

Children's Law Center of Indiana



Adoption

1/22/10

In **In Re Adoption of J.C.**, 919 N.E.2d 1230 (Ind. Ct. App. 2010), the Court affirmed the trial court's order granting Adoptive Father's petition for adoption of the child despite Natural Father's objection. The child was born on November 14, 2004, to Natural Father and Natural Mother, who separated at the end of 2005. During their marriage, Natural Father cared for the child, including bathing, feeding, and changing her diapers. After the parents separated, Natural Mother did not allow Natural Father to see the child until visitation was established through the trial court. Although Natural Father was initially diligent in visiting the child, his last visitation occurred on February 14, 2008. Natural Father never visited for the full time, lacked a driver's license, and had transportation problems, so Natural Mother transported the child to and from visits. Natural Father never attempted to communicate directly with the child after February 14, 2008, but sent cards and had a Christmas present delivered to her through a chaplaincy program when he was in prison. Natural Mother refused to pick up the gift. Natural Father was ordered to pay child support of \$80.00. He made child support payments in February, March, and November of 2006, March of 2007, and from August 17, 2007, through October 19, 2007. Natural Father failed to pay any child support since October 19, 2007, and was incarcerated on two separate occasions for failure to pay support. Natural Father was incarcerated on July 18, 2008, after a burglary conviction and has a scheduled release date of January 15, 2012. On August 28, 2008, Adoptive Father petitioned to adopt the child with Natural Mother's consent. On September 11, 2008, Natural Father filed an objection to the petition for adoption. On May 13, 2009, after a hearing, the trial court entered its Decree of Adoption. The trial court found that Natural Father's efforts can best be characterized as token efforts to support or communicate with the child and therefore the court concluded that Father had abandoned her within the meaning of IC 31-19-9-8(b), so Natural Father's consent to adoption was not required. Natural Father appealed.

When reviewing a trial court's ruling in adoption proceeding, the Appellate Court will not disturb that ruling unless the evidence leads to but one conclusion and the trial judge reached an opposite conclusion. The decision of the trial court is presumed to be correct, and it is the appellant's burden to overcome the presumption. *Id.* at 1233, citing In Re M.A.S., 815 N.E. 2d 215, 218-19 (Ind.Ct. App. 2004).

The Court opined that Natural Father's consent to adoption was not required because he had clearly abandoned his child within the requirements of IC 31-19-9-8(b). *Id.* at 1234. The Court noted that Adoptive Father had the burden of proving by clear and convincing

evidence that Natural Father's consent to adoption was unnecessary. IC 31-19-10-1.2(a). Id. at 1233. The Court concluded that Natural Father's child support payment history and admission that he was incarcerated for sixty days on two separate occasions for failure to pay support established that Natural Father failed in his parental duty to provide financial support for the child. Id.

With regard to Natural Father's visitation with the child, the Court noted that "the frequency of visits alone is an invalid basis for gauging whether significant communication has occurred; instead, we must consider whether the communication was meaningful," and "[n]otwithstanding the parent's actual intent, a significant factor in this analysis is whether the parent carelessly and negligently failed to perform his parental duties." Id., citing In Re Adoption of J.P., 713 N.E.2d 873, 876 (Ind. Ct. App. 1999). The Court observed that "the custodial parent's willingness to permit visitation as well as the natural parent's financial and physical means to accomplish his obligations" must be taken into account. J.C. at 1234, quoting Rust v. Lawson, 714 N.E.2d 769, 771 (Ind. Ct. App. 1999), *trans. denied*. The Court also said that "[t]he reasonable intent of the statute is to encourage non-custodial parents to maintain communication with their children and to discourage non-custodial parents from visiting their children just often enough to thwart the adoptive parents' efforts to provide a settled environment for the children." J.C. at 1234, quoting Lawson at 771. The Court also noted that Natural Father's "[i]mprisonment standing alone does not establish statutory abandonment"; however, "[n]either should confinement alone constitute justifiable reason for failing to maintain significant communication with one's child." J.C. at 1234, quoting Lewis v. Roberts, 495 N.E.2d 810, 813 (Ind. Ct. App. 1986). The Court noted the following evidence which showed Natural Father's lack of significant contact with the child: (1) Natural Father never visited with the child for the entire time nor did he transport the child for visits; (2) Natural Father stopped all visitation with the child five months before his incarceration; (3) Natural Father's efforts to communicate with the child during his incarceration were "almost non-existent and failed to amount to a sincere attempt to stay involved in [the child's] life." J.C. at 1234. The Court found that the trial court properly concluded that Natural Father's consent was not required to adoption. Id.