MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

B.W. (Father),
Appellant/Respondent,

v.

A.C. and D.C.,
Appellees/Petitioners.

October 20, 2023

Court of Appeals Case No. 23A-AD-1181

Appeal from the Lake Superior Court

The Honorable Thomas P. Stefaniak, Jr., Judge

Trial Court Cause No. 45D06-2110-AD-126

Memorandum Decision by Judge Bradford
Judges Vaidik and Brown concur.

Bradford, Judge.

Case Summary

[1] R.C. ("Mother") and B.W. ("Father") are the biological parents of R.W. ("Child"), and A.C. and D.C. ("Grandparents") are Mother's parents. Child, who was born in July of 2017, has lived with Grandparents since birth, and they have been his court-appointed guardians since May of 2018. Pursuant to an agreed order ("the Agreed Order"), Father was permitted to have visitation with Child on Sundays at paternal grandfather's residence. Although Father was aware that Child spent every other Sunday at paternal grandfather's residence, he visited with him only three times, with the last time occurring in July of 2020. In October of 2021, Grandparents petitioned to adopt Child, to which Father objected. The juvenile court concluded that Father had waived his right to object to Child's adoption because he had not had significant communication with him for one year, despite being able to and lacking justification for his lack of communication. Father contends that the juvenile court erred in concluding that he had waived his right to object to Child's adoption. Because we disagree, we affirm.

Facts and Procedural History

[2] Mother and Father are the biological parents of Child, who was born in July of 2017 and has resided with Grandparents in Lake County since birth. Grandparents have served as Child's court-appointed guardians since May 8, 2018. Pursuant to the Agreed Order, Father could exercise parenting time on Sundays from 10:00 a.m. to 6:00 p.m. at paternal grandfather's residence. As it

happens, Grandparents had informally agreed with paternal grandfather and his wife that they could exercise visitation with Child at their residence every other weekend, which they generally did. As paternal grandfather later testified, Father had been aware that he and his wife had been and were exercising this visitation and could have seen Child at any time during this visitation so long as he had contacted Grandparents ahead of time. From May of 2018 until July of 2020, Father only exercised visitation with Child three times.

[3] Father re-initiated contact with Grandparents in August of 2021, when he began requesting visits with Child, requests that were denied. On one occasion, Father did attempt to visit with Child while dropping Mother off at Grandparents' home; the Agreed Order, however, provides that Mother cannot be present during Father's visits and, in any event, the visitation attempt was not during Father's designated time. Father never requested a contempt citation on the basis that he had been denied parenting time with Child by Grandparents or sought any other relief in court.

[4] Grandparents petitioned to adopt Child in October of 2021. On February 24, 2022, the juvenile court held a hearing on Father's objection to Grandparents' adoption petition. On September 29, 2022, the juvenile court denied Father's motion to contest Grandparents' adoption petition and set the matter for a final adoption hearing. On April 28, 2023, the juvenile court granted Grandparents' petition to adopt Child.

Discussion and Decision

[5] Father contends that the juvenile court erred in concluding that he had waived his right to contest Child's adoption by Grandparents.

> "When reviewing adoption proceedings, we presume that the trial court's decision is correct, and the appellant bears the burden of rebutting this presumption." *In re Adoption of J.L.J. and J.D.J.*, 4 N.E.3d 1189, 1194 (Ind. Ct. App. 2014) (citation omitted), *trans. denied*. We generally give considerable deference to the trial court's decision in family law matters, because we recognize 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." *MacLafferty v. MacLafferty*, 829 N.E.2d 938, 940 (Ind. 2005). We will not disturb the trial court's ruling "unless the evidence leads to but one conclusion and the trial judge reached an opposite conclusion." *Rust v. Lawson*, 714 N.E.2d 769, 771 (Ind. Ct. App. 1999) (citation omitted), *trans. denied*. The trial court's findings and judgment will be set aside only if they are clearly erroneous. *In re Paternity of K.I.*, 903 N.E.2d 453, 457 (Ind. 2009). "A judgment is clearly erroneous when there is no evidence supporting the findings or the findings fail to support the judgment." *Id.* "We will neither reweigh the evidence nor assess the credibility of witnesses, and we will examine only the evidence most favorable to the trial court's decision." *In re Adoption of A.M.*, 930 N.E.2d 613, 616 (Ind. Ct. App. 2010).

In re Adoption of O.R., 16 N.E.3d 965, 972–73 (Ind. 2014).

[6] "Generally, a trial court may only grant a petition to adopt a child born out of wedlock who is less than eighteen years of age if both '[t]he mother of [the] child' and 'the father of [the] child whose paternity has been established' consent to the adoption." *Id.* at 973 (quoting Indiana Code section 31-19-9-

1(a)(2)) (brackets in original). However, Indiana Code section 31-19-9-8(a)(2) provides that consent to an adoption is not required from

> (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[.]

[7] The Indiana Supreme Court has observed that

> [a] determination on the significance of the communication is not one that can be mathematically calculated to precision. [S]ignificance of the communication cannot be measured in terms of units per visit. *In re Adoption of J.P.*, 713 N.E.2d 873, 876 (Ind. Ct. App. 1999). Even multiple and relatively consistent contacts may not be found significant in context. *Id*. But a single significant communication within one year is sufficient to preserve a non-custodial parent's right to consent to the adoption. *In re Adoption of Subzda*, 562 N.E.2d 745, 749 (Ind. Ct. App. 1990).

E.B.F. v. D.F., 93 N.E.3d 759, 763 (Ind. 2018).

[8] We conclude that the record contains sufficient evidence to sustain the juvenile court's finding that Father's consent to Child's adoption was not necessary. There is no evidence that Father had any communication, much less significant communication, with Child for a period of over one year, or from July of 2020 to August of 2021.

[9] As for whether Father was able to visit with Child, at all relevant times, the Agreed Order provided that Father could have visitation with Child at paternal grandfather's residence. Also at all relevant times, Grandparents had an informal agreement with paternal grandfather that grandfather would have

Child over for visitation every other Sunday, of which agreement Father was aware. Paternal grandfather testified that the option to have visitation with Child at his house had always been available to Father and that Grandparents had never denied him visitation. Yet, despite having approximately two opportunities per month for visitation, Father only managed three visitations from May of 2018 to July of 2020, with none thereafter. In the end, whether explicitly part of the Agreed Order or not, the record indicates that all Father ever had to do to have visitation with Child was clear it with Grandparents, and he never did from July of 2020 to August of 2021. The record supports a finding that Father had the ability to significantly communicate with Child but did not.

[10] Finally, we conclude that the juvenile court did not err in finding that Father lacked justifiable cause to fail to communicate with Child. Father's entire argument on this point seems to be that he lacked the capacity to take the steps needed to secure visitation with Child, and points to the fact that his father had guardianship of him until March 2, 2022, as evidence of his incapacity. Father, however, did not raise this claim below, despite being represented by counsel during the litigation of Grandparents' adoption petition, including at the evidentiary hearing. Any claim of alleged incompetence is therefore waived as it has been raised for the first time on appeal. *See, e.g.*, *A.L. v. Wishard Health Servs., Midtown CMHC*, 934 N.E.2d 755, 758 (Ind. Ct. App. 2019) ("It is well established that we may consider a party's […] claim waived when it is raised for the first time on appeal."), *trans. denied*.

[11] In any event, Father acknowledged that he had been represented by counsel during the litigation of Grandparents' petition for guardianship of Child and that he had neither attempted to terminate Grandparents' guardianship nor requested a status hearing at any point. Although Father testified that he "tried everything possible" to have visitation with Child but "didn't know what to do[,]" Tr. Vol. II p. 172, the juvenile court was under no obligation to credit this testimony and apparently did not. *See, e.g.*, *J.R.T. v. State*, 783 N.E.2d 300, 303 (Ind. Ct. App. 2003) ("While we recognize that J.R.T. presented evidence tending to support his alibi defense, the trial court was under no obligation to credit it."), *trans. denied*. Father has failed to establish that the juvenile court erred in finding that he had waived his right to object to Child's adoption by Grandparents.

[12] We affirm the judgment of the juvenile court.

Vaidik, J., and Brown, J., concur.