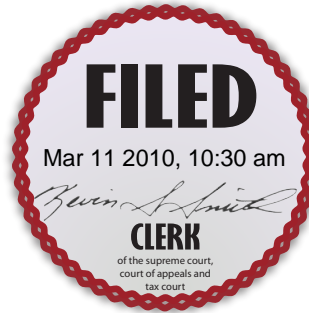


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE THE ADOPTION OF M.M.V.)
)
S.S.)
Appellant-Respondent,)
)
vs.) No. 79A05-0909-CV-504
)
G.R. and D.R.,)
)
Appellees-Petitioners.)

APPEAL FROM THE TIPPECANOE CIRCUIT COURT
The Honorable Donald L. Daniel, Judge
Cause No. 79C01-0812-AD-57

March 11, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

S.S., the biological mother of M.M.V., appeals the probate court's ruling that her consent to the adoption of M.M.V. by G.R. and D.R. ("the Guardians") is not required. We affirm.

Issue

S.S. presents a sole issue for review: whether there is sufficient evidence to support the probate court's decision to dispense with her consent to M.M.V.'s adoption, pursuant to Indiana Code Section 31-19-9-8(2)(A)-(B), which obviates the necessity of consent by a parent who, when able to do so, for at least one year, has failed to significantly communicate with or provide for the care and support of her child who is in the custody of another person.

Facts and Procedural History

In 2000, S.S. gave birth to M.M.V. in the State of Connecticut. S.S. moved to Florida, leaving M.M.V. with her biological father, J.N. In 2002, J.N. was imprisoned and could no longer care for M.M.V. G.S., who was S.S.'s foster mother during her teenage years, traveled with S.S. to Connecticut and brought M.M.V. to Indiana.¹ G.R. and D.R., who are G.S.'s brother and sister-in-law, became acquainted with M.M.V. and began to assist in providing her care.

In June of 2006, S.S. was incarcerated and the Guardians took custody of M.M.V. They obtained legal guardianship of M.M.V. with S.S. consenting. S.S. was convicted of Child Molestering and sentenced to three years imprisonment. In December of 2008, she was

¹ G.S. subsequently adopted two of S.S.'s children.

released from prison. During and after her incarceration, S.S. had some communication with G.S. but did not directly communicate with M.M.V. or the Guardians.

On December 1, 2008, a few days before S.S. was released from prison, the Guardians petitioned to adopt M.M.V. S.S. immediately filed an objection. On July 2, 2009, the probate court held a hearing on the issue of whether the biological parents' consent to adoption was required. The probate court determined that consent was not required from either parent. S.S. now appeals.²

Discussion and Decision

The probate court found that S.S. need not consent to the adoption of M.M.V. based upon alternate grounds of lack of significant communication and lack of support. Indiana Code Section 31-19-9-8(a)(2)(A)-(B), written in the disjunctive, provides in relevant part:

Consent to adoption ... is not required from any of the following:

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.

Parental rights may be relinquished either by consent of the natural parent or by operation of law where the parent has neglected to perform correlative duties and obligations toward the child. See, e.g., Adoption of H.N.P.G., 878 N.E.2d 900, 906 (Ind. Ct. App. 2008), trans. denied, cert. denied, 129 S. Ct. 619 (2008). The party petitioning to adopt without parental consent has the burden of proving both a lack of communication for the statutory

² J.N. is not an active party to this appeal.

period and that the ability to communicate during that time period existed. In re Adoption of C.E.N., 847 N.E.2d 267, 271 (Ind. Ct. App. 2006).

In order to preserve the consent requirement for adoption, the level of the parent's communication with the child must be significant, and more than "token efforts" on the part of the parent. Id. at 272. The reasonable intent of the statute is to encourage non-custodial parents to maintain communication with their children and to discourage them from visiting their children just often enough to thwart the adoptive parents' efforts to provide a settled environment for the children. Id.

The Guardians were required to prove by clear and convincing evidence that S.S.'s consent was not required. In re Adoption of T.W., 859 N.E.2d 1215, 1217 (Ind. Ct. App. 2006). However, on appeal of a probate court's ruling in an adoption case, the appellant bears the burden of showing that the decision was incorrect and "we will not disturb the ruling unless the evidence leads to only one conclusion and the probate court reached an opposite conclusion." In re Adoption of A.S., 912 N.E.2d 840, 851 (Ind. Ct. App. 2009), trans. denied. We do not reweigh the evidence but will consider the evidence that is most favorable to the probate court's decision together with reasonable inferences to be drawn therefrom in order to determine whether there is sufficient evidence to sustain the decision. Id.

At the July 2009 hearing, G.R. testified that, since S.S.'s 2006 incarceration, S.S. had not visited or called M.M.V. nor had she provided any financial support.³ He stated that,

³ S.S. had been briefly employed since her release from incarceration. She emphasizes the fact that she was not

over the years, S.S. had sent a few cards and letters to the address of his sister, G.S. None were sent directly to the Guardians' address, although they had remained at the same address they had during the guardianship proceedings. G.S. also testified that she had received a telephone message from S.S., albeit without the provision of a call-back number. This evidence revealing the absence of direct contact and sporadic indirect contact is sufficient to permit the probate court to conclude that S.S., when able to do so, failed to communicate significantly with M.M.V. or provide for her care or support.

Affirmed.

BAKER, C.J., and ROBB, J., concur.

subject to a court order to support M.M.V. Nonetheless, there is a common law duty of a parent to support his or her child. See Pettit v. Pettit, 626 N.E.2d 444, 445 (Ind. 1993).