

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

J.B.,
Appellant-Respondent,

v.

K.S.,
Appellee-Petitioner.

April 17, 2023

Court of Appeals Case Nos.
22A-AD-2722
22A-AD-2725

Appeal from the Huntington
Circuit Court

The Honorable Davin G. Smith,
Judge

Trial Court Cause Nos.
35C01-2107-AD-18
35C01-2107-AD-19

Memorandum Decision by Judge Bradford
Judges May and Mathias concur.

Bradford, Judge.

Case Summary

- [1] J.B. (“Father”) and A.S. (“Mother”) are the biological parents of T.B. and J.L.B. (collectively, “the Children”). The Children are twins who were born in January of 2014. While never married, Mother and Father separated in 2015, and Mother subsequently married K.S. (“Stepfather”). On July 29, 2021, Stepfather filed petitions to adopt the Children. In these petitions, Stepfather alleged that Father’s consent to the adoptions was not required because Father had failed, without justifiable cause, to communicate with the Children for a period in excess of one year, Father had not provided for the care or support of the Children for a period in excess of one year, Father was not a fit and proper person to parent the Children, and adoption was in the Children’s best interests. Father contested Stepfather’s petitions, arguing that his consent was required but that he did not consent to the adoptions. Following a hearing, the trial court determined that Father’s consent to the adoptions was not required. The trial court further determined that adoption by Stepfather was in the Children’s best interests and granted Stepfather’s petitions to adopt the Children. We affirm.

Facts and Procedural History

- [2] The Children are twins who were born to Mother and Father (collectively, “Parents”) on January 2, 2014. Parents, who were never married, “ended [their] relationship in 2016.” Tr. p. 8. Mother began dating Stepfather in 2017.

Mother and Stepfather have been raising the Children together since 2018, and married on April 20, 2021.

- [3] Father has been incarcerated off-and-on since 2016, for crimes including child solicitation, possession of methamphetamine, invasion of privacy, failure to register as a convicted sex offender (twice), and burglary. Father also has a demonstrated history of abusing illegal drugs, most recently methamphetamine. Father has not seen the Children since 2017.
- [4] On July 29, 2021, Stepfather petitioned to adopt the Children. In his petitions, Stepfather alleged that Father's consent was not required because Father had "failed to, without justifiable cause, communicate significantly, when able to do so with [the Children], for a period in excess of one year." Appellant's App. Vol. II pp. 18, 20. Stepfather further alleged that (1) Father had failed to provide "for the care or support of the [Children] for a period in excess of one year," (2) Father was not "a fit and proper person to parent" the Children, and (3) adoption was in the Children's best interests. Appellant's App. Vol. II pp. 19, 21. Father contested the adoptions. Following a hearing, the trial court granted Stepfather's petitions to adopt the Children, finding, *inter alia*, that Father, without justifiable cause and while being able to do so, had failed to communicate significantly with the Children for a period in excess of one year and that the adoptions were in the Children's best interests.

Discussion and Decision

[5]

“When reviewing adoption proceedings, we presume that the trial court’s decision is correct, and the appellant bears the burden of rebutting this presumption.” *In re Adoption of J.L.J. and J.D.J.*, 4 N.E.3d 1189, 1194 (Ind. Ct. App. 2014) (citation omitted), *trans. denied*. We generally give 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.” *MacLafferty v. MacLafferty*, 829 N.E.2d 938, 940 (Ind. 2005). We will not disturb the trial court’s ruling “unless the evidence leads to but one conclusion and the trial judge reached an opposite conclusion.” *Rust v. Lawson*, 714 N.E.2d 769, 771 (Ind. Ct. App. 1999) (citation omitted), *trans. denied*. The trial court’s findings and judgment will be set aside only if they are clearly erroneous. *In re Paternity of K.I.*, 903 N.E.2d 453, 457 (Ind. 2009). “A judgment is clearly erroneous when there is no evidence supporting the findings or the findings fail to support the judgment.” *Id.* “We will neither reweigh the evidence nor assess the credibility of witnesses, and we will examine only the evidence most favorable to the trial court’s decision.” *In re Adoption of A.M.*, 930 N.E.2d 613, 616 (Ind. Ct. App. 2010).

In re Adoption of O.R., 16 N.E.3d 965, 972–73 (Ind. 2014).

I. Consent

[6]

Father contends that the trial court erred in determining that his consent to the adoption was not required. Indiana Code section 31-19-9-8(a) provides, in relevant part, that consent to adoption 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.

(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.

“[T]he statute is written in the disjunctive such that the existence of any one of the circumstances provides sufficient ground to dispense with consent.” *In re O.R.*, 16 N.E.3d at 973. For the reasons stated below, we conclude that the trial court did not err by determining that Father had failed, without justifiable cause, to communicate significantly with the Children for a period of more than one year. As such, because we conclude the trial court properly relied on at least one statutory provision, we do not address any of the other provisions on which the trial court may have also relied.

[7] The trial court found that “[o]ther than seeing the children approximately three (3) times in 2017, Father has not had any significant contact with them since 2016.” Appellant’s App. Vol. II p. 17. The trial court further found that

although Father was eventually blocked from calling Mother's cellular phone¹ and did not have Mother's then-current mailing address, he, at all times, had Mother's email address and had maternal grandmother's mailing address. However, the trial court found that Father had not sought to communicate with the Children until after the petitions for adoption had been filed. The trial court's findings were supported by Mother's testimony. For his part, Father acknowledged that he had not seen the Children since 2017, and admitted that he had been incarcerated for the majority of the Children's lives.

- [8] Further, while Father's then-girlfriend Candace Miller testified that Father had texted Mother daily from February 2019 through October of 2019, to ask to see the Children, the trial court "did not find this testimony [to be] credible." Appellant's App. Vol. II p. 16. In addition, while Father testified that he had attempted to communicate with the Children, or at least had asked Mother about the Children, on numerous occasions, the trial court was in the best position to judge Father's credibility and we will not reweigh the trial court's determination as to credibility. *See In re O.R.*, 16 N.E.3d at 973. The evidence most favorable to the trial court's decision supports its determination that Father had failed to communicate significantly with the Children for a period of more than one year.

¹ Mother testified that she had eventually had to block Father from calling her cellular phone because he had been repeatedly calling her phone at times when he knew that she was at work and not with the Children.

II. Best Interests

[9] Father also contends that the trial court erred in finding that the adoption was in the Children’s best interests. “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). “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.” *Id.*

[10] The adoption statute does not provide guidance for which factors to consider when determining the best interests of a child in an adoption proceeding, but we have noted that there are strong similarities between the adoption statute and the termination of parental rights statute in this respect. *See In re Adoption of M.L.*, 973 N.E.2d 1216, 1224 (Ind. Ct. App. 2012) (holding that the adoption statutes and the termination statutes provide similar balances between parental rights and the best interests of the children; also holding that termination cases provide “useful guidance as to what makes a parent ‘unfit’”). In termination cases, we have held that the trial court is required to look to the totality of the evidence to determine the best interests of a child. *In re I.A.*, 903 N.E.2d 146, 155 (Ind. Ct. App. 2009). Relevant factors include, among others, a parent’s historical and current inability to provide a suitable environment for the child, *In re J.C.*, 994 N.E.2d 278, 290 (Ind. Ct. App. 2013); the recommendations of the child’s case worker or guardian ad litem; and the child’s need for permanence and stability, *see A.J. v. Marion Cnty. Office of Family and Children*, 881 N.E.2d 706, 718 (Ind. Ct. App. 2008)[, *trans. denied*].

Id. at 1281–82.

[11] In determining that adoption was in the Children's best interests, the trial court made numerous findings relating to Father's frequent (and then-current) incarceration and drug use. Specifically, the trial court found that

4) Father admitted that he has been a drug addict most of his life.

5) Father used methamphetamine, marijuana, and methadone prior to his most recent incarceration in 2018.

8) In July 2016, Father was arrested for child solicitation. He was incarcerated from July 2016 through April 25, 2017.

9) After Father was released from imprisonment, he had the opportunity to get back into his sons' lives. While he indicated that those visits were fine, Mother stated that she could tell that Father was using and that he was hanging around the wrong people. Father admitted that Mother had every right to be concerned about him given his prior history with drug use.

10) According to Father, he was incarcerated from July 2016 until April 25, 2017. He was then arrested for using methamphetamine while on probation in January of 2018.

11) In June 2018, Father was arrested for failure to register as a convicted sex offender, a [L]evel 6 felony.

12) In July 2018, Father was arrested for Invasion of Privacy.

13) Father was released from incarceration on or about February 14, 2019.

14) Between February 14, 2019 and October 2019, Father resumed using methamphetamines.

15) In July 2019, Father was charged with Failure to Register as a Sex Offender, a [L]evel five (5) felony.

16) In October 2019, Father was charged with Burglary and being a Habitual Offender.

17) Father has been incarcerated since October 2019 and will remain incarcerated until his estimated release date of October 22, 2023.

18) Father, since July 2016, has only been out of custody approximately nine (9) months. During this time, he used methamphetamine, had his probation revoked, and committed multiple new offenses.

22) Despite having Mother's email, [Father] did not write to the boys, did not ask for Mother's telephone number or address or seek any other form of communication with either of the boys until after the petition for adoption was filed.

25) [T.B.] is autistic and requires consistent parenting.

26) Both children deserve to have parents who are drug free. While Father may desire that for his future, his past has illustrated that he simply cannot comply with those requirements.

27) Other than seeing the [C]hildren approximately three (3) times in 2017, Father has not had any significant contact with them since 2016.

28) Father is not a fit person to parent these boys.

Appellant's App. Vol. II pp. 15–17. The trial court also heard evidence indicating that Stepfather has played a very significant role in the Children's lives. Mother testified that Stepfather had helped to successfully toilet train T.B. after others had failed. Stepfather spends time with the Children, plays games with them, taught them to fish, took them to their first waterpark, and is involved with their school activities. The trial court further heard evidence indicating that routines and consistency are "huge for" T.B. and that while in Mother's and Stepfather's care, T.B. has made great strides, beyond what doctors originally thought might be possible for him. Mother expressed concern that T.B. would regress if he did not live in a consistent environment.

The evidence supports the trial court's findings, which are sufficient to demonstrate that adoption is in the Children's best interests.

[12] The trial court's determinations that Father's consent to the Children's adoption was not required and that adoption by Stepfather was in the Children's best interests are not clearly erroneous as they are supported by evidence in the record. Further, given that the trial court was in the best position to judge witness credibility and weigh the evidence, we will not second-guess the trial court's determinations. *See In re O.R.*, 16 N.E.3d at 973. Father is effectively requesting for this court to reweigh the evidence, which we will not do. *See id.*

[13] The judgment of the trial court is affirmed.

May, J., and Mathias, J., concur.