

## MEMORANDUM DECISION

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IN THE  
**Court of Appeals of Indiana**

In re the Adoption of Z.S.

U.M.,

*Appellant-Respondent*

v.

B.M. and K.T.,

*Appellees-Petitioners*

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March 12, 2024

Court of Appeals Case No.  
23A-AD-2375

Appeal from the Hamilton Superior Court  
The Honorable Jonathan M. Brown, Judge

Trial Court Cause No.  
29D02-2010-AD-1674

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**Memorandum Decision by Judge Vaidik**  
Judges May and Kenworthy concur.

**Vaidik, Judge.**

## Case Summary

- [1] Z.S.'s foster parents petitioned to adopt him, and the trial court granted the petition. Z.S.'s biological father now appeals. Finding no error, we affirm.

## Facts and Procedural History

- [2] Z.S. ("Child") was born in June 2018 to U.M. ("Biological Father") and C.S. ("Biological Mother") (together, "Biological Parents"). Child was born with drugs in his system and shortly thereafter was found to be a child in need of services (CHINS). Biological Father has a history of drug dealing, and in March 2019, with the CHINS case ongoing, he was charged with several drug and gun offenses. He pled guilty to Level 4 felony possession of cocaine and was imprisoned until early 2022.
- [3] In July 2019, B.M. ("Adoptive Father") and K.T. ("Adoptive Mother") (together, "Adoptive Parents") became Child's foster parents. They petitioned to adopt Child in October 2020 and amended the petition in July 2022. Biological Mother consented to the adoption, and Adoptive Parents alleged that Biological Father's consent was not required under Indiana Code section 31-19-9-8.
- [4] Biological Father moved to contest the adoption. He also moved for appointed counsel, which the trial court granted. In a deposition, Biological Father testified he didn't know exactly how many children he has ("I just stopped

counting at 13.”), didn’t know the names of all his children, has never had custody of any of his children, and isn’t a real father to his children. Appellant’s App. Vol. II p. 30. He added that health issues make him unable to care for Child. He also explained why he had become a drug dealer:

I mean, it’s fast money, so, I mean -- I put it this way: Me, as an adult, had the right upbringing. I just chose to deal drugs. It was just better than working, at the time, for me, because I had to pay child support. Me working they taking my check. So tax time come, I know I’m not getting ready to have no money. So I got tired of that, so I start dealing drugs.

*Id.* at 31.

[5] The trial court held a hearing on the issue of Biological Father’s consent. Biological Father didn’t attend the hearing, but a transcript of his deposition was admitted into evidence. In March 2023, the court issued an order concluding that Biological Father’s consent is not required because (1) he is unfit to be a parent, (2) he failed to provide support for Child, and (3) dispensing with his consent is in Child’s best interests. The court declared its order immediately appealable under Trial Rule 54(B), but Biological Father didn’t appeal.

[6] Around the same time, the Department of Child Services (DCS) substantiated a report that Adoptive Mother had abused Child’s older half-brother, H.M., who had already been adopted by Adoptive Parents. The trial court held a hearing, and Adoptive Parents both vehemently denied any abuse and said the substantiation was being appealed. They explained that H.M. has serious

behavioral and mental-health issues, including reactive attachment disorder, and that he was injured when Adoptive Mother (a licensed behavioral therapist) was attempting to put him in a “safety hold” during a violent outburst. Tr. p. 34. They added that they have arranged various services for H.M., including residential treatment, and will continue to seek help for him. They testified that H.M. has a good relationship with Child and has never been aggressive toward him. A DCS attorney and Child’s guardian ad litem said they support Child’s placement with Adoptive Parents notwithstanding H.M.’s issues.

[7] After a final hearing, which neither Biological Father nor his attorney attended, the trial court issued an order granting the adoption and terminating the parental rights of Biological Parents. The court found, among other things, that Adoptive Parents “are of sufficient ability to rear the Child and to furnish the Child with suitable support and education” and that “[t]he adoption is in the best interests of the Child.” Appellant’s App. Vol. II p. 57.

[8] Biological Father now appeals.

## Discussion and Decision

[9] Biological Father contends that the evidence doesn’t support the trial court’s finding that the adoption is in Child’s best interests. Our Supreme Court has set forth the standard of review applicable to such issues:

In family law matters, we generally give considerable deference to the trial court’s decision 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. Accordingly, 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.

The trial court's findings and judgment will be set aside only if they are clearly erroneous. A judgment is clearly erroneous when there is no evidence supporting the findings or the findings fail to support the judgment. 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.

*In re Adoption of E.B.F.*, 93 N.E.3d 759, 762 (Ind. 2018) (cleaned up).

[10] Citing (1) H.M.'s behavioral issues and violent tendencies and (2) the substantiated report that Adoptive Mother abused H.M., Biological Father argues that "the record clearly demonstrates that it is not safe for [Child] to reside in [Adoptive Parents'] home." Appellant's Br. p. 11. This is merely a request for us to reweigh the evidence. Adoptive Parents testified at length about H.M.'s behavioral issues. They explained that the abuse report arose from Adoptive Mother putting H.M. in a "safety hold" when he was acting aggressively, that the substantiation is being appealed, and that they have arranged various services for H.M. and will continue to do so. They also testified that H.M. is close with Child and has never been violent with him. Consistent with this testimony, DCS's attorney and Child's guardian ad litem expressed no concerns about Child's safety in Adoptive Parents' home. Biological Father hasn't demonstrated that the trial court's best-interests finding was clearly erroneous.

[11] Biological Father purports to make a second argument—that the trial court “erred in failing to make findings that termination of [his] parental rights was in [Child’s] best interest.” Appellant’s Br. p. 10. He doesn’t cite any authority requiring an adoption court to separately find that (1) adoption is in the child’s best interests and (2) termination of the biological parents’ rights is in the child’s best interests. In any event, in its March 2023 order—which Biological Father didn’t appeal—the trial court found that Biological Father is unfit to be a parent and that dispensing with his consent is in Child’s best interests. This was, in effect, a finding that termination of Biological Father’s parental rights is in Child’s best interests.

[12] Affirmed.

May, J., and Kenworthy, J., concur.

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