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IN THE
COURT OF APPEALS OF INDIANA

D.G.,
Appellant-Petitioner,

v.

D.H.,
Appellee-Respondent.

January 28, 2022

Court of Appeals Case No.
21A-AD-1179

Appeal from the Vanderburgh
Superior Court

The Honorable Brett J. Niemeier,
Judge

Trial Court Cause No.
82D04-1911-AD-146

Altice, Judge.

Case Summary

- [1] D.G. (Stepfather) filed a petition to adopt E.H. (Child) and alleged that the consent of Child's natural father, D.H. (Father), was not required because Father had not paid child support for more than one year. At the consent hearing, Father openly acknowledged that he did not pay court-ordered child support for thirteen consecutive months, but he offered justifications for his

failure to pay, including limited employment during this period, mounting bills, eviction, and mental illness. Father also presented evidence that he had regularly exercised his parenting time with Child, during which time he spent money for her benefit, and that shortly after the adoption petition's filing he, with the help of family members, became current on his child support and remained current at the time of the hearing. Based on the totality of the evidence, the trial court determined that Father's consent was required and, thus, denied Stepfather's adoption petition. On appeal, Stepfather contends that the trial court's determination regarding consent was not supported by sufficient evidence.

[2] We affirm.

Facts & Procedural History

[3] Father petitioned to establish paternity shortly after M.S. (Mother) gave birth to Child in July 2009. Later that year, the trial court granted Father joint legal custody of Child and parenting time according to the Indiana Parenting Time Guidelines and ordered him to pay \$55 per week for child support. Thereafter, Father consistently exercised parenting time with Child, and he satisfied his child support obligation for many years until he lost his longtime job sometime in 2015.

[4] After Father began to fall behind on child support, Mother filed an information for contempt in 2015. On September 9, 2015, by agreement of the parties, Father's child support obligation was reduced to \$25 per week. The agreement,

which was approved by the court, provided that upon commencing other fulltime employment, Father would notify Mother and his support obligation would be recalculated. Father also acknowledged a “small arrearage” of \$640, toward which he would begin paying \$10 per week upon gaining employment. *Exhibits Vol. I* at 16.

[5] In June 2016, Mother filed another information for contempt and a motion to modify parenting time, alleging, in part, that Father had again become unemployed, had been evicted from his home, and was acting erratically and abusing alcohol. The next day, the parties entered into a temporary agreed order providing that Father’s parenting time would be held at his mother and stepfather’s home. At a hearing on September 28, 2016, the trial court approved the parties’ agreement, which provided that Father had a support arrearage of \$580 and owed extracurricular fees of approximately \$150, that he would pay the arrearage and fees within thirty days, that he would pay support at least once per month, and that he would perform ten job searches per week. At a review hearing held in November 2016, the trial court dismissed Mother’s information for contempt, noting that “Father is employed and all conditions of the Court’s previous order have been complied with.” *Id.* at 27.

[6] Nearly two years later, in August 2018, Mother filed a motion to modify parenting time. She claimed that Father was abusing alcohol, had been kicked out of his mother and stepfather’s home in June 2017, and had been refusing to communicate with Mother since October 2017. Mother also alleged that Father had not provided her with notice of a change of residence, though Child had

been staying with him at his new apartment during his parenting time. In her motion, Mother asked the trial court to require parenting time to be supervised by an agreed-upon supervisor or at the Parenting Time Center.

- [7] At the time, Father was living in his own apartment and working fulltime at Goodwill making about \$14 per hour. He was going through a “dark time” in his life and suffering from “severe depression” and anxiety after having lost several family members, including his father. *Transcript* at 104, 117. Father began to experience agoraphobia and his speech impediment worsened to a severe stutter. Goodwill terminated Father in December 2018 due to absenteeism. Father obtained employment with TruGreen in March 2019, which lasted only a few months due to his declining speech and depression. Father remained unemployed through the end of 2019.
- [8] Father struggled with paying his bills in 2018 and 2019 and relied on family to help keep him afloat. His landlord filed an eviction action in late 2018, which Father staved off with the financial assistance of family. Father, nevertheless, was evicted in September 2019, and he moved in with his aunt for about a year. Still unemployed, Father sold most of his personal belongings in an attempt to pay some of his debts and help his aunt pay for food and gas. According to Father, “Anything extra that [he] had [he] spent on [Child] directly whenever [he] had her.” *Id.* at 122. Father continued to buy birthday and Christmas gifts for Child, as well as food, some clothing, and entertainment while in his care. After November 19, 2018, however, Father did not pay his court-ordered child support.

[9] In the meantime, the parties continued to litigate Mother's 2018 motion to modify parenting time, with no filings regarding Father's failure to pay support. Child was in counseling due to anxiety and had become reluctant to spend nights with Father around December 2018. In March 2019, the trial court entered an order temporarily providing that if Child did not want to spend overnights with Father during weekend parenting time, she would be returned to Mother each night. At a review hearing in June 2019, the parties were reportedly "working well together in child's best interests." *Exhibits Vol. I* at 30. Following another hearing in October 2019, the trial court noted that all was still going well and ordered a continuation of the overnight limitation on Father's parenting time. The parties requested no further progress hearings.

[10] Thereafter, on November 22, 2019, Stepfather, who had been in Child's life since her infancy, filed the instant petition to adopt. Mother consented to the adoption, and Stepfather alleged that Father's consent was not required based on his failure to pay child support since November 19, 2018, just over a year. Father was served with the petition on December 12, 2019. Five days later, Father made a \$1000 payment toward his child support arrearage and then another \$1000 the following day. He obtained these funds, which brought him current on support, from family. Additionally, on December 18, 2019, Father filed a written objection to the adoption petition and requested the appointment of a public defender.

[11] After nearly eighteen months,¹ the contested consent hearing was held on May 18, 2021. During the pendency of the adoption proceedings, Father had remained current on his child support payments, maintained employment since June 2020, and regularly exercised parenting time with Child. Father admitted, at the hearing, that he had not paid any of the court-ordered child support during the relevant thirteen-month period (November 19, 2018 to December 17, 2019). He explained, however, that he was experiencing significant struggles mentally and, as a result, financially. Stepfather did not dispute that Father’s mental health issues were “clearly significant” and “put him down for about a year.” *Transcript* at 142. Stepfather focused, rather, on Father’s complete nonpayment of support during these months and argued that Father had the ability to pay some support, at least during the months he was employed, but chose not to.

[12] The trial court took the matter under advisement and issued the following order later that same day:

After reviewing the evidence, arguments and exhibits, the Court now finds Father must give consent for Child to be adopted.... Due to Father’s mental illnesses, limited income and no longer being in arrears, the mere fact Father went 13 months without paying his support, a total of \$1300, cannot deprive him of his parental rights. It may well be in Child’s best interest to have Stepfather adopt, but that is not the standard under Indiana law. Best interests of the child only applies in very limited

¹ The COVID-19 pandemic caused much of the delay in this case. Additionally, Father’s initial appointed counsel died in July or August 2020.

circumstances, which this case does not contain, thus a best interest hearing is not allowed. Stepfather's adoption petition is denied.

Appellant's Appendix Vol. II at 162 (cleaned up).

- [13] Stepfather now appeals on the basis of sufficiency of the evidence supporting the trial court's order. Additional information will be provided below as needed.

Standard of Review

- [14] It is well established that a trial court's decision in a family law matter is generally entitled to "considerable deference" on appeal. *Matter of Adoption of I.B.*, 163 N.E.3d 270, 274 (Ind. 2021). This is in recognition of the fact 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." *Id.* Thus, on appeal from an adoption order, we will presume that the trial court's decision is correct and require the appellant to rebut this presumption. *Id.*
- [15] Moreover, we will not disturb the trial court's decision in an adoption case unless the evidence leads to one conclusion and the trial court reached an opposite conclusion. *Id.* We will examine the evidence in the light most favorable to the trial court's decision without reweighing the evidence or judging witness credibility. *Id.*

Discussion & Decision

- [16] A natural parent, like Father, enjoys special protection in adoption proceedings, and courts strictly construe our adoption statutes to preserve the fundamentally important parent-child relationship. *Id.*; *In re Adoption of W.K.*, 163 N.E.3d 370, 374 (Ind. Ct. App. 2021), *trans. denied*. Accordingly, a natural parent’s consent to an adoption may be dispensed with only under carefully enumerated circumstances set out in the adoption statutes. *I.B.*, 163 N.E.3d at 274 (citing Ind. Code ch. 31-19-9).
- [17] The only statutory circumstance at issue in this case is I.C. § 31-19-9-8(2)(B), which provides that parental consent is not required from “[a] parent of a child in the custody of another person if for a period of at least one (1) year the parent ... knowingly fails to provide for the care and support of the child when able to do so as required by law or judicial decree.” A determination regarding the ability to pay requires a consideration of the totality of the circumstances, not simply proof of income standing alone. *Matter of Adoption of E.M.L.*, 103 N.E.3d 1110, 1116 (Ind. Ct. App. 2018); *see also I.B.*, 163 N.E.3d 276 (“Of course, what constitutes failure [to provide financial support] is a fact-intensive inquiry.”). Further, a petitioner for adoption without parental consent has the burden of proving the statutory criterion by clear and convincing evidence. *See In re Adoption of T.L.*, 4 N.E.3d 658, 662 (Ind. 2014).
- [18] Here, the undisputed evidence shows that Father was required to pay child support and did not do so for more than one year. He went thirteen months

without paying anything toward his modest child support obligation of \$25 per week, totaling \$1300. Despite this clear failure to pay, the trial court determined, based on the totality of the circumstances, that Father's consent was still required. Specifically, the trial court noted Father's mental illness and limited income during the thirteen-month period in question and that Father was no longer in arrears at the time of the consent hearing.

[19] The evidence favorable to the trial court's judgment shows that Father has been an active part of Child's life since she was born in 2009 and that he regularly satisfied his child support obligation until sometime in 2015 when he lost his longtime job. Although he had some periods of falling behind in support payments thereafter, he continued to pay his reduced support obligation through November 19, 2018, after which the relevant thirteen-month period of nonpayment began.

[20] Leading up to the period of nonpayment, Father experienced the loss of several family members, including his father, and he began suffering severe depression and anxiety. Father testified that this was a "dark time" in his life and that his depression developed into agoraphobia and caused a deterioration in his speech. *Transcript* at 104. At some point, Father was prescribed Zoloft and Klonopin to help treat his depression and panic attacks.

[21] Father's mental condition led to him losing his employment at Goodwill at the end of 2018. His family provided financial assistance to help him avoid eviction in 2018, but he was eventually evicted in September 2019. Father

struggled to find and maintain employment, which was especially difficult given his severe speech impediment, and he worked only about four months out of the relevant thirteen months. Father grossed approximately \$8000 from employment during this period, which averaged less than \$700 per month or about the amount of his rent. Father could not pay his bills and he accumulated substantial debt. While unemployed and living with his aunt following eviction, Father sold most of his personal belongings to help his aunt pay for food and gas, pay off some of his debt, and spend directly on Child during his parenting time, which he regularly exercised.

[22] On appeal, Stepfather argues that Father could have worked more during the relevant time period but “just did not want to work.” *Appellant’s Brief* at 15. Specifically, Stepfather points to Father’s prior history of longtime employment and asserts that there was no evidence that Father “could not perform work due to a disability or a drug addiction problem.” *Id.* at 14. Stepfather also notes that Father chose to use funds that he obtained from his family to pay monthly bills and debt rather than his child support obligation but that as soon as he was served with the adoption petition, he was able to borrow money from family to pay his support arrearage and stay current thereafter, even though he remained unemployed for several more months. In sum, Stepfather argues that Father “took advantage of his situation” and refused to contribute to Child’s support without justifiable cause. *Appellant’s Reply Brief* at 5.

[23] Stepfather’s argument requires us to reweigh the evidence and judge Father’s credibility, which we cannot do. The trial court clearly found Father’s

testimony regarding his mental health and financial struggles credible and determined, based on the totality of the circumstances,² that Stepfather had failed to prove by clear and convincing evidence that Father had the ability to pay support but failed without justifiable cause to do so for more than a year. The trial court's decision is supported by evidence in the record and, therefore, not clearly erroneous.

[24] Judgment affirmed.

Bailey, J. and Mathias, J., concur.

² The trial court also noted that Father was current in his support at the time of the consent hearing. Indeed, Father had remained current for well over a year at the time of the hearing. This consideration was likely in reference to Ind. Code § 31-19-10-1.4(b), which went into effect six weeks after the hearing and was addressed at the hearing. It provides:

If a petition for adoption alleges that a parent's consent to the adoption is unnecessary under IC 31-19-9-8(a)(1) or IC 31-19-9-8(a)(2) and the parent files a motion to contest the adoption under section 1 of this chapter, the court may consider:

- (1) the parent's substance abuse;
- (2) the parent's voluntary unemployment; or
- (3) instability of the parent's household caused by a family or household member of the parent;

as justifiable cause for the parent's ... failure to provide for the care and support of the child as described in IC 31-19-9-8(a)(2)(B), if the parent has made substantial and continuing progress in remedying the factors in subdivisions (1), (2), and (3), and it appears reasonably likely that progress will continue.