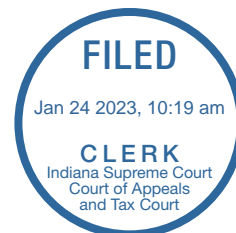


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as binding precedent, but it may be cited for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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S.N.,  
*Appellant-Respondent,*

v.

T.W.,  
*Appellee-Petitioner.*

January 24, 2023

Court of Appeals Case No.  
22A-AD-1996

Appeal from the Cass Circuit  
Court

The Honorable Stephen R. Kitts,  
II, Judge

Trial Court Cause No.  
09C01-2103-AD-7

**Altice, Chief Judge.**

### Case Summary

- [1] S.N. (Mother) appeals from the trial court's order granting the adoption of her minor daughter, S.W. (Child), by Child's stepmother, T.W. (Stepmother). Specifically, Mother contends that the trial court's consideration of hearsay

evidence in determining that her consent was not required amounted to fundamental error.

[2] We affirm.

### **Facts & Procedural History**

[3] Child's biological parents are Mother and K.W. (Father), who were never in a relationship. When Child was born in February 2014, another man fraudulently signed a paternity affidavit that same month. Though Father was aware of Child's birth and his possible parentage, he had virtually no involvement in the first five years of her life, especially after Mother and Child moved to a different town when Child was about one year old.

[4] Father married Stepmother in August 2015, and they subsequently had two children together. Shortly after May 23, 2019, Father learned that Child had been taken into custody by the Indiana Department of Child Services (DCS) after suffering physical abuse in Mother's home at the hands of Mother's live-in boyfriend, identified in the record only as Dantrell. Father and Stepmother promptly took Child into their home,<sup>1</sup> where she has remained since. Father's paternity was confirmed through DNA test results in June 2019, and he then filed a petition to establish paternity, which the trial court granted in November 2019.

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<sup>1</sup> Father and Stepmother also took Mother's younger child, Child's half-brother, into their home for several months until he could be placed with his father.

- [5] In the meantime, Mother was criminally charged with neglect of a dependent, with Child being the victim. In July 2020, pursuant to a plea agreement, Mother pleaded guilty to neglect as a Level 5 felony, and the State agreed to the dismissal of the Level 3 felony charge. On September 4, 2020, Mother was sentenced to five years, with three executed and two suspended to probation. The executed term included one year in the Indiana Department of Correction (the DOC) and two years with Tippecanoe County Community Corrections. Additionally, Mother was ordered to continue to have no contact with Child for the duration of her sentence.
- [6] On March 26, 2021, with Father's consent, Stepmother filed a petition to adopt Child. Thereafter, Stepmother filed a motion to proceed with the adoption without Mother's consent. Mother contested the adoption and was appointed a public defender in May 2021. Mother later filed a petition for the appointment of a guardian ad litem (GAL) for Child, and the trial court appointed Lindsay Ruby as GAL in August 2021.
- [7] Mother was released from the DOC in June 2021 and placed on in-home detention to serve out the remainder of her executed sentence, followed by two years of probation. Since her release from the DOC, Mother has lived with her mother and, though employed, has not paid any of her \$75 weekly child support obligation to Father.
- [8] GAL Ruby experienced difficulties meeting with Mother in the fall of 2021. After finally scheduling, Mother failed to show. Rescheduling proved difficult,

and GAL Ruby eventually had to reach out to Mother's attorney for assistance. Thereafter, GAL Ruby met with Mother on January 5, 2022. Regarding the abuse and neglect Child suffered, Mother acknowledged that when Child informed her about being hit by Dantrell and that her chest hurt, Mother simply asked why Dantrell had hit her and then told Child to use a heating pad for the pain. Mother did not look at the injuries until the next day, when Child indicated she was still hurting. Mother took pictures of the injuries but did nothing more. She then continued to leave Child and two other children with Dantrell while she went to work because she needed a babysitter and believed neighbors in the next apartment would inform her if something was going on. Mother told GAL Ruby on several occasions, "we all make mistakes."

*Transcript* at 12. After meeting with Mother, GAL Ruby formed the opinion that Mother lacked "any remorse." *Id.* She felt like Mother just offered "more excuses and an 'oh well,' type thing." *Id.* GAL Ruby also found it noteworthy that Mother "did not seem overly eager to meet with me or even try to get the no contact order terminated, so she could try to see her daughter." *Appendix* at 100.

[9] GAL Ruby filed her report with the trial court on February 10, 2022, which recommended that the adoption be granted. She noted in the report that Stepmother "truly loves [Child] and wants what is best for her" and that they have "a really close relationship." *Id.* at 100. GAL Ruby also reported that Child had expressed to her that she wanted Stepmother to be her mom and was worried about having to go back to live with Mother.

- [10] After meeting with GAL Ruby, Mother filed a motion in her criminal matter to have the no contact order lifted. That court denied the motion in March 2022.
- [11] After several continuances, the adoption hearing was held on July 15, 2022. GAL Ruby's report was admitted into evidence without objection, and the trial court took judicial notice of the limited records available in the underlying criminal and paternity matters. Additionally, GAL Ruby, Mother, Father, and Stepmother testified at the hearing.
- [12] On July 19, 2022, the trial court issued its order granting the adoption. The court determined that Mother's consent was not required pursuant to Ind. Code § 31-19-9-8(a)(11). That is, the court found that Mother was unfit to be a parent and that Child's best interests would be served by dispensing with her consent. The court then determined that adoption by Stepmother was in Child's best interests.
- [13] Relevant here, the trial court made a number of specific findings on the consent issue. After noting that Mother did not have custody of any of her three children, as opposed to Stepmother who had been caring for all the children in her and Father's blended family, the court turned to what it called "[t]he crux of the matter," Mother's criminal neglect of Child. *Appendix* at 104. The court stated the criminal facts as follows:

On May 23, 2019, Lafayette Police Department received a report of battery on the child who is subject of this cause. DCS was also notified. The child had suffered internal bleeding, a fractured sternum and fractured vertebrae. The criminal and DCS

investigations revealed that the child had suffered beatings from Respondent's live-in boyfriend, and that these beatings had occurred on several occasions over a period of time. DCS also noted unsanitary and insufficient living arrangements. Child identified the boyfriend, and indicated that [Mother] had participated in some of the abuse. [Mother] proceed[ed] to give a series of wildly inconsistent statements: that she was unaware, that she was aware but was frightened of the boyfriend, that she found no problem with continuing to leave the children in his care as long as there were neighbors nearby to hear and report beatings while she was away, that she made no error by trusting him, up to and including her final statement in her PSI, in which she continues to diminish and deny knowledge or responsibility.

*Id.*

[14] The trial court observed that after Mother's release to in-home detention, she lived with her mother and worked but "made no effort" to modify or pay her "active child support order." *Id.* Moreover, at the time of the adoption hearing, Mother was not "engaged in any social or psychological services" and had not seen Child for over three years. *Id.* The court noted that the no contact order through the criminal case would presumably remain in effect for two more years, not ending until Child is ten years old and by then out of Mother's care for half of her life.

[15] Additionally, the trial court made findings regarding the GAL report, which was admitted without objection. The court noted Child's "strong preference for staying where she is," and the GAL's "strong recommendation that the adoption be granted." *Id.* at 105. Further, the court observed: "[Mother] did not actively engage in the investigation by the GAL, merely continuing to

diminish the seriousness of the injuries and the seriousness of her negligence. [Mother's] position that 'everyone makes mistakes' is the entire substance of her responses to the GAL's inquiries." *Id.* The findings also included, of particular import in this appeal, that an allegation was recounted in the GAL report that "[Mother] forced [Child] to engage in inappropriate sexual activity." *Id.*

[16] Mother now appeals from the order granting Stepmother's petition for adoption. Additional information will be provided below as needed.

### **Discussion & Decision**

[17] Mother contends that the trial court committed fundamental error by relying on "multi-level hearsay" contained in the GAL report referring to an allegation that Mother forced Child to come into the bedroom and watch while Mother and Dantrell had sex. *Appellant's Brief* at 8. Mother relies on fundamental error because she did not object below to the admission of any portion of the GAL report on hearsay grounds or otherwise.

[18] "On rare occasions, appellate courts may analyze an issue under the fundamental error doctrine to examine an otherwise procedurally defaulted claim." *Matter of Eq. W.*, 124 N.E.3d 1201, 1214 (Ind. 2019). Such review is "extremely narrow" and is "available only when the record reveals a clearly blatant violation of basic and elementary principles, where the harm or potential for harm cannot be denied, and which violation is so prejudicial to the rights of the defendant as to make a fair trial impossible." *Id.* at 1214-15. In other words, the mere fact that prejudicial error occurred will not satisfy the

fundamental error rule. *Purifoy v. State*, 821 N.E.2d 409, 412 (Ind. Ct. App. 2005) (“Fundamental error ... requires a defendant to show greater prejudice than ordinary reversible error because no objection has been made.”), *trans. denied*. We must consider the alleged error “in the context of all that happened in the proceeding and all the relevant information presented to the court.” *Matter of Eq. W.*, 124 N.E.3d at 215.

[19] Mother asserts that the alleged hearsay contained in the GAL report and relied upon in the trial court’s order was “a revolting evidentiary harpoon that made objective analysis of the other facts in this case impossible because *nothing* could mitigate the statements about Mother and her boyfriend performing sex acts for Mother’s five-year-old daughter.” *Appellant’s Brief* at 8 (emphasis in original). This evidence was indeed prejudicial to Mother to some degree. Based on our review of the record, however, we cannot say that, even if the evidence constituted inadmissible hearsay, its introduction constituted a blatant denial of fundamental due process that was so prejudicial as to make a fair trial impossible.

[20] The GAL report was seven pages long and contained the following brief reference to the complained-of hearsay:

[Stepmother’s mother] stated [Child] told her that [Mother] used to take her into her bedroom, when she and Dantrell were having sex. She stated [Mother] told [Child] she wanted her in the room, so that she could learn what she needed to do with a man.



*Appendix* at 99. GAL Ruby’s final recommendation in the report made no mention of this information. Instead, in her recommendation, GAL Ruby noted Stepmother and Child’s bond and Mother’s lack of effort in meeting with GAL Ruby or trying to have the no contact order terminated. GAL Ruby then placed particular emphasis on Mother’s actions related to the physical abuse of Child, writing:

[Mother] kept stating that people make mistakes, when explaining why she left her daughter in the care of someone who abused her. The mistake here would have been living with and leaving your children alone with someone who abuses them. Had she gotten her daughter out of the home and called the police on the abuser, I would have said, yes it was a mistake, and you should not have placed your child in that situation. She did not do that. She instead made a choice to ignore her daughter, when she told her that Dantrell hurt her and she was in pain. She asked her daughter why Dantrell hit her, as if there is ever a reason to hit a child. Then she failed to look at the injury and sent her on her way. Then, the next day, when [Child] told her she was still in pain, she looked at the bruises and took pictures. She then left her children alone with Dantrell because she needed a babysitter and surely the neighbors would tell her if something was going on in her home. [Mother] did not protect her child and she only showed her daughter that she cannot rely on her to protect her.

I recommend that the adoption be granted.

*Id.* at 100.

[21] Similarly, the trial court’s order focused not on the alleged hearsay evidence but rather on what it termed the “crux of the matter,” Mother’s failure to seek help

for Child, who had suffered internal bleeding, a fractured sternum, and fractured vertebrae at the hands of Dantrell, and Mother’s decision to continue to allow Dantrell to care for Child despite knowledge of the beatings. *Id.* at 118. Relying on records from the criminal proceeding, the court noted that Child had indicated that Mother “participated in some of the abuse” and that Mother had provided investigators with “wildly inconsistent statements.” *Id.* The court also observed Mother’s lack of responsiveness during GAL Ruby’s investigation and Mother’s continued attempts to diminish the seriousness of her negligence as simply a mistake. In addition to the egregious past neglect, the trial court recognized Mother’s lack of contact with Child – which would continue due to the no contact order for another two years, for a total of five years – and Mother’s current failure to engage in social or psychological services or to pay child support.

[22] The trial court’s determination that Mother’s consent to the adoption was not required was supported by substantial evidence of unfitness to parent aside from the alleged hearsay evidence, and it is evident to us that the evidence set out above was not overshadowed by the now-challenged evidence. On this record, we conclude that Mother has failed to establish fundamental error.

[23] Judgment affirmed.

Brown, J. and Tavitas, J., concur.