

# Children's Law Center of Indiana



## Adoption

8/30/17

In **Adoption of D.M.**, 82 N.E.3d 354 (Ind. Ct. App. 2017), the Court affirmed the trial court's judgment which: (1) found that the child's Father was an unfit parent; (2) found the child's best interest was served by finding that Father's consent to the child's adoption was not required; and (3) granted Stepfather's petition to adopt the child. *Id.* at 360-61. Mother and Father were married, and the child was born in June 2010. For nearly the first two years of the child's life, Father lived with the child and Mother and was a stay-at-home father. The child's older half-sister (Half-sister), who is Mother's child from a previous relationship, lived part-time with Father, Mother, and the child. In May 2012, Father was arrested for molesting Half-sister, and later pled guilty to Class C felony child molesting. He was sentenced to sixteen years of incarceration with eight years suspended. A 2012 no contact order provided that as a condition of probation, Father should have no contact with Mother, Half-sister, or the child unless approved in advance by his probation officer and the treatment provider for Half-sister. A decree dissolving Father's and Mother's marriage was issued in October 2012. The decree provided that Father was not ordered to pay child support due to his incarceration, suspended his parenting time based on the criminal no contact order, and directed him to appear before the dissolution court to request parenting time upon his release from incarceration. Father was released from the Department of Correction to Cass County Community Corrections on August 18, 2015, obtained a job in September 2015, and was released from the Community Corrections facility on November 9, 2015. Mother and Stepfather began dating in the fall of 2012, they moved in together in the spring of 2013, and married on March 5, 2016. Stepfather filed a Petition to adopt the child on March 31, 2016. Father filed a motion to contest the adoption on May 23, 2016.

On August 22, 2016, the trial court held a hearing at which it heard testimony from Mother, Stepfather, and Father and admitted into evidence the no contact order and the dissolution decree. Mother testified that: (1) the child was in the room when Father molested Half-sister; (2) Father last saw the child in May of 2012, he had not provided any financial support for the child, and he had not contacted Mother through an attorney to reestablish contact with the child; (3) the child had no recollection of Father in her life, and was a happy, healthy six-year-old; (4) it would put Half-sister into a "tail-spin" if she knew the child had to see Father; (5) Stepfather had been a father figure for the child; (6) Mother though it would "turn [the child's] world upside down" if she had someone else replace Stepfather as the current father figure in her life. Stepfather testified that he had functioned and served as the child's father figure for the previous four years and had provided for the child financially and emotionally. Father testified that: (1) he was a "stay-at-home dad" and raised the child prior to May 2012;

(2) he understood that he would have the opportunity to petition the court to see the child after he completed counseling and received his probation officer's approval; (3) he completed a mandatory three-month sex offender monitoring and management program while in DOC; (4) he was currently seeing a counselor and had been doing so since November, and counseling could last as long as his probation; (5) he was prepared to petition the court to modify child support; (6) he wished to have an opportunity for a relationship with the child in the future and was prepared to pay for any required counseling; (6) he had not filed a petition regarding the no contact order or financial support; (7) he had been able to financially support the child since September 2015 when he became employed; (8) he had a battery conviction prior to the child's birth. On October 14, 2016, the trial court granted Stepfather's petition to adopt the child. In its decree, the court found that: (1) Father's consent to the child's adoption was not required because there was clear and convincing evidence that he was unfit to be a parent due to his conviction of child molesting, a Class C felony, against Half-sister; (2) the conviction rendered Father unfit because the crime was committed in the child's home, and Father was in a position of trust with respect to the child and Half-sister when he had a parental and moral duty to provide care, nurture, and protection to the children; (3) the best interest of the child would be served by finding Father's consent was not required since the child had no recollection of Father, the child was happy and well-rounded, had a sibling relationship with Half-sister, and had a longstanding three year relationship with Stepfather. The court denied Father's motion to correct error, and Father appealed.

**The Court found the evidence supported the trial court's conclusion that Father's consent to the adoption was not required pursuant to IC 31-19-9-8(11), which provides that consent is not required if: (1) the parent is unfit; and (2) the child's best interests would be served if the court dispensed with the parent's consent.** Id. at 361. Citing In re Adoption of K.S., 980 N.E.2d 385, 387 (Ind. Ct. App. 2012), the Court noted: (1) a reviewing court will not disturb a trial court's adoption ruling unless the evidence leads to but one conclusion and the trial court reached the opposite conclusion; (2) recognizing the fundamental importance of the parent-child relationship, the reviewing courts have strictly construed the statute to preserve that relationship; but (3) the status of natural parent, though a material consideration, will not void all others, and the statute allows the trial court to dispense with parental consent and allow the child's adoption. D.M. at 358.

The Court looked to IC 31-19-10-1.2, which provides that the adoption petitioner has the burden of proving that the requirements of IC 31-19-9-8 (a)(11) are satisfied, and that the best interests of the child are served if the court dispenses with the parent's consent. Id. Quoting In re Adoption of M.L., 973 N.E.2d 1216, 1223 (Ind. Ct. App. 2012), the Court explained that, while the term "unfit" as used in IC 31-19-9-8(a)(11) is not statutorily defined, the Court has defined "unfit" as "[u]nsuitable; not adapted or qualified for a particular use or service" or "[m]orally unqualified; incompetent." D.M. at 358. The Court also noted that statutes concerning termination of parental rights and adoption "strike a similar balance between the parent's rights and the child's best interests"; thus, termination cases provide useful information in determining whether a parent is unfit. M.L. at 1223. D.M. at 358-59. Citing In re T.W., 859 N.E.2d 1215,

1218-19 (Ind. Ct. App. 2006), the Court noted that a parent's criminal history is relevant to whether the parent is unfit pursuant to IC 31-19-9-8-(a)(11). D.M. at 359.

Father argued that the trial court specifically relied on his Class C felony conviction for child molesting, but IC 31-19-9-10, a separate statute on dispensing with parental consent, requires a conviction for a Class A or Class B felony molestation to dispense with parental consent. Father also argued that he took responsibility for his crime by pleading guilty, served his sentence, and was released six months early, completed substance abuse treatment and the state's sex offender monitoring and management program while in custody, had been doing follow-up treatment with his counselor, and was compliant with probation. In response to Father's challenge to the trial court's consideration of his Class C felony child molesting conviction in determining his unfitness, the Court opined that the plain and ordinary meaning of the statutory language of IC 31-19-9-8-(a)(11) does not preclude a trial court from considering the circumstances of a parent's criminal activity in determining whether the parent is unfit. Id. at 360. The Court noted that Father's crime of Class C felony child molesting of the child's Half-sister was committed in the child's home when Father had a parental and moral duty to provide care, nurture, and protection to the child and Half-sister. Id. The Court found that Father's sexual misconduct and convictions were relevant to whether he was unfit to be a parent under the statute. Id. The Court noted the following evidence on Father's unfitness: (1) he made no effort to pay support for the child; and (2) he did not pursue parenting time with the child although he was directed to file a petition for visitation by the dissolution decree. Id.

The Court also noted the following trial court findings that the child's best interests would be served by dispensing with Father's consent to Stepfather's adoption: (1) the child had no recollection of Father; (2) the child was happy and well-rounded and had a sibling relationship with Half-sister; and (3) the child had a long-standing three year relationship with Stepfather. Id. at 361.