

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.



ATTORNEY FOR APPELLANT

Lisa Diane Manning
Danville, Indiana

ATTORNEY FOR APPELLEE

Cassandra Hine
Law Office of Cassandra Hine, P.C.
North Judson, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Adoption of
O.W.;

D.J.,

Appellant-Respondent,

v.

M.H.,

Appellee-Petitioner.

August 9, 2021

Court of Appeals Case No.
21A-AD-271

Appeal from the Miami Circuit
Court

The Honorable Timothy P. Spahr,
Judge

Trial Court Cause No.
52C01-1907-AD-19

Najam, Judge.

Statement of the Case

[1] D.J. (“Father”) appeals the trial court’s grant of M.H.’s (“Stepmother’s”) petition for adoption of Father’s minor child, O.W. (“Child”). Father raises

one issue for our review, namely, whether the trial court erred when it concluded that his consent to the adoption was not required.

[2] We affirm.

Facts and Procedural History

[3] Father and H.W. (“Mother”) met in September 2017 and began a romantic relationship. Shortly thereafter, Mother became pregnant with Child. Mother informed Father of the pregnancy, and Father “started disappearing” such that Mother saw him “less and less.” Tr. Vol. 2 at 158-59. At some point, the relationship between Father and Mother ended.

[4] On April 23, 2018, Father was sentenced to five years in the Indiana Department of Correction based on charges that stemmed from Father’s operation of a motor vehicle while intoxicated, which caused an accident that killed one person and seriously injured another. Then, on July 10, Mother gave birth to Child. Father initiated a paternity action, and the court entered an order finding Father to be Child’s father.

[5] When Child was three months old, Mother met Stepmother, and the two ultimately married on April 5, 2019. On July 17, with Mother’s consent, Stepmother filed a petition to adopt Child. In her petition, Stepmother alleged that Father’s consent was not required because Father “is not a fit parent[.]”¹

¹ Stepmother also alleged that Father’s consent was not required because Father had abandoned Child and because Father had failed for at least one year to either communicate significantly with Child or provide care

Appellant's App. Vol. 2 at 21. In response, Father sent a letter to the trial court, which the court treated as a motion to contest the adoption.

[6] The court held a hearing on Stepmother's petition. During the hearing, Stepmother presented evidence that Father has a long history of both dealing and using drugs, that Father has a lengthy criminal history, and that Father has never held gainful employment. Indeed, Father admitted that he began using drugs when he was only eight years old and that he had been dealing heroin and marijuana since was "twelve to thirteen years old." Tr. Vol. 2 at 84. Father also acknowledged that he "caught [his] first juvenile case" when he was thirteen years old and that he was involved in criminal activity "basically all of [his] teenage years," which activity continued until he was incarcerated following the drunk driving accident. *Id.* at 84-85. And Father admitted that he had two jobs while incarcerated but that he had been "removed" from both of them. *Id.* at 104.

[7] Following the hearing on Stepmother's petition, the court entered the following findings and conclusions:

FINDINGS OF FACT¹

* * *

and support for Child. However, the court concluded that Stepmother had failed to meet her burden with regard to those allegations.

3. Father was incarcerated at the Indiana Department of Correction (IDOC) at the time of [Child's] birth and remains incarcerated today, with an earliest possible release date of September 14, 2020. Father is incarcerated as a result of his convictions in Cause No. 85C01-1707-F5-000832 of Operating a Vehicle While Intoxicated Causing Death, a Level 5 felony, and Operating a Vehicle While Intoxicated Causing Serious Bodily Injury, a Level 6 felony. . . .

* * *

10. Father began using drugs that he received from family members when he was eight years old.¹¹ He acknowledged in his testimony that his dealing of heroin and marijuana went back “as far as [he] can remember,” and then clarified that it went back to when he was 12 or 13 years old. Father now is 26 years old.

11. As a youth, Father had juvenile delinquency adjudications for growing marijuana, “breaking and entering,” and robbing a convenience store. He was in juvenile detention at the Robert J. Kinsey Youth Center in Kokomo, Indiana, and the Indiana Boys School from when he was age 13 or 14 until he was age 17 or 18. Father admits that he continued to engage in criminal activity thereafter until he was 23 or 24 years old. It is clear that Father’s criminal activity was interrupted by Father’s current incarceration at the Indiana Department of Correction.

* * *

13. The criminal conduct for which Father is now incarcerated stemmed from the abuse of alcohol and resulted in the death of one person and the serious injury of another. Notwithstanding the severe consequences of his conduct, Father proceeded to abuse marijuana, heroin, and painkillers after that. He acknowledged in his testimony that he was using heroin three

days out of every week and using money from his parents to buy his drugs.

14. Mother found out she was pregnant before Father became incarcerated. When Father found out that Mother was pregnant, he began to distance himself, staying at Mother's home less than he had previously. During Mother's pregnancy, she discovered that Father was using and selling drugs.

* * *

17. When a probation officer met with Father to collect information for the presentence investigation report that was going to be filed in Cause No. 85C01-1707-F5-000832, he told the probation officer that he had no substance abuse problems. Father now acknowledges that he lied to the probation officer about that.

18. Father has participated in a number of programs while at the IDOC, earning a "time cut" for his completion of one of them.

19. By Father's own admission, he has been diagnosed with Schizophrenia since he was 16 years old but is not currently taking any medication for it. The termination of Father's usage of such medication was Father's choice, as he does not believe that he needs it.

20. Father has not held employment consistently while at the IDOC and was in fact terminated from one position due to his erratic behavior and because he was suspected of engaging in trafficking. Outside the IDOC, Father has never held meaningful employment but has not been determined as an adult to be eligible for Supplement Security Income (SSI).

21. Father has reported that, following his release from prison, he plans to move in with his mother and she will support him with her Social Security Disability income and food stamps. He does not have a driver's license, and so he will not be able to drive to and from a job. Rather, he will be dependent on others for transportation.

CONCLUSIONS OF LAW

* * *

12. As to the question of Father's fitness, Father points to his completion of a number of programs while at the IDOC and reports that he has changed his mindset regarding his desire to use drugs as reasons he should not be considered unfit. Cutting against that argument are the following:

- a. Father's extensive use of illegal drugs, beginning at the age of 8 years;
- b. Father's engaging in the dealing of heroin and marijuana from age 12 or 13 until age 23 or 24, when he went to prison;
- c. Father's repeated stays in juvenile detention, including at the Indiana's Boys School, as a result of delinquent conduct that included, *inter alia*, the growing of marijuana, "breaking and entering," and robbing a convenience store;
- d. Father's continued engagement in criminal conduct as an adult after he got out of the Indiana Boys School;
- e. Father's decision to continue abusing drugs even after his abuse of alcohol had led to a motor vehicle accident

that claimed another person's life and seriously injured a second person;

f. Father's continued engagement in substance abuse even after he learned that Mother was pregnant and that he was going to be a father;

g. Father's history of not accepting that he had a substance abuse problem and lying about his addiction issues, as exemplified by the lies he told to the probation officer who prepared his presentence investigation report; and

h. Father's long history of engaging in drug abuse at any time that he is not in juvenile detention or prison.

13. Additionally, the Court notes that Father:

a. Has been diagnosed with Schizophrenia since he was 16 but is not currently taking medication because he thinks he does not need it;

b. Has never held employment of significance;

c. Has no driver's license; and

d. Will be wholly dependent upon his mother (who is surviving on a significantly limited income of her own) for housing, support, and transportation following his release from prison.

Appellant's App. Vol. 2 at 87-93. The court then concluded "that Father is unfit to be a parent." *Id.* at 93. In addition, the court determined that Child's

“best interests would be served if the Court dispensed with Father’s consent to the proposed adoption.” *Id.* Accordingly, the court determined that Father’s consent was not required.² Thereafter, the court granted Stepmother’s petition to adopt Child. This appeal ensued.

Discussion and Decision

[8] Father contends that the trial court erred when it concluded that his consent to the adoption was not required. As our Supreme Court has stated:

In family law matters, we generally give considerable deference to the trial court’s decision 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.

Accordingly, 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.

The trial court’s findings and judgment will be set aside only if they are clearly erroneous. A judgment is clearly erroneous when there is no evidence supporting the findings or the findings fail to support the judgment. We will not reweigh evidence or assess the credibility of witnesses. Rather, we examine the evidence in the light most favorable to the trial court’s decision.

² Father sought to certify for interlocutory appeal the court’s order finding that his consent was not required. The trial court granted Father’s motion, but this Court declined to accept jurisdiction.

J.W. v. D.F. (In re Adoption of E.B.F.), 93 N.E.3d 759, 762 (Ind. 2018) (quotation marks and citations omitted).

[9] Indiana law generally requires natural parents to consent to adoptions. Ind. Code § 31-19-9-1 (2021). However, a natural parent’s consent to an adoption is not required if the trial court finds by clear and convincing evidence that “the parent is unfit to be a parent” and “the best interests of the child . . . would be served if the court dispensed with the parent’s consent.” I.C. § 31-19-9-8(a)(11). As we have explained:

While the term “unfit” as used in Ind. Code § 31-19-9-8(a)(11) is not statutorily defined, this court has defined “unfit” as “[u]nsuitable; not adapted or qualified for a particular use or service” or “[m]orally unqualified; incompetent.” We have also noted that statutes concerning the termination of parental rights and adoption “strike a similar balance between the parent’s rights and the child’s best interests” and thus termination cases provide useful guidance in determining whether a parent is unfit. Termination cases have considered factors such as a parent’s substance abuse, mental health, willingness to follow recommended treatment, lack of insight, instability in housing and employment, and ability to care for a child’s special needs. Also, this Court has consistently held in the termination context that it need not wait until children are irreversibly harmed such that their physical, mental, and social development are permanently impaired before terminating the parent-child relationship. It is well-settled that individuals who pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with their children.

Mendez v. Weaver (In re Adoption of D.M.), 82 N.E.3d 354, 358-59 (Ind. Ct. App. 2017) (citations omitted).

[10] On appeal, Father contends that the trial court erred when it concluded that his consent to the adoption is not required because he had “greatly improved many of the circumstances that existed in his life” by the date of the hearing on Stepmother’s petition. Appellant’s Br. at 12. Specifically, Father asserts that he “completed a treatment program, was participating in a reentry program that will help him find secure employment, and worked to maintain a relationship with [Child] while incarcerated.” *Id.* at 14.

[11] But the evidence supports the trial court’s conclusion that Father is unfit to be a parent. In particular, the evidence demonstrates that Father has a long history of drug abuse that began when he was only eight years old, and Father started dealing drugs when he was twelve or thirteen years old. Indeed, Father continued to both use and deal drugs until his most recent incarceration, even after he drove a vehicle while intoxicated and caused an accident that killed one person and seriously injured another and after he discovered that Mother was pregnant. In addition, Father, who is only twenty-six years old, has a lengthy criminal history that began when he was a young teenager, and his criminal activity continued until his most recent incarceration. The evidence also shows that Father has never held a stable job when he was not incarcerated and was dismissed from the only two jobs he had while incarcerated. And, while Father acknowledges that he has schizophrenia, he has chosen to stop taking his medication. That evidence readily supports the trial court’s judgment, and

Father's contentions on appeal are merely a request that we reweigh the evidence, which we will not do.

[12] As to whether it was in Child's best interests to dispense with his consent, Father simply asserts:

Allowing Father to be released from incarceration to parent [Child] did not delay permanency for [Child] or otherwise pose any threat to his well-being. Mother maintained physical custody of [Child] since birth and failing to grant the adoption would not have placed [Child] at risk of not having his needs met.

Id. at 15. But, again, the evidence demonstrates that Father continued to use and sell drugs even after he learned that Mother was pregnant with Child. In addition, Father has been unable to maintain stable employment either in or out of prison. And, unlike Father, who has never met Child, Stepmother has been acting as a parent toward Child since he was four months old. That evidence supports the court's conclusion that dispensing with Father's consent to the adoption was in Child's best interests.

[13] In sum, the evidence most favorable to the judgment demonstrates that, for the majority of his life, Father has lived a life of drug abuse and crime any time he was not incarcerated. In addition, the evidence shows that Father has been unable to maintain stable employment and that Father has voluntarily stopped taking medication for his schizophrenia. Accordingly, the trial court did not err when it concluded that Father's consent was not required. We therefore affirm the trial court's order.

[14] **Affirmed.**

Riley, J., and Brown, J., concur.