

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In Re The Adoption of: A.M.;

M.M.,
Appellant-Respondent,

v.

B.H.,
Appellee-Petitioner.

November 28, 2023

Court of Appeals Case No.
23A-AD-1423

Appeal from the St. Joseph
Probate Court

The Honorable Jason A.
Cichowicz, Judge

Trial Court Cause No.
71J01-2202-AD-14

Memorandum Decision by Judge Mathias
Judges Riley and Crone concur.

Mathias, Judge.

[1] M.M. (“Father”) appeals the trial court’s judgment that his consent to the adoption of his biological child, A.M. (“Child”), was not necessary. Father raises a single issue for our review, namely, whether the trial court’s judgment is clearly erroneous. We affirm.

Facts and Procedural History

- [2] In September 2018, K.M. (“Mother”) gave birth to Child. Father is Child’s biological father. At the time of Child’s birth, Father was in a court-ordered halfway house for substance-abuse issues.
- [3] Father was present for Child’s birth, but thereafter he returned to the halfway house. He visited with Child about once per week over the next two months, with each visit lasting approximately two hours. When Child was two-months old, Father was incarcerated, and he ceased any attempts to communicate with Child. Father was released from his incarceration in October 2022.
- [4] Father had a history of harassment and aggression toward Mother, and, after his incarceration in late 2018, Mother ended their relationship. Thereafter, Mother met B.H. (“Stepfather”), became pregnant with B.H.’s child, and married B.H. Father called Mother from jail and “threatened the life” of her unborn child. Tr. Vol. 2, p. 16. As a result, in July 2019, Mother sought and received an order for protection against Father.
- [5] In March 2022, Stepfather filed his petition to adopt Child. Mother consented to the adoption, and Father objected. In December, the court held a fact-finding hearing on whether Father’s consent to the adoption was required. At that

hearing, Mother testified that Father never attempted to contact Child after his late 2018 incarceration; that Father never sent Child anything in the mail; that Father never objected to the order for protection and never sought any judicial relief from that order; and that, when the order for protection expired in July 2021, Father never contacted Child.

[6] Based on Mother’s testimony, the trial court found that Father “did not make any efforts to substantially communicate with [C]hild within the one [year] before the petition for adoption was filed, even though he was able to do so.” Appellant’s App. Vol. 2, p. 34. The court further found that Father “did not take any steps to communicate with [C]hild for most of [C]hild[’s] life” even though Father’s “[i]mmediate family members . . . still maintained contact” with Child. *Id.* The court thus concluded that Father’s consent to the adoption was not necessary and granted Stepfather’s petition for adoption. This appeal ensued.

Discussion and Decision

[7] Father appeals the trial court’s conclusion that his consent to Stepfather’s petition to adopt Child was not required. As our Supreme Court has recognized:

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).

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

[8] We initially note that Stepfather has not filed an appellee’s brief. In such circumstances, we do not develop an argument for the appellee but instead will “reverse the trial court’s judgment if the appellant’s brief presents a case of prima facie error.” *Front Row Motors, LLC v. Jones*, 5 N.E.3d 753, 758 (Ind. 2014). Prima facie error in this context means “at first sight, on first appearance, or on the face of it.” *Id.*

[9] The dispositive issue in this appeal is whether the trial court’s conclusion that Father failed to significantly communicate with Child for at least one year is clearly erroneous. As our Supreme Court has explained:

A natural parent enjoys special protection in any adoption proceeding, and courts strictly construe our adoption statutes to preserve the fundamentally important parent-child relationship. *In re Adoption of N.W.*, 933 N.E.2d 909, 913 (Ind. Ct. App. 2010). But “even the status of a natural parent, though a material consideration, is not one which will void all others.” *Id.* And “under carefully enumerated circumstances,” the adoption statutes allow “the trial court to dispense with parental consent

and allow adoption of the child.” *Id.* See Ind. Code ch. 31-19-9 (the Consent-to-Adoption Statute).

I.B., 163 N.E.3d at 274.

[10] In relevant part here, Indiana’s Consent-to-Adoption Statute allowed the trial court to dispense with Father’s consent to Stepfather’s petition if, for at least one year, Father “fail[ed] without justifiable cause to communicate significantly with [C]hild when able to do so.” I.C. §§ 31-19-9-8(a)(2)(A) (2021). “A parent who meets society’s expectations by maintaining a connection with [his] child . . . cannot have [his] legal relationship with the child severed without [his] consent.” *I.B.*, 163 N.E.3d at 276. “Conversely, when a parent fails to maintain a meaningful relationship with . . . that child, [he] loses [his] right as a natural parent to withhold consent to adoption.” *Id.* “Of course, what constitutes failure is a fact-intensive inquiry.” *Id.*

[11] Father has not made a prima facie showing that the trial court’s findings and conclusions on this issue are clearly erroneous. Father contends that Mother’s order for protection “prevented [him] from having any communication with Mother, and consequently [Child], for two (2) years.” Appellant’s Br. at 6. Father also asserts that Mother “blocked [his] phone number so he could not call her.” *Id.*

[12] But Father’s arguments do not fully reflect Mother’s testimony. Mother testified that Father never sought any judicial process to communicate with Child despite the order for protection. She also testified that, following the expiration

of the order for protection in July 2021, Father continued to have no communication with Child. And, while Mother testified that she blocked the phone number for the jail in which Father was incarcerated when she initially obtained the order for protection, she also acknowledged that Father had thereafter been transferred to another jail and, of course, eventually released. And Mother did not testify that she had blocked any other relevant phone numbers.

[13] In sum, the trial court's findings and conclusions are supported by the record, and Father's arguments to the contrary simply seek to reweigh the evidence on appeal, which we will not do. We therefore affirm the trial court's conclusion that Father's consent to Stepfather's adoption petition was not necessary.

[14] Affirmed.

Riley, J., and Crone, J., concur.