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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE MATTER OF J.A.R.	)	
	)	
KAREN REYNOLDS,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 29A02-0706-CV-505
	)	
KIMBERLY and RAJ LOHANI,	)	
	)	
Appellee.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Steven R. Nation, Judge
Cause No. 29D01-0605-AD-762

December 20, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Karen Reynolds appeals the trial court's grant of an adoption petition filed by Kimberly and Raj Lohani (the "Lohanis") regarding Reynolds's son, J.A.R. Reynolds raises one issue, which we restate as whether the trial court's order granting the Lohanis' adoption petition is clearly erroneous. We affirm.[1]

The relevant facts follow. J.A.R. was born to Reynolds on August 25, 2001, in Georgia. Reynolds also has an older child, who was raised by Reynolds's mother, Juanita Wiggs. Following J.A.R.'s birth, he lived with Wiggs in Atlanta, Georgia. Kimberly Lohani is Reynolds's sister. Because Reynolds could not care for J.A.R., the Lohanis began caring for J.A.R. in October 2001. The arrangement between Kimberly and Reynolds was that Kimberly would act as J.A.R.'s mother and Reynolds would act as his aunt.

The Lohanis originally lived in New Jersey but moved to Indiana in May 2002. J.A.R. occasionally visited Wiggs and Reynolds in Atlanta. However, Reynolds never provided any financial support to the Lohanis for J.A.R.'s care. J.A.R. has been diagnosed with attention deficit and hyperactivity disorder, and the Lohanis have arranged a significant amount of therapy and treatment for J.A.R.

In late-2004, Reynolds was angry, came to Indiana, and took J.A.R. from the Lohanis. However, she soon returned J.A.R. to the Lohanis because "[s]he couldn't

[1] We direct Reynolds's attention to Ind. Appellate Rule 46(A)(10), which requires an appellant's brief to "include any written opinion, memorandum of decision or findings of fact and conclusions thereon relating to the issues raised on appeal."

handle him." Transcript at 28. At that time, Reynolds consented to the Lohanis having guardianship. A guardianship was established in December 2005.

In December 2005, at a family Christmas gathering in Atlanta, Reynolds became extremely angry that J.A.R. did not want to spend the night with her and, ultimately, the police were called to remove her from the house. In January 2006, Reynolds filed a petition to terminate the guardianship. After a hearing, the trial court denied Reynolds's petition to terminate the guardianship.

Reynolds then filed a petition for visitation. In a separate cause, the Lohanis filed a petition to adopt J.A.R. in May 2006. The Lohanis alleged that Reynolds's consent was not required pursuant to Ind. Code § 31-19-9-8. Reynolds filed a letter, which the trial court interpreted as a motion to contest the adoption.

The trial court held a consolidated hearing regarding the two causes. After the hearings, the trial court issued the following findings of fact and conclusions thereon:

> 1. That [J.A.R.], the prospective adoptive male child, was born out of wedlock in Clayton County, Georgia, on August 25, 2001, and is currently five (5) years old. . . .
> 2. That Karen Rochelle Reynolds is the biological mother of the prospective adoptive child, and she resides in Jonesboro, Georgia.
> 3. That Douglas Showers is the biological father of the prospective adoptive child but formal paternity of the child was never established in a court proceeding. The Court also takes judicial notice of Douglas Showers' WAIVER OF NOTICE AND CONSENT OF BIOLOGICAL FATHER FOR ADOPTION OF HIS MINOR CHILD filed June 19, 2006, and of the ORDER of November 17, 2006 denying Douglas Showers' request to withdraw such Waiver and Consent.
> 4. That the Petitioners are Kimberly Reynolds-Lohani and Raj Lohani, the child's aunt and uncle. The Petitioners currently reside in Fishers, Indiana, with the child and currently serve as his legal Co-Guardians.

5. That the Court will take judicial notice of its ORDER dated May 11, 2006 (hearing held March 22, 2006) regarding the Guardianship of [J.A.R.] . . . which was consolidated for hearing purposes with this cause. [Reynolds] and [the Lohanis], having previously presented evidence concerning the custody, care and support of [J.A.R.], and the Court having entered an ORDER concerning such matters, the Court does now confirm its ORDER of May 11, 2006. Finally, the Court does now note that such ORDER and its findings were not appealed by [Reynolds].
6. That [Reynolds's] motion to contest should be denied for the reason that the consent of the biological mother [Reynolds] is not required pursuant to I.C. 31-19-9-8, because [Reynolds] has:
    a) abandoned or deserted [J.A.R.] on or about October 15, 2001, which is at least six (6) months immediately preceding the filing of the PETITION FOR ADOPTION;
    b) failed, without justifiable cause, to communicate significantly with [J.A.R.] while able to do so for over one year prior to the filing of the PETITION FOR ADOPTION. Only after such PETITION was filed, and under direction of counsel, did [Reynolds] begin to request to communicate with [J.A.R.].
    c) knowingly failed to provide anything for the care and support of [J.A.R.]. [Reynolds] by her own admission, states that she has never paid anything in the way of support for [J.A.R.].
7. That [Reynolds] has been employed by Delta Airlines for the past two years and was capable of having paid support for [J.A.R.] and, with her travel benefits, to have visited the child during this time.
8. That [Reynolds] does not have the bond with [J.A.R.] as do the [Lohanis], and has not and will not provide for the support and care of the child as would be required in his best interests.
9. That the Court further finds that it is in the best interests of [J.A.R.] to be adopted by the [Lohanis]. [J.A.R.] has lived with the [Lohanis] on a full time basis since October 15, 2001, soon after his birth. The [Lohanis] have continually loved and cared for [J.A.R.]. The emotional attachment between [J.A.R.] and the [Lohanis] is substantial, with the [Lohanis] being the only parents the child has known. The [Lohanis] have provided a loving home, with financial and emotional support and stability, along with appropriate medical care and educational development. The [Lohanis] have provided and are providing [J.A.R.] with appropriate medical care for his developmental delays and diagnosis of ADHD. [J.A.R.] is emotionally attached to the [Lohanis], is well established in this community, and is enrolled in and has attended school here in Indiana.

> 10. That the [Lohanis] have sustained their burden by clear and convincing evidence, and judgment should be entered for the [Lohanis] on the issue of whether the consent of [Reynolds] is required and whether it would be in the child's best interests to grant such adoption. Further, the Court finds that in the instances where the Court could not reconcile the testimony presented in this cause, the Court accepts the testimony of [the Lohanis] and Juanita Wiggs, the child's grandmother, because such testimony was consistent with the evidence presented in this cause and also consistent with the Court's findings in the Guardianship cause.
>
> IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that [Reynolds's] motion to contest is hereby denied in that her consent to adoption is not required, pursuant to I.C. 31-19-9-8, based on the above-stated findings.
>
> IT IS FINALLY ORDERED, ADJUDGED AND DECREED that it would be in the best interests of [J.A.R.] to grant the adoption to the [Lohanis] based on the above-stated facts.

Appellant's Appendix at 39-42.

The issue on appeal is whether the trial court's order granting the Lohanis' adoption petition is clearly erroneous. When reviewing a trial court's ruling in an adoption proceeding, we will not disturb that ruling unless the evidence leads to but one conclusion and the trial judge reached an opposite conclusion. Rust v. Lawson, 714 N.E.2d 769, 771 (Ind. Ct. App. 1999), trans. denied. We will not reweigh the evidence but instead will examine the evidence most favorable to the trial court's decision together with reasonable inferences drawn therefrom to determine whether sufficient evidence exists to sustain the decision. Id. The decision of the trial court is presumed to be correct, and it is the appellant's burden to overcome that presumption. Id.

Additionally, the trial court entered findings of fact and conclusions thereon pursuant to Ind. Trial Rule 52(A). We may not set aside the findings or judgment unless

they are clearly erroneous. Menard, Inc. v. Dage-MTI, Inc., 726 N.E.2d 1206, 1210 (Ind. 2000), reh'g denied. In our review, we first consider whether the evidence supports the factual findings. Id. Second, we consider whether the findings support the judgment. Id. "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996). A judgment is clearly erroneous if it relies on an incorrect legal standard. Menard, 726 N.E.2d at 1210. We give due regard to the trial court's ability to assess the credibility of witnesses. Id. While we defer substantially to findings of fact, we do not do so to conclusions of law. Id. We do not reweigh the evidence; rather we consider the evidence most favorable to the judgment with all reasonable inferences drawn in favor of the judgment. Yoon v. Yoon, 711 N.E.2d 1265, 1268 (Ind. 1999).

A. Consent to the Adoption.

Reynolds first argues that the trial court erred by concluding that her consent to the adoption was not necessary. Ind. Code § 31-19-11-1 provides that the trial court "shall grant the petition for adoption and enter an adoption decree" if the court hears evidence and finds, in part, that "proper consent, if consent is necessary, to the adoption has been given." According to Ind. Code § 31-19-9-8:

> (a) Consent to adoption, which may be required under section 1 of this chapter, is not required from any of the following:
>
> (1) A parent or parents if the child is adjudged to have been abandoned or deserted for at least six (6) months immediately preceding the date of the filing of the petition for adoption.
> (2) 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.
>
> * * * * *
>
> (b) If a parent has made only token efforts to support or to communicate with the child the court may declare the child abandoned by the parent.

The Lohanis had the "burden of proving that the parent's consent to the adoption [was] unnecessary." Ind. Code § 31-19-10-1.2(a). They were required to meet this burden by proving by clear and convincing evidence that Reynolds's consent was not required under Ind. Code § 31-19-9-8(a). In re M.A.S., 815 N.E.2d 216, 220 (Ind. Ct. App. 2004).

The trial court found that Reynolds had: (1) abandoned or deserted J.A.R. on or about October 15, 2001; (2) failed, for a period of at least one year, without justifiable cause to communicate significantly with J.A.R. when able to do so; and (3) knowingly failed, for a period of at least one year, to provide for the care and support of J.A.R. when able to do so. Reynolds challenges each of these conclusions. Specifically, Reynolds argues that she made attempts to communicate with J.A.R. during the six-month period prior to the adoption petition beginning in December 2005 but that the Lohanis denied her visitation attempts and telephone communication with J.A.R. Reynolds also argues that she provided support by providing health insurance for J.A.R. through the State of Georgia and that she was unemployed for significant periods of time. Because we can resolve this issue based upon Reynolds's failure to provide support, we need not address the trial court's findings on abandonment and failure to communicate significantly for a

period of one year. See, e.g., In re T.W., 859 N.E.2d 1215, 1218 (Ind. Ct. App. 2006) (holding that the provisions of Ind. Code § 31-19-9-8 "are disjunctive; as such, either provides independent grounds for dispensing with parental consent").

Ind. Code § 31-19-9-8(a)(2)(B) provides that a parent's consent to adoption is not required when, for a period of one year, the parent "knowingly fails to provide for the care and support of the child when able to do so as required by law or judicial decree." This duty exists apart from any court order or statute. In re M.A.S., 815 N.E.2d 216, 220 (Ind. Ct. App. 2004). On this issue, the trial court found that Reynolds had, by her own admission, not paid anything in the way of support for J.A.R. and that Reynolds was capable of providing support as she had been employed by Delta Airlines for the prior two years.

The evidence indicates that the Lohanis began caring for J.A.R. in October 2001. Reynolds admitted that she did not provide any money, clothing, or "anything else" to the Lohanis for J.A.R.'s care. Transcript at 205. However, she contends that she provided health insurance for him. She testified that J.A.R. was insured through Peach Care in Georgia until December 2004. She obtained that insurance without cost through Medicaid. Reynolds testified that she has been employed with Delta Airlines for two years. Reynolds contends that J.A.R. was insured between December 2004 and August 2006, through her employer at a cost of $88 per month. However, Kimberly testified that they had insured J.A.R. with Anthem Blue Cross health insurance since May 2002. Prior to May 2002, they either directly paid for any medical care in New Jersey or used the Peach Care when visiting Georgia.

To the extent that there is a conflict between Reynolds's testimony and Kimberly's testimony regarding the provision of health insurance, the trial court specifically found Kimberly to be a more credible witness. In arguing that she provided support to J.A.R. by way of health insurance, Reynolds is simply requesting that we reweigh the evidence and judge the credibility of the witnesses, which we cannot do. The evidence most favorable to the trial court's findings indicates that Reynolds did not provide any support to J.A.R. for a period exceeding one year despite her ability to do so. We cannot say that this finding is clearly erroneous. See, e.g., In re A.K.S., 713 N.E.2d 896, 899 (Ind. Ct. App. 1999) (holding that the evidence supported the finding of the trial court that the father knowingly failed to provide support for the child for over one year when he was required to do so by law), reh'g denied, trans. denied.

Because Reynolds, for a period of one year, knowingly failed to provide for the care and support of J.A.R. when able to do so as required by law or judicial decree, her consent to the adoption was not required. See Ind. Code § 31-19-9-8(a)(2)(B). The trial court's conclusion that Reynolds's consent to adopt was not required is not clearly erroneous. See, e.g., A.K.S., 713 N.E.2d at 899 (holding that the father's consent to adoption was not required due to his failure to provide support for over one year).

B. Best Interest.

Reynolds also argues that the trial court erred by concluding that the adoption was in J.A.R.'s best interests. Ind. Code § 31-19-11-1 provides that the trial court "shall grant the petition for adoption and enter an adoption decree" if the court hears evidence and

finds, in part, that "the adoption requested is in the best interest of the child." On this issue, the trial court found:

> [I]t is in the best interests of [J.A.R.] to be adopted by the [Lohanis]. [J.A.R.] has lived with the [Lohanis] on a full time basis since October 15, 2001, soon after his birth. The [Lohanis] have continually loved and cared for [J.A.R.]. The emotional attachment between [J.A.R.] and the [Lohanis] is substantial, with the [Lohanis] being the only parents the child has known. The [Lohanis] have provided a loving home, with financial and emotional support and stability, along with appropriate medical care and educational development. The [Lohanis] have provided and are providing [J.A.R.] with appropriate medical care for his developmental delays and diagnosis of ADHD. [J.A.R.] is emotionally attached to the [Lohanis], is well established in this community, and is enrolled in and has attended school here in Indiana.

Appellant's Appendix at 41-42.

Reynolds contends that the trial court granted the adoption because the Lohanis can provide "better things in life." Appellant's Brief at 13. Reynolds also contends that she did not intend the Lohanis' guardianship to be permanent and that the Lohanis inappropriately allow J.A.R. to call Kimberly "mommy."[2]

The evidence most favorable to the trial court's judgment indicates that Reynolds arranged for the Lohanis to care for J.A.R. after his birth in 2001 because she was unable to care for him. In fact, Reynolds's older son was raised by her mother, Wiggs. The Lohanis are the only parents that J.A.R. has known. Reynolds attempted to take J.A.R.

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[2] Reynolds also contends that the trial court's findings are "generalized" and are not adequate to support its judgment. Appellant's Brief at 16 (citing In re B.H., 770 N.E.2d 283, 287 (Ind. 2002) ("A generalized finding that a placement other than with the natural parent is in a child's best interests, however, will not be adequate to support such determination, and detailed and specific findings are required."')). We conclude that the trial court's findings are sufficiently detailed and specific to support its conclusions.

from the Lohanis in late-2004, but returned him soon thereafter because she was unable to "handle" him. Transcript at 28.

Kimberly and Wiggs both testified regarding Reynolds's anger issues. Wiggs testified that Reynolds "has a terrible temper." Id. at 167. The police were called to a family Christmas gathering in 2005 because Reynolds was angry that J.A.R. did not want to spend the night with her. Reynolds has repeatedly threatened family members. She has threatened to kill Kimberly, she told Wiggs that, "if she had a gun, she would shoot [her] and kill [her]," and she made similar threats to her older son and Wiggs's sister. Id.

Wiggs believes that, if J.A.R. was returned to Reynolds, Reynolds would leave J.A.R. with her, and she did not want to raise another child at her age. Wiggs testified that it was in J.A.R.'s best interest to remain with the Lohanis. Under these circumstances, we cannot say that the trial court's finding regarding J.A.R.'s best interest is clearly erroneous. See, e.g., In re R.L.R., 784 N.E.2d 964, 970 (Ind. Ct. App. 2003) (holding that adoption by the child's stepmother was in the child's best interest). Consequently, we conclude that the trial court's grant of the Lohanis' petition to adopt J.A.R. is not clearly erroneous.

For the foregoing reasons, we affirm the trial court's grant of the Lohanis' petition to adopt J.A.R.

Affirmed.

BARNES, J. and VAIDIK, J. concur