

Children's Law Center of Indiana



Adoption

9/2/2015

In **In Re Adoption of E.A.**, 43 N.E.3d 592 (Ind. Ct. App. 2015), *trans. denied*, the Court affirmed the trial court's order granting Stepfather's adoption petition, and finding that Father's consent to the adoption was not required. *Id.* at 599. The child was born on February 5, 2009 and Father signed a paternity affidavit at the child's birth. Father lived with Mother and the child until he was arrested for burglary on March 16, 2009 and held in jail. The last time Father saw the child was on July 21, 2010, the day he was sentenced to fifteen years in prison for burglary. After Father was sentenced and committed to the Department of Corrections (DOC) he sent the child a birthday card on his second birthday. Father also sent Mother a couple of letters that year referencing the child. Father's sister tried to contact Mother, on Father's behalf, multiple times, but none of these attempts were after 2012. Father never provided any money for the child. At the time that Stepfather filed his adoption petition, Father had not tried to communicate with Mother or the child for over two years. Father asserted that he stopped sending letters because he feared punishment at the DOC but there was no evidence at trial to support this fear. Father also claimed that he did not have up-to-date contact information for Mother and the child but Mother testified that she did not change the address that Father knew until almost 2012, and even at that point had her mail forwarded to her new address. On October 17, 2013 Stepfather filed a petition to adopt the then four-year-old child. Father contested the adoption. On April 7, 2015 the trial court granted Stepfather's petition to adopt the child and denied Father's motion to contest the adoption.

The Court found that Father's consent to the child's adoption was not required under IC 31-19-9-8(a)(2)(A); thus, the decree of adoption by Stepfather was proper. *Id.* at 599.

Although the court noted that other statutory provisions may have resulted in the same conclusion, the court focused on IC 31-19-9-8(a)(2)(A) which states that consent to adoption is not required from "A parent of a child in the custody of another person if for a period of at least one (1) year the parent: fails without justifiable cause to communicate significantly with the child when able to do so." Stepfather held the burden of proving that there was a lack of communication for the specified time period and that during that time period the ability to communicate existed. *Id.* at 595. The Court, citing Lewis v. Roberts, 495 N.E.2d 810 (Ind. Ct. App. 1986), observed that although imprisonment does change what constitutes significant communication it does not alone justify a parent's failure to maintain significant communication. In re Adoption of E.A. at 598. The Court found that Father did not persist in his communications with the child and that he voluntarily chose to stop trying to communicate with the child for over two years at the time Stepfather filed his adoption petition. *Id.* at 599. Therefore, Father's consent to the adoption was not required. *Id.*