

## 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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D.J.,  
*Appellant-Petitioner,*

v.

C.R.,  
*Appellee-Respondent.*

October 28, 2022

Court of Appeals Case No.  
22A-AD-731

Appeal from the Marion Superior  
Court

The Honorable Mark A. Jones,  
Judge  
The Honorable Kelly M. Scanlan,  
Magistrate

Trial Court Cause No.  
49D15-2006-AD-21462

**Weissmann, Judge.**

- [1] D.J. (Stepfather) sought to adopt his stepson and thereby sever the child's contact with his biological father. But the biological father, C.R. (Father), objected to the adoption. The adoption statutes require the consent of both parents to a stepparent adoption absent certain specific circumstances, such as a parent's protracted lapse in support of or contact with the child.
- [2] The trial court found Stepfather failed to prove the existence of any of those circumstances. It thus denied Stepfather's petition based on Father's failure to consent to the adoption. Stepfather appeals, claiming that Father's consent was unnecessary due to Father's lack of contact with the child during Father's addiction struggles and treatment. As the record supports the trial court's determination that Father's lack of contact was justified, we affirm.

## Facts

- [3] A.J. (Mother) became pregnant with B.L. (Child) after a brief relationship with Father during which they never dated or lived together. Father was present when Child was born in 2016 but soon was arrested and jailed for a month. Although he resumed visiting Child after his release, Mother obtained a protective order against Father when Child was three months old. She was concerned about her own safety and wished to halt all contact between Father and Child. Tr. Vol. II, p. 59.
- [4] Father successfully petitioned to establish paternity of Child when Child was five months old. Father and Mother agreed, and the trial court ordered in October 2016 that Father would have supervised parenting time for two months

followed by unsupervised parenting time. The trial court also ordered that Child take Father's surname.

[5] A month later, Mother petitioned the trial court for more restrictions on Father's parenting time after he appeared for parenting time with glossy eyes and nodded off while sitting. Eventually, however, Father convinced Mother that he was just hungover, and she withdrew her petition. In June 2017, Father transitioned to unsupervised parenting time.

[6] In January 2018, Father acted erratically on Child's second birthday. Father was shaking and attempting to dig glass out of his face with a knife. He also picked up rock salt and asked Mother to determine whether it was methamphetamine. Mother took Child to Riley Hospital the next day to determine whether he had ingested anything dangerous. That led to the Indiana Department of Child Services petitioning to find Child to be a child in need of services (CHINS). While the CHINS action was pending, Father exercised supervised parenting time once weekly.

[7] The CHINS proceeding closed about four months after it began. Father then sought a return to his earlier court-ordered parenting time. Mother objected, and the parties ultimately agreed to the following parenting time arrangements, which the trial court ordered:

- Father would submit to a drug and alcohol evaluation at a reputable facility, with the results sent to Mother.

- Father would engage in any recommended counseling and drug screens, with the results sent to Mother.
- Father would resume supervised visitation once the evaluation report was provided and he had undergone three counseling sessions.
- Paternal Grandparents would have Facetime contact with Child.
- Father would pay \$97 weekly child support.

[8] Despite these conditions, Father continued drug use, leading to his arrest on drug-related charges in November 2018. In Spring 2019, Father entered an inpatient treatment program for 90 days, during which he was not allowed to have a phone. Father believed this private facility could not meet the requirements of the court order.

[9] In February 2019, the paternity court set a final hearing for three months later. Mother sought a continuance, and the trial court vacated the hearing and ordered the parties to mediation. Father relapsed and sought treatment--first at an inpatient facility and then at an outpatient program--before delivering the results of his evaluation and treatment personally to the paternity court in December 2019 or January 2020.

[10] The trial court in late January 2020 set a final hearing for two months later but ordered Father to report to the Service Referral Case Manager to monitor Father's services and report his completion. The court also ordered the parties, both of whom then were unrepresented, to work on a parenting time agreement

through a program for parents without counsel. Father contacted the program within the week. The program reported that Father was in counseling and had signed a release. It sought to arrange a meeting of Mother and Father to schedule parenting time, but Mother rescheduled the appointment for March. Mother later reported that she would not allow any parenting time until she could speak to the judge. The trial court continued the March hearing to July based on the COVID-19 pandemic.

[11] Stepfather married Mother in March 2020 and petitioned for Child's adoption three months later. The petition listed Child's last name as Mother's maiden name, not Father's surname. As a result of that filing, the paternity court did not conduct the scheduled final hearing in July and, instead, transferred the proceeding to the probate court, where the adoption petition was pending.

[12] Father relapsed after the adoption filing but later resided in a sober living house for several months afterward. He began renewed treatment for substance abuse and regular drug screens. Since then, Father has tested positive for THC, but not for methamphetamine or heroin, his previous drugs of choice. He attributes the THC finding to his use of CBD oils and gummies for his anxiety and joint pain. Father continues treatment, takes Suboxone, and attends Narcotics Anonymous meetings twice weekly.

[13] At the adoption hearing, the guardian ad litem (GAL) testified that Father was a fit parent who was bonded to Child and who had attempted to maintain a relationship with Child since Child's birth. The GAL viewed Child as confused

because Mother and Stepfather spoke critically of Father to Child and revealed information about the proceedings to Child.

[14] The trial court found that, despite some gaps in Father's contact with and support of Child, Father's consent to the adoption was necessary. As Father objected to Stepfather's adoption of Child, the trial court denied Stepfather's petition. Stepfather appeals.

## Discussion and Decision

[15] Stepfather contends the trial court erroneously determined that Father's consent to Stepfather's adoption of Child was statutorily required. Stepfather argues that Father failed to significantly contact Child for more than a year. As Father's lack of contact was justified by court orders and his treatment and prompted, in part, by the obdurate actions of Mother and Stepfather, we agree with the trial court that Stepfather proved no statutory exception to the consent requirement.

### I. Standard of Review

[16] Given the substantial deference normally given trial judges in family law matters, we presume on appeal that the court's decision in an adoption case is correct. *Matter of Adoption of I.B.*, 163 N.E.3d 270, 274 (Ind. 2021). The appellant bears the burden of rebutting this presumption. *Id.* We will not disturb the trial court's decision unless the evidence leads to only one conclusion opposite of that reached by the trial court. *Id.* In reaching that determination, we will examine the evidence in the light most favorable to the trial court's ruling without reweighing evidence or assessing witness credibility. *Id.*

[17] This standard of review is impacted by Father's failure to file a brief in this appeal. Under such circumstances, we need not develop an argument on the silent party's behalf and may instead "reverse the trial court's judgment if the appellant's brief presents a case of prima facie error." *Front Row Motors, LLC v. Jones*, 5 N.E.3d 753, 758 (Ind. 2014). In this context, prima facie error means error "at first sight, on first appearance, or on the face of it." *Id.*

## II. Consent Necessary

[18] Stepfather contends the trial court should have granted his adoption petition because Father's consent was unnecessary under Indiana Code § 31-19-9-8(a)(2)(A), which specifies:

(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 . . . .

[19] Stepfather argues that Father had no significant communication with Child for more than three years—from May 2018 through September 22, 2021. Stepfather notes that the trial court ordered in October 2018 that Father complete an evaluation and engage in counseling and drug screens before resuming parenting time. But Father kept using drugs for another six months before seeking treatment. Then Father relapsed in 2019 and did not submit proof that he had complied with the requirements for resumption of parenting time until

January 2020. Father relapsed again when he learned of Stepfather's adoption petition. Stepfather contends that Father's lack of communication with Child far exceeded a year and was unjustified.

[20] The trial court agreed that "Father failed to significantly communicate with the Child for a period of over one (1) year, beginning in 2018" and that Father "last saw the Child in May of 2018." App. Vol. II, p. 16. But the trial court determined Father's lack of contact was justified by Mother's refusal to allow Father contact with Child, Father's drug treatment, and the delays in court hearings. The court ruled:

Father filed a petition in June of 2018 to reestablish his parenting time. Mother moved to dismiss the petition. A hearing was scheduled for October 29, 2018, on which date Mother and Father entered into the 2018 Agreement.

Father was aware that he would not be entitled to see the Child until he met the requirements of the 2018 Agreement. Recovering from drug addiction takes time. For at least five (5) months during which Father failed to communicate with the Child, he was in inpatient treatment, and for three (3) of those months, no phones were allowed, thus, Father was not able to communicate with Mother or the Child. Just under fifteen (15) months after entering into the 2018 Agreement, Father delivered documentation of his evaluation and treatment to the Court. Shortly thereafter, the Court ordered Mother and Father to Access, where Mother refused to agree to any parenting time for Father, supervised or otherwise. The Covid-19 pandemic delayed resolution of the parenting time issue in paternity Court, and Stepfather filed for adoption while the issue remained pending.

The Court finds that justifiable cause for Father's failure to communicate with the Child exists under the circumstances of



this case. Importantly, Father has made good faith attempts at achieving and maintaining sobriety, and despite having struggled with relapse, he has demonstrated significant progress. Father is employed, is in a relationship, has an infant child, is maintaining stable housing, remains in drug treatment and therapy, and exercised consistent limited supervised parenting with the Child in 2021 consistent with this Court's order, during which Father acted appropriately.

*Id.* at 16-17.

[21] Whether a petitioner has met his burden to prove the non-custodial parent's failure to communicate greatly depends on the particular facts. *In the Matter of Adoption of E.B.F.*, 93 N.E.3d 759, 764-65 (Ind. 2018). Accordingly, we must review the totality of the circumstances to determine whether the trial court properly found Father justifiably failed to communicate with Child. When conducting that review, we strictly construe Indiana Code § 31-19-9-8(a)(2)(A). *See In re Adoption of N.W.*, 933 N.E.2d 909, 913 (Ind. Ct. App. 2010) (ruling that a biological parent enjoys special protection in any adoption proceeding and that in line with that protection, courts strictly construe adoption statutes to protect the fundamentally important parent-child relationship).

[22] The record shows that during much of the relevant three-year period, Father was pursuing treatment necessary to resume his parenting time. His efforts to reunite with Child, either by complying with the requirements of the 2018 agreement or by seeking a court order of parenting time, were continuous except during his temporary relapses.

[23] Mother and Stepfather opposed Father's efforts at every turn, with Mother delaying appointments necessary to reinstate Father's parenting time and then refusing to agree to any parenting time until the court could hear her complaints. *See E.W. v. J.W.*, 20 N.E.3d 889, 896-97 (Ind. Ct. App. 2014) (ruling that a custodial parent's efforts to thwart communication between the non-custodial parent and the child are relevant to determining the non-custodial parent's ability to communicate and should be weighed in the non-custodial parent's favor).

[24] And Stepfather also showed an unwillingness to support Father's involvement with Child. As the trial court found, Stepfather "desires to have a 'small' loving family with Mother, their newborn, and the Child and does not want 'outsiders' such as Father to be involved in their lives." App. Vol. II, p. 16. Troubled by Mother and Stepfather's negative comments about Father and impressed by Father's current stability and bond with Child, the GAL recommended that the trial court deny Stepfather's adoption petition.

[25] The totality of the circumstances supports the trial court's finding that Father did not fail to communicate with Child for at least one year without justifiable cause. Father's lack of significant communication with Child, caused in part by Mother's actions, was justified by Father's drug treatment, court orders, and delays in court proceedings. The trial court thus correctly determined that Stepfather failed to prove that Father's consent was unnecessary under Indiana Code § 31-19-9-8(a)(2)(A). *See E.B.F.*, 93 N.E.3d at 760 (ruling that the totality of the mother's circumstances, including her addition struggles and good-faith

recovery efforts, justified her failure to communicate with her child for more than a year and that father and stepmother's lack of cooperation frustrated mother's limited ability to communicate).

[26] We affirm the trial court's judgment.

May, J., and Crone, J., concur.