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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Adoption of A.F. and N.F. (Minor Children);

L.G. and W.G.,

Appellants-Petitioners.

July 7, 2022

Court of Appeals Case No. 22A-AD-288

Appeal from the Sullivan Circuit Court

The Honorable Robert E. Hunley, II, Judge

Trial Court Cause Nos. 77C01-2106-AD-7 77C01-2106-AD-8

Najam, Judge.

Statement of the Case

[1] W.G. ("Adoptive Mother") and L.G. (Adoptive Father") (collectively, "Adoptive Parents") filed petitions to adopt their great-grandchildren. After both parties had completed the necessary steps but prior to the final hearing, Adoptive Father died. Following the final hearing, the trial court granted the

petitions as to Adoptive Mother but denied them as to Adoptive Father. In this consolidated appeal, Adoptive Mother, individually and on behalf of Adoptive Father, raises one issue for our review, namely, whether the court erred when it determined that it could not grant the petitions as to Adoptive Father because he was deceased.[1]

[2] We affirm.

Facts and Procedural History

[3] Adoptive Parents are the biological great-grandparents of A.F., born February 16, 2017, and N.F., born February 18, 2018 (collectively, the "Children"). Adoptive Parents began caring for A.F. when she was eleven months old, and they began caring for N.F. when he was seventeen days old. At some point, the Indiana Department of Child Services ("DCS") removed the Children from their biological parents and formally placed them in the custody of Adoptive Parents. DCS then filed a petition to terminate the parental rights of the biological parents. The mother's parental rights were terminated on May 7, 2021, and the biological father consented to an adoption of the Children. *See* Appellant's App. Vol. 2 at 59.

[4] On June 30, Adoptive Parents filed petitions to adopt the Children. DCS conducted a local law enforcement check, a sex and violent offender check, a

[1] There is no appellee in this case.

"CPS Check," and a limited criminal history check on Adoptive Parents and determined that they were both "[q]ualified" to adopt the Children. *Id*. at 28-29. DCS also conducted a "Home Study" on Adoptive Parents. Tr. at 7. DCS then "consented" to the adoption of the Children by Adoptive Parents. Appellant's App. Vol. 2 at 25. The court scheduled a hearing on Adoptive Parents' petitions for November 5.

[5] On October 30, less than one week prior to the scheduled hearing, Adoptive Father died. At the hearing, which proceeded as scheduled, Adoptive Mother testified that she is "basically mom" to the Children, that she could "[a]bsolutely" support them financially, and that she believed that the adoption was "in the best interest" of the Children. Tr. at 9. Following the hearing, the court found that Adoptive Mother "is of sufficient ability to rear" the Children and to "furnish suitable support and education" for them." Appellant's App. Vol. 2 at 38.[2] And the court found that the adoption of the Children by Adoptive Mother is in the Children's "best interest." *Id*. Accordingly, the court granted the petitions as to Adoptive Mother. However, the court found that it "cannot grant an adoption of a child to a Petitioner who is already deceased" and denied the petitions as to Adoptive Father. *Id*. This consolidated appeal ensued.

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[2] Adoptive Parents filed a separate adoption petition, and the court entered a separate order, for each child. The petitions and the orders contain nearly identical language.

Discussion and Decision

[6] Adoptive Mother contends that the court erred when it denied the adoption petitions as to Adoptive Father.[3] Here, the court entered findings of fact and conclusions thereon following an evidentiary hearing. Generally, in such appeals,

> we review the court's judgment under our clearly erroneous standard. *E.g. Salyer v. Washington Regular Baptist Church Cemetery*, 141 N.E.3d 384, 386 (Ind. 2020). We "neither reweigh evidence nor judge witness credibility." *R.L. v. Ind. Dep't of Child Servs. & Child Advocates, Inc.*, 144 N.E.3d 686, 689 (Ind. 2020). Rather, a judgment is clearly erroneous only when there are no record facts that support the judgment or if the court applied an incorrect legal standard to the facts. *Id*.

Jones v. Gruca, 150 N.E.3d 632, 640 (Ind. Ct. App. 2020). However, this appeal presents a pure question of law. Pure questions of law are reviewed *de novo*. *See M.S. v. C.S.*, 938 N.E.2d 278, 282 (Ind. Ct. App. 2010).

[7] On appeal, Adoptive Mother contends that the court erred when it did not grant the adoption petitions as to Adoptive Father because Adoptive Father completed all of the necessary steps to adopt the Children prior to his death. Specifically, Adoptive Mother maintains that Adoptive Father "executed verified petitions" to adopt the Children, that DCS consented to the adoptions

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[3] Adoptive Mother contends that the issue is not moot because granting the adoption as to Adoptive Father "would result in the [C]hildren's birth certificates being reissued with both parents as well as permitting [Adoptive Father's social security] survivor benefits to pass to the minor children." Appellant's Br. at 21.

while Adoptive Father was alive, and that Adoptive Father "completed the statutorily required criminal and child protective services background checks[.]" Appellant's Br. at 14. And, while Adoptive Father died before the final hearing and was thus unable to testify, Adoptive Mother contends that the evidence presented to the trial court "demonstrated that both [Adoptive Parents] had sufficient ability to raise the [C]hildren and furnish suitable support and education." *Id*. at 15-16.

[8] Indiana Code Section 31-19-11-1(a) (2022) provides:

> Whenever the court has heard the evidence and finds that:
>
> > (1) the adoption requested is in the best interest of the child;
> >
> > (2) *the petitioner or petitioners for adoption are of sufficient ability to rear the child and furnish suitable support and education*;
> >
> > (3) the report of the investigation and recommendation [by DCS] under IC 31-19-8-5 has been filed; [and]
> >
> > * * *
> >
> > (8) the petitioner for adoption is not prohibited from adopting the child as a result of an inappropriate criminal history . . .
>
> the court shall grant the petition for adoption and enter an adoption decree.

(Emphasis added.)

[9] Adoptive Mother is correct that, with Adoptive Father's cooperation and assistance, DCS was able to complete a home study and submit its report consenting to the adoption. In addition, DCS was able to determine that Adoptive Father did not have a criminal history that would prohibit him from adopting the Children. And Adoptive Mother presented evidence that the adoption of the Children was in their best interests. However, the undisputed evidence also demonstrates that Adoptive Father died prior to the final hearing. It is readily apparent that a deceased person cannot rear children or provide suitable support and education to children as required by Indiana Code Section 31-19-11-1(a)(2). While the undisputed evidence demonstrates that Adoptive Father loved and cared for the Children while he was alive, Adoptive Father's death means he is no longer able to provide care or support for the Children.

[10] Still, Adoptive Mother contends that the Children became "filius nullius, meaning 'son of nobody'" when the court denied the petitions as to Adoptive Father. Appellant's Br. at 17. To support her assertion, Adoptive Mother relies on this Court's opinion in *Gonzalez v. Ortiz (In re J.O.)*, 141 N.E.3d 1246 (Ind. Ct. App. 2020). In that case, the father signed a paternity affidavit "even though he suspected that he was not Child's biological father." *Id*. at 1248. Thereafter, on the mother's request, the county prosecutor filed a petition to establish child support. *Id.* The father moved to dismiss the petition and to have his name removed from the child's birth certificate. *Id*. The court ordered the parties to submit to genetic testing, which demonstrated that the father was

not the biological father. *Id*. The court then granted the father's motion to dismiss the child support petition, and the State appealed. *Id*.

[11] On appeal, this Court held that the father could not rescind his paternity affidavit because the facts did not "constitute the extreme and rare circumstances required to set aside paternity[.]" *Id*. at 1250. The Court further noted that, "in a situation like this one, where setting aside paternity would leave a child fatherless, then the child would be a 'filius nullius,' meaning a 'son of nobody.'" *Id*. (quoting *In re Paternity of E.M.L.G.*, 863 N.E.2d 867, 870 (Ind. Ct. App. 2007). And the Court observed that the "paternity statute was created to avoid such an outcome, which could carry with it countless detrimental emotional and financial effects." *Id*. a 1251 (quotation marks and alteration omitted).

[12] We find *In re J.O.* to be distinguishable. That case considered a man who actively sought to disestablish his paternity after he had executed a paternity affidavit. Here, however, the Children's biological father did not seek to disestablish his paternity. Rather, the biological father consented to the adoption only after DCS had initiated proceedings to terminate his parental rights. And while our paternity statutes were created to prohibit a man from disestablishing his paternity if it would render a child fatherless, other statutes expressly allow a court to terminate parental rights or a parent to voluntarily consent to an adoption. *See* I.C. § 31-35-2-8 (termination of parental rights); *see also*, I.C. § 31-19-9-2 (consents to an adoption).

[13] Considering Adoptive Mother's argument that the Children will not have a father listed on their birth certificate, it is not uncommon for a single individual to adopt a child. Indeed, the Indiana General Assembly has enacted statutes "permitting adoptions by not only married couples, but also stepparents and single adults." *Rybolt v. Brooks (In re Adoption of L.M.R.)*, 884 N.E.2d 931, 938 (Ind. Ct. App. 2008). And the adoption statutes frequently reference individuals. For example, Indiana Code Section 31-19-2-2(a) provides, in relevant part, that "an individual" who seeks to adopt a child must file a petition for adoption. Further, if "an individual" who files a petition for adoption of a child decides not to adopt or is unable to adopt the child, the petition may be amended "to substitute another individual[.]" I.C. § 31-19-2-2(d). And in order to grant an adoption, a court must find that "the petitioner or petitioners" have the ability to raise the child. I.C. § 31-19-11-1(a)(2). Thus, the adoption of a child or children by a single individual is allowed under our statutes, and the court was not required to grant the petitions as to Adoptive Father simply because the Children will only have Adoptive Mother's name on their birth certificates.

[14] Finally, Adoptive Mother asserts that the court should have granted the adoptions as to Adoptive Father so that the Children "could receive Social Security benefits" as his "surviving dependents[.]" Appellant's Br. at 21. We acknowledge that generally an adoption "legally entitles the child[ren] to both parents' employer-and/or government-sponsored health and disability insurance; education, housing, and nutrition assistance; and social security

benefits." *In re Adoption of M.M.G.C.*, 785 N.E.2d 267, 270 (Ind. Ct. App. 2003). However, that does not change the fact that a deceased individual cannot rear a child or furnish suitable support and education, as required by statute. And courts should not grant an otherwise improper adoption just to ensure that children receive certain benefits.

[15] In sum, a trial court can only grant an adoption petition if it determines that the petitioner is of sufficient ability to rear a child and to furnish the child with suitable support and education. But a deceased individual does not have that ability. Here, while there is no dispute that Adoptive Father loved the Children and cared for them while he was alive, Adoptive Father is no longer able to raise them or provide them with support. We therefore hold that the trial court did not err when it denied the adoption petitions as to Adoptive Father. We affirm the trial court.

[16] Affirmed.

Bradford, C.J., and Bailey, J., concur.