MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

M.T.,
Appellant-Petitioner

v.

D.W.,
Appellee-Respondent

March 8, 2024

Court of Appeals Case No.
23A-AD-1328

Appeal from the Johnson Superior Court

The Honorable Kevin M. Barton, Judge

Trial Court Cause No.
41D01-2211-AD-63

Memorandum Decision by Chief Judge Altice
Judges Weissmann and Kenworthy concur.

Altice, Chief Judge.

Case Summary

[1] M.T., maternal grandmother (Grandmother) of B.R.T. (Child), filed a petition to adopt Child, and biological father, D.W. (Father), objected. The trial court determined, as a matter of law, that Father's obligation to provide financial support or have meaningful communication with Child, for purposes of Ind. Code § 31-19-9-8(a)(2)(A), (B) (the Consent Statute), did not begin until paternity was established. Because Father began communicating with and providing support for Child upon paternity being established, the trial court concluded that his consent to the adoption was necessary. The trial court denied Grandmother's petition to adopt, and she now appeals, asserting that the court clearly erred in its interpretation of the Consent Statute.

[2] We reverse and remand.

Facts & Procedural History

[3] In spring 2017, Mc.T. (Mother) and Father engaged in a one-time sexual encounter. Some weeks later, Mother advised Father that she was pregnant, and thereafter, over the course of about a week, they exchanged a series of text messages about the matter. Initially, the texts were amicable. Father's texts included telling Mother "I need to own up to this" and that he planned to "come clean" with his girlfriend about it. *Exhibits Vol.* at 8.

[4] In the following days, their text exchanges became less agreeable. Father asked Mother for the results of her recent medical exam/tests, which would indicate how far along she was in her pregnancy. Mother advised that she was five weeks and five days, and Father said that he was "still not convinced" that the baby was his and, later said, "I still do not believe that this baby is mine." *Id*. at 19, 20. Father indicated his belief that Mother had been "partying" during that timeframe and "could've been with someone else." *Id*. at 20. Mother responded that she did not "sleep with anyone else" during that time and maintained to Father that the baby was his, but told him, "You don't want to believe that then fine." *Id*. at 20, 23. Mother also told Father that he could get a paternity test when the baby was born. On June 5, Father told Mother not to contact him anymore, and they had no further communication.

[5] Child was born in January 2018, and Father was made aware of the birth by Mother's father. Father did not go to the hospital because he "had reason to believe that . . . this was not [his] child." *Transcript* at 13. Over four years later, on Father's Day in June 2022, Father reached out to Mother to discuss rumors that had been circulating in the community that he was the father of Child. Father requested to visit with Child, which Mother permitted on one occasion for an hour or two in her presence and in her home.

[6] On August 8, 2022, Father filed a petition to establish paternity, and the parties agreed to genetic testing. Following a hearing and pursuant to the parties' agreement, the court issued an order on November 28, 2022, establishing Father's paternity of Child and ordering temporary custody, parenting time,

and weekly child support.[1] Thereafter, Father paid support as ordered and regularly exercised the permitted parenting time with Child.

[7] The same day as the court's paternity order, Grandmother filed a petition to adopt Child, to which Mother consented. The petition alleged that Father had not had contact with Child since she was born "although aware of her existence," other than recently meeting her for an hour, and that Father had made no monetary contributions towards or for the care of Child, "not even a token effort, since [she] was born." *Appendix* at 13.

[8] Father promptly objected to the petition,[2] and the trial court held a hearing on the matter of Father's consent in April 2023. At the start of the hearing, Father stipulated that, between the date of Child's birth in January 2018 and the November 2022 paternity order, he (1) had the ability to provide financial support, (2) did not provide financial support, and (3) did not communicate with Child.

[9] Father then testified that when he filed the paternity petition, he was still unsure if he was Child's father as he "had reason to believe" that Mother had been involved with one or two other men around that same time. *Transcript* at 24. He explained that he filed the paternity petition because he wanted to get an

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[1] The parties agreed that the issue of any support arrearage that accrued prior to the date of the November 2022 Agreement was going to be addressed at the final hearing in the paternity matter.

[2] On Grandmother's motion, the paternity matter was consolidated with the adoption proceeding.

answer about whether he was, in fact, Child's biological father. As of the date of the hearing, Father had paid $4,752 in support and had unsuccessfully asked Mother for additional parenting time with Child.

[10] Mother testified that, after their text exchange in early June 2017, Father blocked her on his phone and social media, such that she had no communication with him after that time. She also stated that, contrary to Father's suggestion, she had not been involved with any other individuals at the time she became pregnant with Child.

[11] The parties submitted proposed findings and conclusions, and the trial court thereafter issued an order on May 29, 2023, finding that Father's consent was required and denying Grandmother's petition to adopt Child. In reaching that decision, the court observed:

> 5. Effectively, the dispute between the parties comes down to when the duty to provide support and the right of communication came into existence. [Grandmother] asserts that the time period under [the Consent Statute] commences at birth or at least when the putative father has information that he could be the Father, which in this case preceded birth. Father asserts that the time period under [the Consent Statute] commences to run upon establishment of paternity.

Appendix at 4-5. The trial court analyzed the language of the Consent Statute, as well as case law and treatises, and concluded:

> 14. [T]he common law would not recognize an obligation to provide support to a child until the paternity of the child is established. . . . [T]he support may be made retroactive to the

> date of establishment of paternity in recognition that the duty of support commences at birth, but the obligation does not come into existence until the determination of paternity.
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> 15. Here, paternity was established upon the Court Entry of November 28, 2022. A current child support obligation was created. . . .
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> 16. The Court would then determine that the time period under [the Consent Statute] could not commence to run until paternity was established.

Id. at 6-7. Because Father had not failed to significantly communicate with Child or provide financial support of Child for a period one year after Father's paternity was established, the court determined that Father's consent was required and denied Grandmother's petition to adopt. Grandmother now appeals.

Discussion & Decision

[12] 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. *Matter of Adoption of I.B.*, 163 N.E.3d 270, 274 (Ind. 2021). I.C. § 31-19-9-1(a)(2) provides, in part, that a petition to adopt a child who is less than eighteen years of age may be granted "only if written consent to adoption has been executed by ... [t]he mother of a child born out of wedlock and the father of a child whose paternity has been established[.]" "[U]nder carefully enumerated circumstances," however, the adoption statutes allow the trial court to dispense with parental consent and allow adoption of the

child. *In re Adoption of C.W.*, 202 N.E.3d 492, 495 (Ind. Ct. App. 2023) (quoting *I.B.*, 163 N.E.3d at 274).

[13] These circumstances are set forth in the Consent Statute, which provides, as is relevant here, that a natural parent's consent is not required if, for at least one 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[3] or judicial decree.

I.C. § 31-19-9-8(a)(2)(A), (B). The provisions are written in the disjunctive, and each one provides independent grounds for dispensing with parental consent. *In re Adoption of S.W.*, 979 N.E.2d 633, 640 (Ind. Ct. App. 2012). Our Supreme Court has observed that what constitutes a parent's failure to maintain a meaningful relationship or failure to financially support a child "is a fact-intensive inquiry." *I.B.*, 163 N.E.3d at 276. The petitioner for adoption carries the burden of proving that the natural parent's consent is unnecessary. I.C. § 31-19-10-1.2(a). The party bearing this burden must prove his or her case by

[3] Indiana common law imposes a duty upon a parent to support his children apart from any court order or statute. *In re Adoption of M.A.S.*, 815 N.E.2d 216, 220 (Ind. Ct. App. 2004); *see also Irvin v. Hood*, 712 N.E.2d 1012, 1014 (Ind. Ct. App. 1999) ("Irvin's failure to provide support for a child whom he acknowledged as his own establishes that he has failed to support his child 'as required by law or judicial decree.'").

clear and convincing evidence. I.C. § 31-19-10-0.5; *In re Adoption of M.B.*, 944 N.E.2d 73, 77 (Ind. Ct. App. 2011).

[14] Here, the trial court's decision that the one-year period "could not commence to run until paternity was established" was based on an analysis of the specific language used in the Consent Statute. *Appendix* at 7. Statutory interpretation is a matter of law that we review de novo. *Matter of Paternity of M.A.M.*, 137 N.E.3d 1019, 1021 (Ind. Ct. App. 2019), *trans. denied*; *In re Adoption of B.R.*, 877 N.E.2d 217, 218 (Ind. Ct. App. 2007).

[15] Grandmother argues, and we agree, that the trial court committed reversible error when it determined that the one-year period under the Consent Statute cannot begin to run until a father's paternity is established. As pointed out by Grandmother, this interpretation is inconsistent with Indiana law. For instance, in *In re Adoption of T.H.*, 677 N.E.2d 605 (Ind. Ct. App. 1997), where a trial court dispensed with the father's (Hudson) consent based on a finding that he had failed to communicate with his son for at least a year, this court rejected Hudson's claim on appeal that the trial court erred when it considered a period of time before his paternity had been established.

[16] In that case, Hudson and T.H.'s mother, Jones, had sex once or twice in the summer of 1991, and in September, she told him she was pregnant. Hudson had doubts that he was the father as Jones had informed him that she had slept with someone else that summer. The two rarely spoke after a meeting they had in November, although Jones called Hudson's parents when T.H. was born in

May 1992. After T.H. was placed in foster care, Hudson filed a petition to establish paternity in August 1993.

[17] After some confusion regarding genetic testing dates, and because Jones regained custody of T.H., Hudson dismissed his petition to establish paternity, although he eventually filed a petition again in June 1995, and his paternity was established in February 1996. In March 1996, individuals who had guardianship of T.H. filed a petition to adopt. At the hearing, Hudson admitted that he had seen T.H. on four occasions, all in 1996. The trial court determined that from August 1993 to the beginning of 1996, Hudson never saw T.H. and thus his consent was not necessary under the Consent Statute for failure to communicate with T.H. for a period of one year.

[18] On appeal, Hudson argued that, as a matter of law, the one-year period under the Consent Statute could not begin to run until his paternity had been established. This court rejected his argument, making the following observations:

> While we recognize the attractiveness of Hudson's argument, i.e. it is unfair to take away the child of someone who never even knew he had a child, we note that the statute cures such problems. If Hudson had no idea he had fathered a child, that would be "justifiable cause" for not communicating under the statute. In fact, in this case, Hudson expressed serious doubts about being T.H.'s father. These doubts may have explained [his] lack of involvement in T.H.'s welfare, but when Hudson filed a paternity action in August of 1993, he evidenced a belief in a distinct possibility that T.H. was his son.

Id. at 607. Finding that Hudson had failed without justifiable cause to communicate with T.H. for over two years after he filed his petition to establish paternity in August 1993, we affirmed the trial court's determination that his consent was not required.

[19] Acknowledging *T.H.*, Father concedes that the trial court's reading of the Consent Statute is "not in accord with established precedent" but asks us to nevertheless affirm the trial court's decision to require his consent under the facts of this case and pursuant to the deference we accord to trial courts in family law matters.[4] *See Appellee's Brief* at 6. However, that deference is reserved for review of a trial court's factual determinations, and here the court's decision regarding consent was not based on factual determinations but rather, was based on its interpretation of the Consent Statute to which we owe no deference. Furthermore, contrary to Father's invitation, it is not our role to independently determine whether the facts of the case establish that Father's consent was required.

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[4] It is well established that

> [w]e 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. 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. And we will not disturb that decision unless the evidence leads to but one conclusion and the trial judge reached an opposite conclusion. We will not reweigh evidence or assess the credibility of witnesses. Rather, we examine the evidence in the light most favorable to the trial court's decision.

I.B., 163 N.E.3d at 274 (citations and quotations omitted).

[20] Finding that the trial court's decision was based on an erroneous reading of the Consent Statute, we reverse the trial court's judgment denying Grandmother's petition to adopt. We remand to the trial court with instructions to enter factual findings as to whether, based on the facts and circumstances before it, Grandmother proved by clear and convincing evidence that Father (1) failed without justifiable cause to communicate with Child when able to do so, or (2) knowingly failed to provide for Child's care and support when able to do so as required by law.[5] If the court determines that Father's consent was not required, it shall thereafter proceed to determine whether adoption is in Child's best interests. *See* I.C. § 31-19-11-1(a)(1) (requiring trial court to determine whether adoption is in the best interest of the child before granting petition for adoption).

[21] Judgment reversed and remanded.

Weissmann, J. and Kenworthy, J., concur.

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[5] We note that, while we reject the court's decision that the one-year period could not commence until Father's paternity was established, we likewise disagree with Grandmother's argument that, because the duty to support a child exists apart from any order or statute, the one-year period under the Consent Statute necessarily "started on the day [Child] was born[.]" *Appellant's Brief* at 15. Implicit in the *T.H.* decision is that there is no such brightline rule and that the Consent Statute requires examination of the facts of each case. 677 N.E.2d at 607 (where child was born in May 1992 but father had reason to doubt it was his, and, in considering the issue of whether he failed to communicate with child for one year as provided in the consent statute, appellate court examined the period between when father filed his petition to establish paternity in August 1993 and the date that the petition to adopt was filed in March 1996).

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