

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

In the Matter of the Adoption of
T.A. and F.T., Minor Children,
F.A.,

Appellant-Respondent,

v.

D.M. and R.M.,

Appellees-Petitioners.

May 2, 2022

Court of Appeals Case No.
21A-AD-2342

Appeal from the
Allen Superior Court

The Honorable
Charles F. Pratt, Judge

Trial Court Cause Nos.
02D08-2006-AD-90
02D08-2006-AD-91

Molter, Judge.

[1] F.A. (“Father”) appeals the trial court’s conclusion that his consent to the adoption of his children was unnecessary because he had failed to provide adequate financial or in-kind support to his children for at least one year.

Finding no error, we affirm the trial court.

Facts and Procedural History

- [2] Father and E.T. (“Mother”) (collectively, “Parents”) had two children out of wedlock, T.A., born January 2017, and F.T., born October 2018 (collectively, “Children”). In September 2018, Parents and T.A. lived in a hotel and had little food or money, so the Indiana Department of Child Services (“DCS”) substantiated allegations of neglect and, the next month, initiated a child in need of services (“CHINS”) case. Parents refused services from DCS, so T.A. was removed from Parents and placed in foster care. When F.T. was born later, she too was removed from Parents because Mother was in drug treatment and Father lacked stability to care for her. In August 2019, T.A. was returned to Mother, but two months later she was again removed because of Mother’s drug use and Father’s inability to care for her. In April 2020, Mother died from a drug overdose.
- [3] Starting in October 2018, the trial court ordered Father to participate in services related to supervised visitation, but he either refused to participate in services, failed to complete services, or was discharged from services because he was difficult to work with. From 2019 until early January 2021, Father participated in supervised visitation only about half the time.
- [4] Around the time Children were removed from Parents care, Parents had more than \$5,000 in the bank. Father was not disabled or unable to work. He was fully employed with a temporary agency, and in 2019 he made \$500 per week.

- [5] On June 3, 2020, adoptive parents filed verified petitions to adopt T.A. and F.T. During the CHINS and adoption proceedings, Father's housing situation was unstable. He slept in his van, at friends' houses, or at work. In early January 2021, Father lived at a friend's home for \$400 per month in rent.
- [6] During the same period, Father provided some non-monetary, in-kind support to Children including a backpack, which contained two condoms, a used toothbrush, a shoe, and clothes. Father claimed he got the backpack at a flea market and did not realize what was in the backpack. Father gave Children a used laptop, a birthday present for F.T., and some used clothes.
- [7] Father brought some food and drinks to visits, but the visitation supervisor eventually told him to stop bringing food because he was not following instructions. For example, Father gave almonds to Children, even though the visitation supervisor had earlier told Father that nuts were not safe for Children to eat.
- [8] On January 6, 2021, the trial court held a fact-finding hearing, and on April 5, 2021, it determined adoption was in the best interest of Children. It also concluded Father's consent was unnecessary for the adoption, finding in part that Father was not disabled and did not provide regular financial or in-kind support to Children. On September 30, 2021, the trial court issued adoption decrees for both T.A. and F. T. Father now appeals.

Discussion and Decision

[9] When we review a trial court’s ruling in an adoption case, 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 T.L.*, 4 N.E.3d 658, 662 (Ind. 2014) (quoting *Rust v. Lawson*, 714 N.E.2d 769, 771 (Ind. Ct. App. 1999), *trans. denied.*). “We presume the trial court’s decision is correct, and we consider the evidence in the light most favorable to the decision.” *Id.* To determine whether sufficient evidence sustains the decision, we will not reweigh the evidence but will examine the evidence most favorable to the trial court’s decision and the reasonable inferences we may draw from it. *In re Adoption of K.S.*, 980 N.E.2d 385, 387 (Ind. Ct. App. 2012).

[10] When a trial court has made findings of fact and conclusions of law, we normally apply a two-tiered standard of review, determining whether the evidence supports the findings and whether the findings support the judgment. *In re Adoption of T.L.*, 4 N.E.3d at 662. But since Father does not claim that the findings are unsupported by the evidence, we need only determine whether the findings support the juvenile court’s legal conclusions. *See Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992) (Unchallenged findings “must be accepted as correct.”); *see also T.B. v. Ind. Dep’t of Child Servs.*, 971 N.E.2d 104, 110 (Ind. Ct. App. 2012), *trans. denied*; *see also McMaster v. McMaster*, 681 N.E.2d 744, 747 (Ind. Ct. App. 1997).

- [11] Under Indiana Code section 31-19-9-8, a parent's consent to the adoption of the parent's child is unnecessary when (1) the parent, for one year, has knowingly failed to provide care and support for a child when able to do so by law or (2) the parent is unfit as a parent and it is in the child's best interest to dispense with the parent's consent to adopt. The burden to prove that a parent has not supported a child for one year rests on the person seeking to adopt the child. *See In re Adoption of M.A.S.*, 815 N.E.2d 216, 220 (Ind. Ct. App. 2004).
- [12] Father argues the evidence does not support the trial court's conclusions that his consent to the adoption of Children was unnecessary, specifically challenging the trial court's conclusions that (1) he failed to provide support and care for Children and that (2) adoption was in the best interests of Children. Because this statute is written in the disjunctive, any one of the grounds listed is alone sufficient to dispense with parental consent, *see In re Adoption of O.R.*, 16 N.E.3d 965, 973 (Ind. 2014), so here we will review the trial court's conclusion that the adoptive parents proved that Father had knowingly failed to provide care and support for Children when he could afford to do so.
- [13] Even though there was no court order requiring Father to provide financial support to Children, "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 instance, in *In re Adoption of N.W.*, we found that even though the

mother provided little 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, we have held that where a father had sufficient resources to provide financial support to his child but mostly provided only in-kind support, that father failed to provide adequate support to his child and his consent to the adoption was therefore unnecessary. *In re M.A.S.*, 815 N.E.2d at 220–21.

[14] Here, Father’s situation here resembles that of the Father in *In re M.A.S.* because he had ample financial resources to support Children but failed to do so. Thus, it was reasonable for the trial court to conclude that Father provided little or no financial support to Children and that Father had no excuse for failing to do so because he: (1) had \$5,000 in the bank when T.A. was removed, (2) had been earning \$500 per week since 2019, and (3) was recently paying only \$400 per month in rent.

[15] In the trial court and now on appeal, Father claims he tried to provide financial support to Children through DCS, service providers, and the adoptive parents, but they all rejected his offers. The trial court did not credit Father’s testimony, and it still observed that even having these offers rejected “did not stop Father from providing non-monetary items that were necessities for the children.” Appellant’s App. Vol. II at 26. This is a reasonable conclusion based on the evidence, and we will not second guess this determination by the trial court.

The trial court also reasonably concluded that the in-kind support Father did provide—a backpack, condoms, clothes, a laptop, nuts, and a shoe—were often inappropriate and were given only sporadically. As the trial court noted, these supplies were “merely token efforts that are not sufficient to preserve the requirement for Father’s consent to this adoption.” *Id.*

[16] We conclude the trial court did not error in finding that Father failed to provide for the care and support of Children when he could do so and as required by Indiana law, so his consent was unnecessary for the adoption.

[17] Affirmed.

Riley, J., and Robb, J., concur.