed findings and conclusions, the critical inquiry is whether such findings, as adopted by the court, are clearly erroneous. *See Saylor v. State*, 765 N.E.2d 535, 565 (Ind. 2002) (citing *Woods v. State*, 701 N.E.2d 1208, 1210 (Ind. 1998)).

In re Marriage of Nickels, 834 N.E.2d 1091, 1095–96 (Ind. Ct. App. 2005). D.A. does not explain why the act of adopting the proposed findings verbatim—in

and of itself—undermines those findings.[7] Thus, D.A. must demonstrate some failing in the substance of those findings. We find that he has not done so.

[14] Considering the evidence most favorable to the decision, we cannot conclude that the trial court reached the opposite of the only conclusion supported by clear and convincing evidence.[8] Testimony supported the conclusion that Father was in frequent contact with Venters in an attempt to schedule visitation. There is evidence in the record suggesting that Mother was reluctant to uphold her obligation to coordinate and facilitate visitation by cooperating with the Bowen Center. Father's attempts to secure visitation in accordance with the court order may have been delayed and may have been inadequate in other ways, but the trial court could reasonably conclude that those efforts did not reach the level of failure contemplated by relevant statute. Those delays could be attributed to misfortune and obstruction rather than Father's motives. *See, e.g., D.D. v. D.P.*, 8 N.E.3d 217, 221 (Ind. Ct. App. 2014) (affirming trial court's finding that Father's consent was required for an adoption when "Mother hampered and thwarted Father's attempts to communicate with the children.").

---

[7] We note that the trial court, in ruling on D.A.'s motion to correct errors, explained that "*Upon reconsideration* of the evidence presented on the issue of Adoption by the Petitioner without the consent of the Respondent Father, the Court did not err in its exercise of discretion and declines to reverse, modify or set aside the Order entered August 30, 2022." Appellant's App. Vol. II p. 8 (emphasis added). This strongly suggests that the trial court did not blindly adopt its findings, but rather carefully considered them.

[8] To the extent that D.A. finds minor errors in the trial court's order or disagrees with the trial court's interpretation of various testimony, we find that he goes no further than asking us to reweigh the evidence, which we will not do.

[15] A fair reading of the record suggests that Father wishes to have a relationship with Child, and that the three years during which he had been unable to see Child did not result from a lack of efforts on Father's part. He has consistently paid his child support, sought pictures of and updates regarding Child, attempted communication, and attempted to comply with the court order from the paternity case. The trial court did not err in concluding that D.A. failed to establish—by clear and convincing evidence—that Father's consent was not required.

[16] Affirmed.

Vaidik, J., and Tavitas, J., concur.