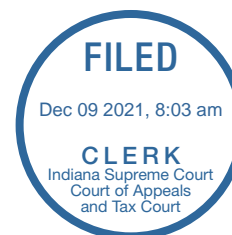


MEMORANDUM DECISION

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.



ATTORNEYS FOR APPELLANT

Melanie K. Reichert
Austin T. Robbins
Broyles Kight & Ricafort, P.C.
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Robert C. Becker
Laurie D. Johnson
Boje, Benner, Becker, Markovich
& Hixson, LLP
Noblesville, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Adoption of
G.L.H. (Minor Child);

G.S.,

Appellant-Respondent,

v.

M.K.,

Appellee-Petitioner.

December 9, 2021

Court of Appeals Case No.
21A-AD-848

Appeal from the Hamilton
Superior Court

The Honorable Michael A. Casati,
Judge

Trial Court Cause No.
29D01-2007-AD-1181

Najam, Judge.

Statement of the Case

- [1] G.S. (“Father”) appeals the trial court’s interlocutory order finding that his consent to M.K.’s (“Stepfather’s”) adoption of Father’s minor child G.L.H. (“Child”) is not required. Father raises one issue for our review, namely, whether the trial court erred when it concluded that his consent to the adoption is not required.
- [2] We affirm.

Facts and Procedural History

- [3] S.H. (“Mother”) is the mother of Child, who was born August 5, 2014. In 2016, Mother obtained a protective order against Father. In February 2017, Father established his paternity of Child. Pursuant to the paternity decree, Mother was awarded full custody of Child, Father was awarded supervised parenting time, and Father was ordered to pay child support. In November 2017, Father was arrested, and he subsequently pleaded guilty to “Conspiracy to Possess with Intent to Distribute and to Distribute 50 Grams or More of Methamphetamine (actual) and 100 Grams or More of Heroin and Money Laundering[,] and [he] was sentenced to one hundred twenty (120) months in the U.S. Bureau of Prisons.” Appellant’s App. Vol. 2 at 13. Father has not visited with or directly contacted Child during his incarceration.
- [4] Mother married Stepfather in April 2020. And on July 31, Stepfather filed his verified petition for adoption of Child. Father filed a motion to contest the

adoption in August. Following a hearing on the issue of Father's consent, the court issued findings and conclusions as follows:

2. [Stepfather] and [Mother] were married on April 18, 2020, in Hamilton County, Indiana. There is a 3-month old child of this marriage. [Stepfather] is gainfully employed as a general contractor at Kastaway Renovations, LLC. Together, [Stepfather] and [Mother] have built a home in Hamilton County and wish to complete their family with [Stepfather]'s adoption of the minor child, [Child]. Given [Stepfather]'s employment, he and [Mother] are able to properly care for, support, and provide education for the minor child. [Mother] consents to and wishes for [Child] to be adopted by [Stepfather].

3. Father does not consent to the adoption of the minor child. Father is currently incarcerated in prison, and has been continuously since November, 2017. . . . Currently, he is eligible for parole May 20, 2026. He has a very lengthy criminal history, including approximately 13 arrests and numerous convictions, and has a history of struggling with substance abuse issues for many years. Father's own actions have resulted in his imprisonment for a very extended period of time.

4. Father has not seen or communicated with the minor child since November, 2017, except that he directed that Christmas presents be sent to the child in December, 2020. The last time Father and the minor child saw one another, their time was spent in a supervised visitation setting in 2017. The Court finds it rather disturbing that Father's first effort at (indirect) communication with the child in more than three years would be in the form of gifts to the child while this hearing on the issue of his consent was pending.

5. It will be approximately 9 years from the date of Father's last contact with the child until Father is released from prison.

6. The child has a half-sibling, [G.J.-S.], who is 17 and lives in Louisville, Kentucky with his biological mother. [G.J.-S.] has had very limited contact with the child, and has not had any contact with the child since 2017 during a supervised visit. Evidence presented indicated that Father does have substantial communication with [G.J.-S.] while in prison—claimed to be daily—evidencing in part his ability to communicate with his children while imprisoned.

7. Father argues that his claimed daily telephonic contact with [G.J.-S.] evidences his ability to “parent” while imprisoned (as to the issue of his fitness to parent). The Court declines to make this leap. Parenting requires extensive efforts and assumption of substantial responsibilities that go well beyond phone calls.

8. Father is currently paying \$200 per month in child support for the minor child, less than the \$50 per week in child support under the current child support order. Father has rental properties that are the source of income for him while incarcerated. Further, Father owed a child support arrearage in the amount of \$11,798.00 as of August 1, 2018. There is currently an outstanding child support arrearage in excess of \$11,798 that was established as of August 9, 2018. . . .

9. Father has substantially failed to communicate and maintain a relationship with the minor child since 2017. Although there was some evidence of contact in the first year of the child’s life, there was evidence of estrangement between Mother and Father in the summer of 2015, eventually resulting in the issuance of a protective order against Father in favor of Mother.

10. Father demonstrated acts of violence against [Mother] and [Child] as set forth under 29D05-1603-PO-002459, of which the Court took judicial notice. Although the original protective order was issued ex parte, a subsequent hearing was conducted thereon and the protective order was affirmed. A hearing was also conducted on the extension of the protective order, which was

granted. The allegations in the original petition included allegations that Father had physically and verbally abused Mother, including in the presence of the child.

11. There was little to no evidence presented as to any contact Father might have had with the child from the summer of 2015 until a supervised parenting order was issued in the paternity matter in February, 2017.

12. Father asserts that he was unable to communicate with the child due to the protective order action. However, Mother's counsel has remained the same through the paternity and protective order proceedings. Father was represented by counsel in both proceedings. He presented no evidence of any efforts made through counsel at any time to communicate or otherwise pursue a relationship with his son. He presented no evidence of any efforts made by him in either the paternity or the protective order action to obtain the assistance of the court to pursue contact/relationship/communication with the child. Further, the issuance of the protective order was due to the Father's own actions—he alone is responsible [for] any obstacle that [he] created in pursuing a relationship with the child.

Conclusions of Law

* * *

2. Based upon the evidence presented as set forth herein above, the Court concludes that, under Ind. Code § 31-19-9-8(a)(2)(A), Father's consent is not required because Father, for a period of at least one year, has failed without justifiable cause to communicate with the child when able to do so.

3. Further, pursuant to Ind. Code § 31-19-9-8(a)(11), consent of a parent is also not required by 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.

* * *

5. Based upon the evidence presented as set forth herein above, the Court concludes that, under Ind. Code § 31-19-9-8(a)(11), Father is unfit to be a parent to [Child] under the clear and convincing evidence standard and that the best interests of the minor child would be served if the court dispensed with his consent. Accordingly, the Court does now dispense with Father's consent.

Id. at 12-16. This certified interlocutory appeal ensued.

Discussion and Decision

[5] Father contends that the trial court erred when it concluded that his consent to the adoption is not required. As our Supreme Court recently stated:

We generally show “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.” *E.B.F. v. D.F.*, 93 N.E.3d 759, 762 (Ind. 2018) (cleaned up). So, “when reviewing an adoption case, we presume that the trial court’s decision is correct, and the appellant bears the burden of rebutting this presumption.” *Id.* And we will not disturb that decision “unless the evidence leads to but one conclusion and the trial judge reached an opposite conclusion.” *In re Adoption of T.L.*, 4 N.E.3d 658, 662 (Ind. 2014). “We will not reweigh evidence or assess the credibility of witnesses.” *E.B.F.*, 93 N.E.3d at 762 (citation omitted). “Rather, we examine the

evidence in the light most favorable to the trial court's decision.”
Id. (citation omitted).

J.P. v. V.B. (In re Adoption of I.B.), 163 N.E.3d 270, 274 (Ind. 2021).

- [6] Indiana law generally requires natural parents to consent to adoptions. Ind. Code § 31-19-9-1 (2021). However, as relevant here, a natural parent's consent to an adoption is not required if the trial court finds by clear and convincing evidence either that (1) for a period of at least one year, the parent fails without justifiable cause to communicate significantly with the child when able to do so or (2) a petitioner for adoption proves by clear and convincing evidence that the parent is unfit to be a parent and that the best interests of the child sought to be adopted would be served if the court dispensed with the parent's consent. I.C. § 31-19-9-8(a).
- [7] Father contends that the trial court erred when it concluded both that he had failed without justifiable cause to communicate significantly with Child for at least one year and that he was unfit to be a parent to Child. Because the statute is written in the disjunctive, any one of the grounds listed therein is alone sufficient to dispense with parental consent. *N.R. v. K.G. (In re Adoption of O.R.)*, 16 N.E.3d 965, 973 (Ind. 2014). Here, as we explain below, the trial court properly concluded that for a period of at least one year Father failed without justifiable cause to communicate significantly with Child although he was able to do so, and we need not address the court's additional conclusion that Father is unfit to be a parent to Child. *See id.*

- [8] Father does not challenge any of the trial court’s findings on this issue. Accordingly, we must accept those findings as true. *M.M. v. A.C.*, 160 N.E.3d 1133, 1135 (Ind. Ct. App. 2020). Still, Father maintains that his failure to communicate with Child was justified because Mother has consistently thwarted his attempts to contact Child and because the protective order was in effect until August 1, 2020. Father’s contentions miss the mark.
- [9] Father is correct that “[e]fforts of a custodial parent to hamper or thwart communication between a parent and child are *relevant* in determining the ability to communicate.” *E.W. v. J.W.*, 20 N.E.3d 889, 896-97 (Ind. Ct. App. 2014) (quoting *In re Adoption of A.K.S.*, 713 N.E.2d 896, 899 (Ind. Ct. App. 1999), *trans. denied*) (emphasis added), *trans. denied*. But here, while Mother did not keep Father apprised of Child’s home address after 2016, as the trial court found, Father did not present evidence that he made *any* effort to contact child through Mother’s attorney or through the court. *See In re O.R.*, 16 N.E.3d at 974 (noting father could have attempted communication with child through either child’s guardians’ attorney or the trial court). Indeed, while he was incarcerated, Father filed a petition to modify child support, but he did not move the court to order visitation or otherwise seek the means to communicate with Child by order of the court.
- [10] And, while Father points out that the protective order prevented Father from contacting *Mother*, directly or indirectly, the order did not prevent Father from contacting Child. Father suggests that the protective order barred him from even contacting Mother’s attorney, which, he asserts, would have been

prohibited indirect contact with Mother. But nothing in the protective order prohibited Father from contacting Mother's attorney simply to request Child's home address for the purpose of sending Child a card or letter. This, Father did not do. And, in any event, as the trial court found, "the issuance of the protective order was due to the Father's own actions [and] he alone is responsible [for] any obstacle that [he] created in pursuing a relationship with the child." Appellant's App. Vol. 2 at 15.

[11] In sum, the evidence most favorable to the judgment demonstrates that Father has not had any contact with Child since November 2017. The trial court found that Father's failure to communicate with Child was not justified either by Mother's conduct or by the protective order, and the evidence supports those findings. Father's contentions on appeal amount to a request that we reweigh the evidence, which we cannot do. We hold that the trial court did not err when it found that Father failed to communicate significantly with Child without justifiable cause for a period of at least one year and that Father's consent is not required for the adoption.

[12] Affirmed.

Vaidik, J., and Weissmann, J., concur.