STATE OF INDIANA
COURT OF APPEALS

F A Appellant(s), v. A T Appellee(s).	Cause No. 23A-AD-03067

CERTIFICATION

STATE OF INDIANA)
) SS:
Court of Appeals)

I, Gregory R. Pachmayr, Clerk of the Supreme Court, Court of Appeals and Tax Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the Opinion of said Court in the above entitled case.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of THE CLERK of said Court, at the City of Indianapolis, this on this the 1st day of October, 2024.

Gregory R. Pachmayr,
Clerk of the Supreme Court

MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

F.A.,

Appellant-Respondent

v.

A.T.,

Appellee-Petitioner

June 4, 2024

Court of Appeals Case No.
23A-AD-3067

Appeal from the Bartholomew Superior Court

The Honorable Jonathan L. Rohde, Judge

Trial Court Cause No.
03D02-2306-AD-3256

Memorandum Decision by Judge Tavitas
Judges Crone and Bradford concur.

Tavitas, Judge.

Case Summary

[1] F.A. ("Father") appeals the trial court's order granting the petition of A.T. to adopt F.A.'s biological son, O.E. ("Son"). Father claims that the trial court clearly erred by concluding that Father's consent to the adoption was not required because Father, for a period of at least one year and without justifiable cause, failed to communicate significantly with Son when able to do so. Father also argues that the adoption was not in Son's best interest. We disagree and, accordingly, affirm.

Issues

[2] Father raises two issues, which we restate as:

I. Whether the trial court's finding that Father's consent was unnecessary is clearly erroneous.

II. Whether the trial court's finding that adoption was in Son's best interest is clearly erroneous.

Facts

[3] Son was born in March 2009 to Father and M.E. ("Mother"). A paternity action was initiated in Marion County in 2010. Father, by his own admission, has not seen Son since 2011. In the summer of 2011, Mother and Son moved to Columbus and lived with A.T., who is Mother's fiancé.

[4] In 2016, Father filed a motion to modify child support and a request for paternity testing, but Father later withdrew his request for paternity testing. In January 2017, the parties reached an agreement regarding child support. In March 2017, Father filed a petition to modify custody, visitation, and child support, but the trial court notified Father that his motion did not comply with filing requirements. No further filings were made in the paternity action until March 2023, when an attorney filed an appearance on behalf of Father but did not file any pleadings.

[5] On June 26, 2023, A.T. filed a petition to adopt fourteen-year-old Son, and Mother gave consent for the adoption. Father filed a motion to dismiss, which the trial court granted but allowed A.T. thirty days to amend the pleading. A.T. filed an amended petition and alleged that Father's consent to the adoption was unnecessary because Father "failed without justifiable cause to communicate significantly with the child when able to do so for a period of at least 1 year." Appellant's App. Vol. II p. 54.

[6] The trial court held a hearing on December 4, 2023. A social worker, who performed a home study for the adoption, testified that Son is very attached to A.T. and wants to be adopted. Father testified that he attempted to contact Son throughout the years but that Mother moved numerous times without providing Father with her new address. Father also claimed that he paid child support through Oklahoma. Father admitted that he has not seen Son since 2011, that he has not spoken with Son since 2015, and that he last mailed Son something in December 2017.

[7] Mother testified that she has lived at the same address for "7 1/2 to 8 years"; she was living at that address during the 2017 court proceedings; and Father was aware of that address. Tr. Vol. II p. 39. In fact, Father's attorney sent Mother a letter to her Columbus address in 2023. Father was also aware of maternal grandmother's address, which has not changed since 1998. Mother further testified she has had the same email address since high school, and Father knew the email address. According to Mother, Father has not seen Son since 2011, and Father has not sent any letters or gifts since 2011. Mother stopped attempting to obtain child support from Father when Son was approximately six or seven years old. Mother and A.T. have lived together for twelve years, and Son has a stable environment and a bond with A.T.

[8] The trial court concluded that Father's consent to the adoption was not required pursuant to Indiana Code Section 31-19-9-8(a)(2)(A) because Father "failed without justifiable cause to communicate significantly with [Son] for at least one (1) year when he was able to do so." Appellant's App. Vol. II p. 66. The trial court also found that it is in the best interest of [Son] to be adopted by [A.T.], and the parental rights of [Father] are terminated." *Id.* Father now appeals.

Discussion and Decision

[9] Father appeals the trial court's order concerning Son's adoption by A.T. 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)).

[10] 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).

I. Father's Consent Was Not Required

[11] Father first argues that the trial court clearly erred in concluding that Father'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 and the father of a child whose paternity has been established. . . .'" *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).

[12] At issue here is the circumstance enumerated in Indiana Code Section 31-19-9-8(a) which 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:
>
> * * * * *
>
> (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. . . .

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.*

[13] Father admits that he has not seen Son since 2011. Father claims that he spoke with Son in 2015 and that he last mailed Son something in December 2017, although Mother disputes these claims. Regardless, it is clear that Father failed to communicate with Son for much more than one year.

[14] Father, however, argues that he "was repeatedly thwarted in his attempts to communicate and support his child, due to factors beyond his control, such as Mother's relocation and lack of communication about Child's whereabouts." Appellant's Br. p. 10. "A custodial parent's efforts to thwart communication between the non-custodial parent and [his] child are relevant to determining the non-custodial parent's ability to communicate and should be weighted in the non-custodial parent's favor." *E.B.F.*, 93 N.E.3d at 766. A "determination on whether a petitioner's burden to prove non-custodial parent's failure to communicate is met is highly dependent upon the facts and circumstances of each particular case[.]" *Id.* at 764-65.

[15] Father testified that Mother moved often and that he was unable to locate her. Father also argued that financial hardship and the Covid-19 pandemic prevented him from obtaining court-ordered parenting time. In support of his argument, Father relies upon our Supreme Court's decision in *E.B.F.*, 93 N.E.3d 759, which we find distinguishable. There, the mother cared for the child for ten years before agreeing to give the father primary physical custody due to mother's substance abuse and the fact that she was in an abusive relationship. The mother did not have significant contact with the child for slightly over one year, and the child's stepmother filed a petition to adopt the child. The trial court found that the mother's consent was unnecessary and granted the petition for adoption. On appeal, our Supreme Court reversed and held:

> [T]he totality of the circumstances—Mother's struggles with addiction, her willingness to give up custody after ten years of caregiving, and her good-faith recovery efforts—justify Mother's failure to communicate with her child during that one-year period. We further find that Father and Stepmother's thwarting of Mother's occasional attempts to communicate with Child, in violation of the agreed-upon custody modification order, frustrated Mother's ability to communicate.

Id. at 767.

[16] Here, Mother disputed Father's contention that she thwarted communication between Father and Son. Mother testified that Father was aware of her address, maternal grandmother's address, and Mother's email address. According to Mother, Father had not contacted Son or sent letters or gifts to Son since 2011. Mother testified that she has lived at the same address for the last seven to eight years and that Father's attorney sent correspondence to her at that address in 2023.

[17] Father's argument is merely a request that we reweigh the evidence and judge the credibility of Mother and Father, which we cannot do. The trial court was within its discretion to believe Mother regarding Father's knowledge of Mother's and Son's location. Unlike in *E.B.F.*, Father pointed to no specific evidence that Mother thwarted his ability to communicate with Son or that his failure to communicate with Son was justified. A.T., thus, presented evidence to demonstrate that Father, for a period of at least one year, failed without justifiable cause to communicate significantly with Son when Father was able

to do so. Accordingly, we conclude that the trial court's finding that Father's consent is unnecessary is not clearly erroneous.

II. The Adoption is in the Child's Best Interest

[18] Next, Father argues that the trial court erred by finding that the adoption was in Son's best interest. Indiana Code Section 31-19-11-1(a)(1) provides that a court cannot grant an adoption petition unless it is in the child's best interests. Even if a trial court "determines that a natural parent's consent is not required for an adoption, the court must still determine whether adoption is in the child's best interests." *In re Adoption of O.R.*, 16 N.E.3d 965, 974 (Ind. 2014).

[19] Father argues that Son's best interests are served by preserving a connection with Father "without undermining the stability Mother and [A.T.] continue to provide." Appellant's Br. p. 13. Here, the social worker performing the home study noted that fourteen-year-old Son wants to be adopted by A.T. A.T. presented evidence that Son is in a stable and loving environment, and Son has no relationship with Father. Under these circumstances, the trial court's finding that the adoption is in Son's best interest is not clearly erroneous. *See, e.g.*, *O.R.*, 16 N.E.3d at 975 (holding that the trial court's finding that adoption was in the child's best interest was not clearly erroneous).

Conclusion

[20] The trial court's findings that Father's consent to the adoption is not required and that the adoption is in Son's best interest are not clearly erroneous. Accordingly, we affirm.

[21] Affirmed.

Crone, J., and Bradford, J., concur.

ATTORNEYS FOR APPELLANT

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

Anne Medlin Lowe
Fugate Gangstad Lowe, LLC
Carmel, Indiana

ATTORNEY FOR APPELLEE

Jane Ann Noblitt
Columbus, Indiana