

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Matter of the Adoption
of M.J.E., (Minor Child),

N.E.,

Appellant-Respondent,

v.

K.A.,

Appellee-Petitioner

February 26, 2021

Court of Appeals Case No.
20A-AD-951

Appeal from the Howard Circuit
Court

The Honorable Douglas A. Tate,
Special Judge

Trial Court Cause No.
34C01-1801-AD-4

Crone, Judge.

Case Summary

- [1] N.E. (Father) appeals the trial court's decree of adoption permitting the adoption of his son, M.J.E. (Child), by Child's stepfather, K.A. (Stepfather). Father argues that the trial court erred in declining to dismiss the adoption petition and in determining that his consent was not required as a prerequisite to the adoption. We disagree with both of Father's assertions and therefore affirm.

Facts and Procedural History

- [2] Child was born out of wedlock on April 21, 2013, to N.A. (Mother) and Father. Mother and Father executed a paternity affidavit at or near the time of Child's birth. Father became physically violent with Mother while she was still in the hospital, and he threatened to kill her. The violence continued in the weeks following Child's birth, which included Father holding a knife to Mother's throat and threatening to kill her while Child was in a bassinet a few feet away. Approximately two weeks after Child's birth, Father was arrested and charged with domestic violence and strangulation, with Mother being the victim. The event leading to the arrest was Father putting his hands around Mother's throat while in public, with Child present, and again threatening to kill her. Mother subsequently obtained a protective order against Father that included herself and Child. Multiple additional protective orders were issued following the expiration of the original order, none of which were contested by Father. The final protective order expired in October 2017. Father has had no contact with Child since Child was eleven months old. In January 2014, the trial court

entered an order suspending all parenting time between Father and Child due to Father's violent behavior. Father has spent most of Child's life in and out of incarceration for various crimes including many involving violence and drugs.

[3] Mother began a relationship with Stepfather when Child was sixteen months old and subsequently married Stepfather on June 10, 2017. Stepfather and Child have an extremely close relationship, and Stepfather is the only father Child has ever known. Stepfather filed a Verified Petition for Second Parent Adoption on January 16, 2018. Stepfather also filed Mother's waiver of notice and consent to the adoption. On January 29, 2018, Father filed an objection to the adoption and a motion for change of venue. A special judge assumed jurisdiction over the case on August 22, 2018.

[4] An adoption hearing was held on February 14, 2020. Prior to the hearing, Father filed a motion to dismiss the adoption petitions. The trial court took the matter under advisement and subsequently entered its findings of fact, conclusions thereon, and order granting Stepfather's petition for adoption. Specifically, the trial court found that the evidence presented established that Father "failed without justifiable cause to communicate significantly with [Child] for a period of at least one (1) year." Appealed Order at 3. The trial court further found that Child has had little to no contact with Father due to Father's violent behavior, numerous criminal convictions, and almost constant incarceration during Child's entire life. Accordingly, the trial court concluded that Father's consent to the adoption was not required and that it was in Child's best interest to be adopted by Stepfather. This appeal ensued.

Discussion and Decision

Section 1 – The trial court did not commit reversible error in declining to dismiss the adoption petition.

[5] We begin by addressing Father’s assertion that Stepfather failed to strictly comply with certain procedural/technical requirements of the adoption statute, and therefore the trial court committed reversible error in declining to dismiss the adoption petition. It is true that, in some circumstances, it is possible that procedural irregularities in family-law proceedings may be of such significance that they deprive a parent of procedural due process when terminating his or her parental rights. *A.P. v. Porter Cnty. Off. of Fam. & Child.*, 734 N.E.2d 1107, 1112-13 (Ind. Ct. App. 2000), *trans. denied* (2001). Thus, as a general matter, the adoption statute is to be strictly construed and followed. *See In re Adoption of A.M.*, 930 N.E.2d 613, 620 (Ind. Ct. App. 2010). But it is not to be so strictly construed as to defeat the statute’s purposes. *Id.* Indeed, the court “must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.” Ind. Trial Rule 61. Therefore, we will not reverse for harmless errors. *See id.*

[6] Father first very briefly complains that Stepfather failed to strictly comply with Indiana Code Section 31-19-2-7, which requires a medical report of the health status and medical history of the child and the child’s birth parents to be filed

within sixty days of filing the petition to adopt.¹ Father concedes, however, that Stepfather in fact filed the required report three days after the adoption hearing, and Father makes no argument that timely submission would have changed the outcome in this case.² Thus, any error was harmless at best.

[7] Father next complains that Stepfather failed to satisfy Indiana Code Section 31-19-2-8, which requires an adoption history “fee” of twenty dollars and a putative father registry “fee” of fifty dollars, each payable to the state department of health, to be attached to the adoption petition. However, Father concedes that Stepfather filed a putative father registry affidavit on May 3, 2018, and January 28, 2019, and that an adoption history was filed with the trial court on February 17, 2020. As urged by Stepfather, we may presume that the affidavits and history would not have been generated, as they were here, absent payment of the requisite fees. Significantly, Father again makes no argument how the alleged failure to specifically attach those fees to the

¹ We agree with Stepfather that the purpose of the medical history report, which is to share with prospective adoptive parents the health status and medical history of the child sought to be adopted and the health status and medical history of the child’s birth parents, seems much less applicable in the case of a second parent adoption in which the spouse of a custodial birth parent seeks adoption, and the child’s health status and medical history, as well as the birth parent’s own medical history, are well known to the individuals involved. We remind Father that our adoption statutes were primarily designed as a shield to protect new adoptive families and were never intended to be utilized as a sword to prohibit otherwise beneficial intrafamily adoptions by second parents. *See generally In re Adoption of K.S.P.*, 804 N.E.2d 1253, 1258 (Ind. Ct. App. 2004) (discussing specifically divesting statute, Ind. Code § 31-19-15-1, and exception thereto regarding stepparent adoption).

² Although we choose in our discretion to briefly address each of Father’s allegations of statutory noncompliance, we note that he fails to make cogent argument to support several of his allegations, and therefore waiver of those claims on appeal would have been appropriate. *See Crider v. Crider*, 15 N.E.3d 1042, 1071-72 (Ind. Ct. App. 2014) (failure to make cogent argument waives issue for appellate review), *trans. denied*.

adoption petition affected his substantial rights in any way, or how strict statutory compliance in this regard would have changed the outcome of this case. We will not address this allegation further.

[8] Father also asserts that Stepfather failed to comply with Indiana Code Section 31-19-8-5(d), which requires a licensed child agency to ensure that a criminal history check of the petitioner is conducted pursuant to Indiana Code Section 31-19-2-7.5. Father concedes that Stepfather did employ a licensed child agency, The Villages, to conduct a criminal background check on Stepfather on May 22, 2019, and that the trial court took judicial notice of this report. While Father maintains that the criminal history check provided by The Villages “was not properly conducted,” we disregard that bald assertion. Appellant’s Br. at 19. Father further concedes that Stepfather also filed with the court a criminal history check conducted by the Indiana State Police on November 6, 2018. Father complains that these reports were untimely filed (not within sixty days of the adoption petition), but he fails to explain how his substantial rights were affected, or how a timely submission would have changed the outcome in this case. Again, any procedural irregularities here were harmless.

[9] Father next argues that Stepfather did not strictly comply with the applicable notice provision of the adoption statute. Specifically, Father received a letter sent by Stepfather’s attorney, that included a copy of Stepfather’s adoption petition, which clearly notified him that Stepfather sought to adopt Child, but he complains that the letter “in no way complied” with statutory notice requirements. Appellant’s Br. at 18; *see* Ind. Code § 31-19-4.5-3 (providing

proper form of notice).³ It is well settled that substantial compliance with the notice provision is “sufficient if the party receives notice which achieves that purpose for which the statute was intended.” *In re Adoption of J.T.A.*, 988 N.E.2d 1250, 1257 (Ind. Ct. App. 2013) (quoting *In re Paternity of Baby Girl*, 661 N.E.2d 873, 877 (Ind. Ct. App. 1996)), *trans. denied*. Here, Father knew from the letter, and the copy of the adoption petition, that Stepfather was seeking to adopt Child, that Mother consented to the adoption, and that he could either consent to the adoption or file an objection. After receiving the letter, Father obtained counsel, objected to the adoption, and was able to present evidence and contest the adoption in open court. Even assuming the letter did not strictly comply with the form provided by statute, any defect did not cause Father to be deprived of due process; notice was, therefore, sufficient.⁴

[10] Father urges us to evaluate the “cumulative [e]ffect” of Stepfather’s failure to strictly comply with the adoption statute and to conclude that the trial court committed reversible error in declining to dismiss the adoption petition as facially defective. Appellant’s Br. at 19. However, after a thorough review of the record, we are unconvinced that the procedural irregularities were of such

³ Father refers to a different notice provision that would apply to a “putative father” even though he does not meet the statutory definition of putative father. *See* Ind. Code § 31-9-2-100 (defining putative father in part as one who has not established paternity of child by executing paternity affidavit).

⁴ Father also suggests that Child’s paternal grandparents were entitled to, but did not receive, adequate notice of the adoption proceedings. First, we note that paternal grandmother appeared in the adoption proceedings with counsel, and thus it is clear that she was not deprived of due process. As far as paternal grandfather is concerned, Father lacks the authority to raise a due process claim on his behalf.

significance, either individually or collectively, that Father was deprived of procedural due process. Consequently, we find no reversible error.

Section 2 – The trial court did not err in concluding that Father’s consent to Child’s adoption was not required.

[11] Father contends that the trial court erred in concluding that his consent to Child’s adoption by Stepfather was not required. Recognizing that the trial court is in the best position to judge the facts and assess witness credibility, we give considerable deference to the court’s ruling. *In re Adoption of M.L.*, 973 N.E.2d 1216, 1222 (Ind. Ct. App. 2012). We will not disturb the court’s ruling in an adoption proceeding unless the evidence leads to but one conclusion, and the trial court reached the opposite conclusion. *In re Adoption of D.M.*, 82 N.E.3d 354, 358 (Ind. Ct. App. 2017).

[12] We will set aside the trial court’s findings and judgment only if they are clearly erroneous, which means that there is no evidence to support the findings or the findings fail to support the judgment. *In re Adoption of O.R.*, 16 N.E.3d 965, 973 (Ind. 2014). In conducting our review, we neither reweigh evidence nor reassess witness credibility but rather examine the evidence and reasonable inferences most favorable to the decision and determine whether sufficient probative evidence supports it. *D.M.*, 82 N.E.3d at 358. The trial court’s decision is presumed to be correct, and the appellant has the burden of overcoming the presumption. *Id.*

[13] When the trial court has heard evidence and finds that the adoption requested is in the child's best interest, and proper consent, if necessary, to the adoption has been given, the court shall grant the petition and enter an adoption decree. Ind. Code § 31-19-11-1(a). If the petition alleges that a parent's consent is unnecessary and the parent files a motion to contest the adoption, the petitioner must prove by clear and convincing evidence that the parent's consent is not required. *D.M.*, 82 N.E.3d at 358. (citing Ind. Code §§ 31-19-10-0.5, 31-19-9-8(a)). Indiana Code Section 31-19-9-8 reads in relevant part,

(a) Consent to adoption, which may be required under section 1 of this chapter, is not required from any of the following:

....

(2) A parent of a child in the custody of another person if for a period of at least one (1) year the parent:

(A) fails without justifiable cause to communicate significantly with the child when able to do so; or

(B) knowingly fails to provide for the care and support of the child when able to do so as required by law or judicial decree.

....

(11) A parent if:

(A) a petitioner for adoption proves by clear and convincing evidence that the parent is unfit to be a parent; and

(B) the best interests of the child sought to be adopted would be served if the court dispensed with the parent's consent.

Ind. Code § 31-19-9-8.⁵ To determine what is in the best interests of a child, we must look at the totality of the circumstances. *In re A.W.*, 62 N.E.3d 1267, 1275 (Ind. Ct. App. 2016). A parent's criminal offenses are properly considerable by the trial court in assessing a parent's unfitness as a parent under the statute. *D.M.*, 82 N.E.3d at 360.

[14] Here, the trial court concluded that it was in Child's best interests to dispense with Father's consent due to Father's failure to significantly communicate with Child, his failure to provide for the care and support of Child, and his unfitness to parent Child based on his criminal history. Because the statute is written in the disjunctive, any one of the grounds listed therein is alone sufficient to dispense with parental consent. *O.R.*, 16 N.E.3d at 973. We will address two of the grounds clearly supported by the evidence.

[15] Here, the trial court found that Father's efforts at communication with Child were essentially nonexistent. Father has admittedly had no contact with Child since Child was eleven months old. He acknowledges that he has spent a significant portion of Child's life incarcerated, yet he blames most of his failure to communicate with Child on protective orders sought and obtained by

⁵ We acknowledge that Stepfather's adoption petition did not specifically allege that Father's consent is not required. However, this issue was clearly argued at the hearing, and Father makes no assertion of error in this regard on appeal.

Mother. To be clear, any protective order issued was due to Father's intentional criminal behavior, specifically his repeated domestic violence against Mother in Child's presence. The record further indicates that Father never objected to, or contested, the issuance of any protective order. Father acknowledges that there were brief periods when he was released from incarceration and could have communicated with Child, but he claims that Mother "established a pattern of her interference" which thwarted his ability to do so. Appellant's Br. at 23. However, the trial court found no credible evidence to support that assertion, and we will not reassess the credibility of evidence on appeal. The trial court's conclusion that Father failed without justifiable cause to communicate significantly with Child for at least one year is supported by substantial evidence.

[16] The uncontroverted evidence also establishes that Father's criminal history and the nature of many of his convictions render him an unfit parent. The record indicates that Father has amassed a shockingly high number of criminal convictions.⁶ Father's domestic battery convictions and repeated threats to kill Mother are obviously particularly troubling, as are his numerous other convictions involving battery and drug abuse. Indeed, at the time of the adoption proceedings, Father had recently been released on home detention following new charges of domestic violence, possession of marijuana, and

⁶ Based upon exhibits presented at the adoption hearing and also referenced in his appellee brief, Stepfather states that Father has amassed at least fifty-six criminal convictions. While we are unable to confirm that exact number, Father did not challenge that number at the hearing, nor does he contradict it on appeal.

possession of cocaine. He was also facing a petition to revoke probation in another cause. It is quite evident from the record that Father has chosen violence and a life of crime over any parental relationship with Child. Substantial evidence supports a finding that Father is an unfit parent.

[17] In sum, it is in Child's best interests to remove the barrier of parental consent to his adoption by Stepfather. Based on the foregoing, we find no error in the trial court's conclusion that Father's consent to adoption was not required. Consequently, we affirm the trial court's adoption decree.

[18] Affirmed.

Najam, J., and Riley, J., concur.