STATE OF INDIANA
COURT OF APPEALS

J R Appellant(s), v. B S J S Appellee(s).	Cause No. 24A-AD-00119

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 15th day of April, 2025.

Gregory R. Pachmayr,
Clerk of the Supreme Court

MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

In re the Adoption of Infant Male G.

J.R.,

Appellant-Respondent

v.

B.S. and J.S.,

Appellees-Petitioners

October 23, 2024

Court of Appeals Case No.
24A-AD-119

Appeal from the DeKalb Circuit Court

The Honorable Kurt B. Grimm, Judge

Trial Court Cause No.
17C01-2104-AD-6

Memorandum Decision by Judge Crone

Judges Bradford and Tavitas concur.

Crone, Judge.

Case Summary

[1] B.S. (Adoptive Father) and J.S. (Adoptive Mother) (collectively Adoptive Parents) filed a petition to adopt Infant Male G. (Child), the biological child of M.G. (Mother) and J.R. (Father). Father contested the adoption. The trial court granted Adoptive Parents' petition, finding that Father's consent to the adoption was not required because he is unfit to be a parent and that the adoption is in Child's best interests. On appeal, Father argues that these conclusions are erroneous and that Adoptive Parents lacked standing to file their petition. We affirm.

Facts and Procedural History

[2] On December 30, 2020, Mother gave birth to Child in DeKalb County. Mother had used drugs during her pregnancy, and Child had multiple congenital conditions, including micrognathia (an undersized lower jaw), bilateral clubfoot, poor feeding, "obstructive sleep apnea and bilateral conductive hearing loss." Appellant's App. Vol. 5 at 57. At the time of Child's birth, Father was incarcerated in Steuben County Jail on a pending felony case, in which he later pled guilty to possession of methamphetamine and invasion of privacy and was placed on probation.

[3] On January 4, 2021, Adoptive Parents, who are Ohio residents, filed a petition to adopt Child in Hamilton Superior Court. At that time, out-of-state residents could petition to adopt a "hard to place child" from Indiana pursuant to Indiana Code Section 31-19-2-3, which was repealed effective July 1, 2021. Indiana Code Section 31-9-2-51 defines a "hard to place child" in pertinent part as a child who is "disadvantaged … because of: (A) ethnic background; (B) race; (C) color; (D) language; (E) physical, mental, or medical disability; or (F) age[.]" In their petition, Adoptive Parents alleged that Child was a "hard to place child as the mother has tested positive for methamphetamines, the birth mother received minimal prenatal care, the birth mother has a history of mental illness, and the child has a birth defect." Appellant's App. Vol. 2 at 30. They also alleged that Child was born out of wedlock and that Child's father was not known. Adoptive Parents requested custody of Child pending adoption and attached Mother's consent to the petition.[1] The court awarded them custody of Child that same day.

[4] Adoptive Mother is a physical therapist with a doctorate in physical therapy, and Adoptive Parents almost immediately "engaged in extensive and aggressive rehabilitative therapy with [Child] on a daily basis[.]" Appellant's App. Vol. 5 at 57. They took him to dozens of "differing medical appointments to address his special needs." *Id*. "[D]espite the initial prognosis, the aggressive intervention and treatment provided by [Adoptive Parents] and the medical

[1] Mother later sought to withdraw her consent but ultimately abandoned that effort.

care providers they have selected, has created a reasonable expectation, if the care and treatment continues, that [Child] may one day walk." *Id*.

[5] On January 26, 2021, Father filed a motion to intervene, in which he contested the adoption and alleged that he had registered as Child's putative father in both Indiana and Ohio, initiated a paternity action in DeKalb County, and "filed a motion for DNA testing in the paternity action to conclusively establish paternity." Appellant's App. Vol. 2 at 58. Father also filed a motion to transfer venue. Father's motion to intervene was granted. The adoption proceeding was transferred to DeKalb Circuit Court (the trial court) and was consolidated with Father's paternity action. In February 2021, Father submitted a DNA test report indicating that he is Child's biological father.

[6] In June 2021, the trial court appointed a guardian ad litem (GAL) for Child. Later that month, the court allowed Adoptive Parents to amend their adoption petition to allege that Father's consent was not required because he was unfit to be a parent. *See* Ind. Code § 31-19-9-8(a)(11) (providing that consent to adoption is not required from "[a] parent if: (A) a petitioner for adoption proves by clear and convincing evidence that the parent is unfit to be a parent; and (B) the best interests of the child sought to be adopted would be served if the court dispensed with the parent's consent").

[7] Father's paternity of Child was established on August 2, 2021. The next day, Father filed a motion to dismiss the adoption petition, asserting that Adoptive Parents did not have standing as out-of-state residents to pursue the adoption.

More specifically, Father argued that Child was not "disadvantaged" for purposes of Indiana Code Section 31-9-2-51 "because he has a father who has stepped forward and wants his son." Appellant's App. Vol. 2 at 200.

[8] In September 2021 and February 2022, the trial court held evidentiary hearings on the issue of Father's unfitness. In April 2022, the trial court issued an order in which it denied Father's motion to dismiss and concluded, based on numerous sua sponte factual findings, that Adoptive Parents had established by clear and convincing evidence that Father was unfit to be a parent and that adoption was in Child's best interests. Among other things, the trial court found that "throughout his entire adult life [Father] has proven himself unable to maintain a stable home" or "engage in productive, remunerative, and stable employment"; that Father was currently on probation with a pending violation and has a criminal history that includes convictions for neglect of a dependent, domestic battery, and operating while intoxicated; that Father "has suffered from depression, mental health issues, suicidal ideations, chemical dependence, and episodes of auditory hallucinations throughout the bulk of his life"; that Father "has consistently rebuffed treatment and treatment recommendations concerning his significant substance abuse and mental health issues, preferring what is clearly an ineffective course of self-treatment which has included self-medication with alcohol and controlled substances"; that Father, who was then thirty-five years old, "has a demonstrated and long duration inability to house and care for himself" and was currently living rent-free with his mother; that Father "has not filed tax returns for many years and has an unsatisfied

judgment against him for unpaid rent"; and that the GAL "did not believe that [Father] could provide for the care of an infant, and particularly a high special needs infant such as [Child]" and "further opined that [Father's] long history of mental health issues and substance abuse, largely untreated and minimized by [Father], rendered him unfit as a parent to [Child]." Appellant's App. Vol. 5 at 57-60.

[9] In the meantime, Father's mother had filed a competing adoption petition, and that proceeding was consolidated with the other proceedings. In December 2022, February 2023, and March 2023, the trial court held evidentiary hearings on both petitions. In June 2023, the trial court issued an order in which it cited Indiana Code Section 31-19-11-1 and found that Child's best interests would be served by denying Father's mother's petition and allowing Adoptive Parents' petition to proceed. *See* Ind. Code § 31-19-11-1(a) ("Whenever the court has heard the evidence and finds that … the adoption requested is in the best interest of the child[,] the court shall grant the petition for adoption and enter an adoption decree.").

[10] A brief final hearing was held on December 15, 2023. Adoptive Parents' counsel asked the trial court to take judicial notice of its prior ruling that Father's consent was not required, which the court did. Adoptive Parents testified regarding Child's progress as a result of physical and speech therapy and asked the court to change Child's name to C.S. The GAL reiterated his recommendation that the adoption be granted. Father testified that he continued to object to the adoption. When his counsel asked about his

employment, Adoptive Parents' counsel objected on relevance grounds based on the court's ruling that Father's consent was not required. The court sustained the objection and allowed Father's counsel to make an offer of proof regarding Father's current situation.[2] At the conclusion of the hearing, the court found that the adoption should be granted and indicated that it would sign the proposed decree, which found that the adoption was in Child's best interests and changed his name to C.S.

[11] Father filed a notice of appeal from the final decree and requested a transcript of the final hearing, comprising fifteen substantive pages. Adoptive Parents subsequently requested a transcript of the other hearings mentioned above, comprising over 600 pages and ten exhibit volumes, which was compiled at their expense.

Discussion and Decision

Section 1 – Father has waived his argument that Adoptive Parents lacked standing to file their petition.

[12] Because it is potentially dispositive, we address Father's last argument first, namely, that Adoptive Parents lacked standing to file their petition. As stated above, Father argued in his motion to dismiss that Adoptive Parents lacked standing because Child was not "disadvantaged" for purposes of Indiana Code

[2] Father does not challenge the trial court's evidentiary ruling on appeal, yet he summarizes his testimony in his brief. We may not and do not consider it.

Section 31-9-2-51, in that he had "a father who has stepped forward and wants his son." Appellant's App. Vol. 2 at 200. On appeal, Father argues instead that Child is not "hard to place" for purposes of Indiana Code Section 31-19-2-3 because "[t]he record shows that Child was improving in his ability to feed and transitioning from a feeding tube to a bottle, which indicates progress and adaptability." Appellant's Br. at 28.

[13] It is well settled that "an appellant cannot argue one legal theory before the trial court and present a different theory on appeal." *Hampton v. Barber*, 153 N.E.3d 1204, 1208 n.1 (Ind. Ct. App. 2020); *see also Baird v. ASA Collections*, 910 N.E.2d 780, 786 (Ind. Ct. App. 2009) ("Generally, a party may not present an argument or issue to an appellate court unless the party raised that argument or issue to the trial court. This rule exists in part to protect the integrity of the trial court because it cannot be found to have erred as to an issue or argument that it never had an opportunity to consider.") (citation omitted), *trans. denied* (2010). Accordingly, we find Father's argument waived. *Hampton*, 153 N.E.3d at 1209. Regardless, it is undisputed that Child was suffering from multiple physical and medical disabilities and was therefore "disadvantaged" when Adoptive Parents filed their petition, and Father cites no authority for the absurd proposition that petitioners may lose standing if the child's physical and medical condition improves due to their own efforts.

Section 2 – Father has waived his arguments regarding his consent and Child's best interests.

[14] Father contends that the trial court erred in concluding that his consent to the adoption was not required and that the adoption is in Child's best interests. "We will not disturb a decision in an adoption proceeding unless the evidence leads to but one conclusion and the trial judge reached an opposite conclusion." *In re Adoption of A.G.*, 199 N.E.3d 1220, 1223 (Ind. Ct. App. 2022). "We will not reweigh the evidence or judge the credibility of witnesses." *Id.* "Instead, we examine the evidence most favorable to the decision together with reasonable inferences drawn therefrom to determine whether there is sufficient evidence to sustain the decision." *Id.*

[15] Here, Father made such an examination practically impossible because he failed to submit the transcript of the evidentiary hearings and the accompanying exhibits on which the trial court based its consent and best interests rulings. Our supreme court has stated that "failure to include a transcript works a waiver of any specifications of error which depend on the evidence." *Campbell v. Criterion Grp.*, 605 N.E.2d 150, 160 (Ind. 1992). Adoptive Parents made the transcript and exhibits available to us, which is commendable. But even so, Father does not challenge any of the trial court's predicate findings, which therefore stand as proven, *In re Moeder*, 196 N.E.3d 691, 698 (Ind. Ct. App. 2022), and his challenges to the ultimate findings are merely requests to reweigh the evidence

in his favor, which we may not do.[3] Accordingly, we affirm the adoption decree.

[16] Affirmed.

Bradford, J., and Tavitas, J., concur.

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[3] Father asserts that his "desire to be in his child's life[,]" as demonstrated by his registration as Child's putative father, his initiation of a paternity action, his confirmation of paternity through DNA testing, and his opposition to Adoptive Parents' petition, "is real, sustained, and validated by his behavior over time." Appellant's Br. at 25. One's desire to be a parent is not dispositive of one's fitness to be a parent.