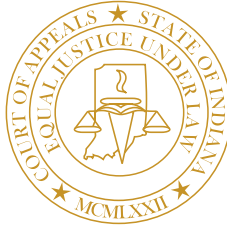


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

C.C.,

Appellant-Respondent

v.

A.F. and M.F.,

Appellees-Petitioners



October 3, 2025

Court of Appeals Case No.
25A-AD-954

Appeal from the Lawrence Circuit Court
The Honorable Stephen R. Galvin, Senior Judge
Trial Court Cause No.
47C01-2405-AD-24

Memorandum Decision by Judge Tavitas
Judges Bailey and Kenworthy concur.

Tavitas, Judge.

Case Summary

- [1] C.C. (“Mother”) appeals the trial court’s order granting the petition of A.F. (“Aunt”) and M.F. (“Uncle”) to adopt Mother’s biological child, J.R. (“Child”). The trial court found that Mother’s consent to the adoption was not required, and Mother challenges that finding. We conclude that the trial court’s finding is not clearly erroneous, and Mother’s consent to the adoption was not required. Accordingly, we affirm.

Issue

- [2] Mother raises one issue, which we restate as whether the trial court’s finding that Mother’s consent was unnecessary is clearly erroneous.

Facts

- [3] Mother has three sisters—Aunt, M.C., and K.C. Mother gave birth to E.R. in approximately 2020; and M.C. gained custody of E.R. in 2020 due to Mother’s mental health. Mother attempted suicide in 2020, was hospitalized, and was diagnosed with depression and PTSD.
- [4] Mother then gave birth to Child in May 2021.¹ The Illinois Department of Children and Family Services became involved with Mother and Child. Child

¹ Mother is unaware of the location of the putative father, I.R.

then lived with his maternal grandmother from January 2022 until February 2022 and with M.C. until March 2022. M.C., however, was unable to care for Child. In March 2022, Aunt and Uncle agreed to care for Child. In April 2022, Aunt and Uncle were appointed legal guardians of Child, and Mother consented to the guardianship.

[5] After Child was placed with Aunt and Uncle, Mother visited with Child only four times in April 2022, May 2022, March 2023, and July 2023. Aunt and Uncle would not leave Child alone with Mother during the visits because they “did not feel that it was safe to leave him alone with her.” Tr. Vol. II p. 72. Aunt and Uncle did not move or change their phone numbers. Mother often moved and sometimes changed her phone number but could communicate with Aunt through Facebook and Snapchat. Mother messaged Aunt in May 2024 with a happy birthday message for Child. Mother did not give Aunt and Uncle financial assistance to care for Child, and Aunt did not ask for financial assistance.

[6] On May 31, 2024, Aunt and Uncle filed a petition to adopt Child and alleged that Mother’s consent to the adoption was unnecessary pursuant to Indiana Code Section 31-19-9-8. Despite hiring a private investigator to locate Mother, Aunt and Uncle were unsuccessful in locating Mother in order to serve her with the petition. On July 11, 2024, their counsel emailed Mother, and Mother responded that her attorney would contact Aunt’s and Uncle’s counsel. Mother did not give an updated address thereafter. Aunt and Uncle served Mother by publication.

- [7] In October 2024, Aunt and Uncle filed a motion for summary judgment, which the trial court granted. In November 2024, Mother filed an objection to the adoption. The trial court set aside the October 2024 summary judgment due to inadequate service, appointed counsel for Mother, and set the matter for a hearing.
- [8] The trial court held a contested adoption hearing in March 2025. Mother testified regarding her alcohol abuse and that she could drink a bottle of Crown Royal per day. Mother further admitted that she had been “a bad pot head.” Tr. Vol. II p. 51. Mother has never received treatment for her alcohol issues. Mother claimed that she last drank alcohol “[a]bout three weeks ago.” *Id.* at 50.
- [9] The trial court then entered findings of fact and conclusions thereon, found that Mother’s consent to the adoption was not required, and granted the adoption petition. Regarding Mother’s consent, the trial court found:

3. [Mother] has only seen [Child] four times since she placed the child with [Aunt and Uncle] on March 16, 2022. She last saw [Child] on July 26, 2023. Her visits with [Child] have only been for a few hours. They are always supervised by [Aunt and Uncle]. [Mother] has no justification for failing to maintain contact with her son. Although she cites transportation problems, she also testified that she has a vehicle and has been regularly employed. [Mother] has obviously elected not to make [Child] a priority in her life. [Mother’s] contact with [Child] has been so infrequent that the child would not recognize her if he met her today.

4. [Mother] testified that [Aunt and Uncle] were not always available when she wished to visit with [Child]. [Aunt] testified that they arranged for [Mother] to visit each time she asked. [Aunt] is a reliable witness. There is no credible evidence that [Aunt and Uncle] denied [Mother] contact with [Child].

5. Clearly, [Mother] has failed without justifiable cause to communicate significantly with [Child] when able to do so for a period of at least one year.

6. Further, it is undisputed [Mother] has never paid support or provided funds for [Child's] care. [Mother] has been employed, at least intermittently, for the last four years. [Mother] currently resides with her mother. [Mother] has utilized her funds to purchase alcohol and marijuana, not for [Child's] support. For more than one year, [Mother] has knowingly failed to provide for the care and support of [Child] when able to do so as required by law or judicial decree.

7. Finally, it is clear that [Mother] has made only token efforts to support and communicate with [Child]. She has effectively abandoned the child.

Appellant's App. Vol. II pp. 14-15. Mother now appeals.

Discussion and Decision

[10] Mother appeals the trial court's decision that her consent to the adoption was not required. Our Supreme Court has explained that appellate courts should "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.’” *In re Adoption of I.B.*, 163 N.E.3d 270, 274 (Ind. 2021) (quoting *E.B.F. v. D.F.*, 93 N.E.3d 759, 762 (Ind. 2018)). “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.* (quoting *E.B.F.*, 93 N.E.3d at 762). “[W]e will not disturb that decision ‘unless the evidence leads to but one conclusion and the trial judge reached an opposite conclusion.’” *Id.* (quoting *In re Adoption of T.L.*, 4 N.E.3d 658, 662 (Ind. 2014)).

[11] In an adoption case, a trial court’s findings and judgment will be set aside only if they are clearly erroneous. *E.B.F.*, 93 N.E.3d at 762. “A judgment is clearly erroneous when there is no evidence supporting the findings or the findings fail to support the judgment.” *Id.* On appeal, we will neither reweigh evidence nor assess the credibility of witnesses; instead, we consider the evidence in the light most favorable to the trial court’s decision. *I.B.*, 163 N.E.3d at 274 (citing *T.L.*, 4 N.E.3d at 662).

[12] Mother argues that the trial court clearly erred in concluding that Mother’s consent to the adoption was not required. “In general, ‘a petition to adopt a child who is less than eighteen (18) 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’” *In re Adoption of C.W.*, 202 N.E.3d 492, 495 (Ind. Ct. App. 2023) (citing Ind. Code § 31-19-9-1(a)(2)). “[U]nder carefully enumerated circumstances,’ however, the adoption statutes allow ‘the trial court to dispense

with parental consent and allow adoption of the child.’’ *Id.* (quoting *I.B.*, 163 N.E.3d at 274).

[13] Indiana Code Section 31-19-9-8(a) provides in relevant part:

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.

Our courts have long held that a natural parent enjoys special protection in adoption proceedings. *C.W.*, 202 N.E.3d at 495 (citing *I.B.*, 163 N.E.3d at 274). Accordingly, we strictly construe our adoption statutes to preserve the fundamentally important parent-child relationship. *Id.*

[14] Here, the trial court found that Mother’s consent was not required because: (1) Mother failed without justifiable cause to communicate significantly with Child for at least one year when able to do so; (2) Mother knowingly failed to provide

for the care and support of Child for at least one year when able to do so as required by law or judicial decree; and (3) Mother abandoned Child.

[15] We first address whether Mother knowingly failed to provide for the care and support of Child for at least one year when able to do so as required by law or judicial decree. It is well settled that parents have a common law duty to support their children, and this duty exists independently of any court order or statute. *In re Adoption of E.B.*, 163 N.E.3d 931, 936-37 (Ind. Ct. App. 2021) (quotation marks and citation omitted). The relevant time period “‘is *any year* in which the parent had an obligation and the ability to provide support, but failed to do so.’” *Id.* at 936 (quoting *In re Adoption of M.S.*, 10 N.E.3d 1272, 1279 (Ind. Ct. App. 2014)). “A petitioner for adoption must show that the noncustodial parent had the ability to make the payments that she failed to make.” *I.B.*, 163 N.E.3d at 277. “A court must look at the totality of the circumstances to determine the parent’s ability to pay, not just his or her income (or lack of income).” *Id.*

[16] Here, there is no dispute that Mother did not provide any support to Aunt and Uncle for Child between March 2022, when Child was placed with Aunt and Uncle, and May 2024, when Aunt and Uncle filed the adoption petition. Mother, however, argues that she did not have the ability to provide support for Child.

[17] The evidence demonstrated that Mother is employed as a dietary aide at a nursing home and makes either \$17 or \$18.50 per hour, depending on her shift.

Prior to this job, Mother worked as a cook in restaurants. Mother's tax returns for 2021, 2022, and 2023 were admitted at the hearing and show that Mother had income of \$10,033, \$15,338, and \$9,952 for those years, respectively.

Mother has a vehicle and a valid driver's license. Mother currently lives with her mother, but she has also lived with M.C. and Mother's boyfriend's family. Mother helps her mother pay the rent and electric bill. Mother also testified that she spends "probably about \$25" a week on alcohol and \$50 every three weeks on marijuana. Tr. Vol. II p. 51-52.

[18] Based on this evidence, the trial court found that, "[f]or more than one year, [Mother] has knowingly failed to provide for the care and support of [Child] when able to do so as required by law or judicial decree." Appellant's App. Vol. II p. 15. The trial court specifically noted that "[Mother] has utilized her funds to purchase alcohol and marijuana, not for [Child's] support." *Id.* We agree that the circumstances reflect that Mother had "an ability to pay at least a minimal amount of support." *I.B.*, 163 N.E.3d at 278. Given the evidence presented, we cannot say that the trial court's finding is clearly erroneous.

[19] Because the trial court's finding regarding Mother's failure to support Child is not clearly erroneous, Mother's consent to the adoption was not required. We, thus, need not address the trial court's additional findings that Mother failed to communicate significantly with Child and abandoned Child.

Conclusion

[20] The trial court's finding that Mother's consent to the adoption was not required is not clearly erroneous. Accordingly, we affirm.

[21] Affirmed.

Bailey, J., and Kenworthy, J., concur.

ATTORNEYS FOR APPELLANT

Nicholas J. Moll
Daniel A. Dixon
Lawrence County Public Defender Agency
Bedford, Indiana

ATTORNEYS FOR APPELLEES

Bryan L. Ciyou
Ciyou & Associates, P.C.
Indianapolis, Indiana

Anne M. Lowe
Fugate Gangstad Lowe, LLC
Carmel, Indiana