

Children's Law Center of Indiana



Adoption

9/7/12

In **In Re Adoption of M.L.**, 973 N.E.2d 1216 (Ind. Ct. App. 2012), the Court affirmed the trial court's order which had granted Adoptive Parents' petition to adopt their grandson's half-brother (hereinafter the child) without Father's consent. Adoptive Parents had obtained a guardianship over their grandson and the child in the fall of 2008 due to Adoptive Parents' concerns that the two children were not being properly supervised. The child's father had consented to the guardianship due to his inability to take care of the child at that time. Both children have remained in Adoptive Parents' care since 2008. In October 2010, Adoptive Parents filed a petition to adopt the child, which Father contested. Adoptive Parents argued that Father's consent to the adoption was not necessary because he had failed to communicate significantly with the child for a period of one year, had failed to support the child for a period of one year when he was able to do so, and was unfit to be a parent. After an evidentiary hearing, the trial court found that Adoptive Parents had established all three grounds for dispensing with Father's consent. The trial court found that adoption was in the child's best interests and granted the adoption petition. The trial court also granted Adoptive Parents' petition to adopt their grandson, of whom Father was not the parent, so this appeal concerns only the adoption of Father's child. Father appealed, arguing that the evidence was insufficient to prove that his consent was not required and that adoption was in the child's best interests.

The child was born on July 6, 2006, and Father resumed living with Mother and both children (Adoptive Parents' grandson) around this time. Father viewed himself as parent to Adoptive Parent's grandson. Father and Mother separated, and Mother took both children with her. In the summer of 2008 the children began living with Adoptive Parents, and during this time, Father was under the strain of losing his mother, his job, his girlfriend (Mother), and both children. Father was drinking a half gallon of hard liquor each week, and was charged with operating while intoxicated in July 2008. In September 2008, Father twice attempted to commit suicide within a short period of time. Father was hospitalized and diagnosed with depressive disorder, alcohol dependence, and cannabis dependence. He was assessed by Aspire on December 23, 2008. The assessment indicated that Father's longest period of sobriety had been one month, that he did not view drug use as a problem, and that he lacked insight into his condition. Father

was diagnosed with polysubstance dependence, depressive disorder, and alcohol dependence. Father received treatment from Aspire from May to August 2009.

Due to the turmoil in his life, Father visited with the child only a few times between October 2008 and December 2009. Father was allowed by Adoptive Parents to have visitation with the child: (1) first at the home of his father and stepmother every other Saturday in 2009; (2) then weekly unsupervised for two to three and one half hours each week beginning in April 2010; (3) then weekly in Adoptive Parents' home beginning in November 2010; (4) finally, every other week in Adoptive Parents' home beginning in January 2011. On March 3, 2011, Adoptive Parents informed Father that they were suspending his visitation, but in April 2011 they began allowing Father to see the child at a restaurant for about one hour every other week.

On September 19 and 20, 2011, the court held an evidentiary hearing on the Adoptive Parents' petition to adopt the child. The trial court had dismissed Mother from the proceedings "for failing to prosecute [her] Motion to Contest without unreasonable delay pursuant to IC 31-19-9-18", and had dismissed Father's Motion to Contest the adoption of Adoptive Parents' grandson. Thus, the primary issue was whether Father's consent to the child's adoption was required. Father's testimony at the hearing included the following: (1) at the age of twelve, he began struggling with depression, cutting himself, and using marijuana; (2) he had experimented with a variety of drugs, including inhalants, methamphetamine, cocaine, and hallucinogens; (3) he had shifted from job to job; (4) in October 2004 he was arrested for public intoxication and assault after consuming alcohol and Klonopin, for which he did not have a prescription; (5) during his hospitalization for attempting to kill himself, he was diagnosed with depressive disorder, dysthymic disorder, alcohol abuse, and a self-inflicted chest wound; (6) he had thirty-five to forty scars on his chest and arms from cutting himself; (7) he was diagnosed with alcohol dependence and cannabis abuse and was found to have poor judgment and insight during court ordered treatment with Community Addiction Services of Indiana (CASI) from December 2004 until discharged in April 2005; (8) he continued to drink during the time he was receiving treatment at CASI; (9) he did not feel that it was necessarily bad to smoke marijuana, and, despite being advised multiple times to stop drinking alcohol, he did not feel his alcohol use was as serious as medical professionals tried to make it; (10) he drank half a pint of whiskey or vodka several nights a week between February 2009 and February 2010; (11) he currently goes one to three weeks at a time without drinking alcohol, but still uses it when he can afford to do so; and (12) he does not like to take medication for depression and prefers to deal with it on his own. With regard to Father's income, the evidence showed that: (1) he earned \$6,000 in 2008, \$13,000 in 2009, and \$20,000 in 2010; (2) he received food stamps from September 2010 until February or March 2011; (3) as of August 2011, he was living paycheck to paycheck and had only a few dollars in his bank accounts; (4) when he visited with the child or both children, he

paid for their meals and transportation as well as some small gifts; (5) he had paid Adoptive Parents a total of \$60 in child support and also paid \$60 toward the child's soccer registration fee; and (6) he agreed that, at a minimum, the money that he spent on alcohol could have been used to support the child. Father also testified that: (1) he consented to the guardianship because, at the time, he was unable to properly take care of the children; (2) he did not visit the children between October and December 2008 because of his suicide attempt and he did not think it was good for the children to see him struggling so hard and not thinking clearly; (3) so far as he was aware, Adoptive Parents had given the child a "stable, nurturing" environment; and (4) he feels that the children "should have a lifelong brotherly bond" and that they "should always have an opportunity to know each other."

Evidence from Adoptive Parents included that: (1) when he first started living with them, the child had developmental delays in his growth and speech, both of which have improved; (2) the child has become close to Adoptive Parents' five grandchildren, especially a granddaughter with whom the child attended preschool; (3) Father's behaviors made them concerned about his emotional stability; (4) they do not believe the child is bonded to Father and do not see signs that he is missing Father; (5) they stopped allowing Father to visit the child outside of their home because they were concerned for the child's safety; (6) they had not seen any changes since 2008 and were concerned that Father would continue his patterns of instability and substance abuse; and (7) they felt it was in the child's best interests to be adopted because he had come to view them as his parents and felt comfortable in their home.

On December 29, 2011, the trial court issued an order finding that Father's consent to adoption was not required because he had failed to communicate significantly with the child, had failed to provide for the child when he was able to do so, and because he was unfit. The court also found that the adoption was in the child's best interest and granted the adoption petition.

The Court concluded that there was sufficient evidence to support the trial court's conclusions that Father is not a fit parent and that the adoption is in the child's best interests. *Id.* at 1224. The Court, citing MacLafferty v. MacLafferty, 829 N.E.2d 938, 940 (Ind. 2005), stated that the Court generally gives considerable deference to the trial court's decision in family law matters, recognizing 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. M.L. at 1222. The Court reviewed the provisions of IC 31-19-9-8, which provides in relevant part:

- (a) 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; or

(B) knowingly fails to provide for the care and support of the child when able to do so as required by law or judicial decree.

....

(11) 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.

The Court also said that: (1) Adoptive Parents, as the petitioners, had the burden of proving by clear and convincing evidence that consent was not required; (2) the provisions of IC 31-19-9-8 are written in the disjunctive; therefore, they each provide independent grounds for dispensing with parental consent; and (3) regardless of which provision is relied on, adoption is granted only if it is in the best interests of the child (multiple citations omitted). *Id.* The Court, in addressing Father's fitness, noted that the statute does not provide a definition of "unfit." *Id.* at 1223. The Court observed that the interpretation of a statute is a pure question of law, which is reviewed *denovo*. *Id.* The Court cited *M.S. v. C.S.*, 938 N.E.2d 278, 282 (Ind. Ct. App. 2010), which states that the Court, in construing a statute, gives words and phrases their plain and ordinary meaning. *M.L.* at 1223. The Court quoted BLACK'S LAW DICTIONARY, which defines "unfit" as "[u]nsuitable; not adapted or qualified for a particular use or service" or "[m]orally unqualified; incompetent." Black's Law Dictionary 1564 (8th ed. 2004). *M.L.* at 1223. The Court observed that both Father and Adoptive Parents have looked to cases where parental rights have been terminated as a result of a petition made by the Department of Child Services (DCS) for guidance. *Id.* The Court said that, although the termination statute (IC 31-35-2-4) does not use the work "unfit," the Court has frequently referred to its provisions as indicators of a parent's fitness, and termination cases clearly deal with a parent's suitability or competence to be a parent. *Id.* The Court said that the termination statutes and adoption statutes strike a similar balance between the parent's rights and the child's best interests. *Id.* The Court agreed that termination cases provide useful guidance as to what makes a parent "unfit." *Id.* The Court noted that in termination cases the Court has considered factors such a parent's substance abuse, mental health, willingness to follow recommended treatment, lack of insight, instability in housing and employment, and ability to care for a child's special needs. *Id.* The Court cited the following cases: *In Re J.S.*, 906 N.E.2d 226, 235 (Ind. Ct. App. 2009) (affirming termination of parental rights based on parents' drug use and inability to maintain stable housing and

employment); C.T. v. Marion Cnty. Dep't of Child Servs., 896 N.E.2d 571, 582 (Ind. Ct. App. 2008) (affirming termination of parental rights based on mother's pattern of failing to address mental health deficiencies, long-standing addiction to drugs, and past and present inability to provide safe, stable, and nurturing home), *trans. denied* (2009); In Re A.B., 887 N.E.2d 158, 169-70 (Ind. Ct. App. 2008) (affirming termination of parental rights based on mother's instability, lack of participation in counseling, and inability to provide permanency for special needs child); In Re Termination of Parent-Child Relationship of D.D., 804 N.E.2d 258 (Ind. Ct. App. 2004) (affirming termination of parental rights where mother failed to follow through with treatment for mental health issues and substance abuse), *trans. denied*; In Re J.T., 742 N.E.2d 509, 512-13 (Ind. Ct. App. 2001) (affirming termination of parental rights based on mother's lack of progress and insight), *trans. denied*. M.L. at 1223.

The Court said that each of these factors is present in this case, noting: (1) Father has a long history of depression and self-medicating with drugs and alcohol; (2) he is reluctant to follow treatment advice for his mental health or substance abuse issues; (3) he minimizes the seriousness of these issues and believes that he can control them on his own despite the fact that his untreated conditions have resulted in suicide attempts, cutting himself, arrests, loss of his license, and difficulty maintaining employment and stable housing; (4) he has hidden the extent of his drinking from his friends and family members; (5) there is no indication that he intends to quit drinking; and (6) the trial court found that Father attempted to downplay the extent of his drinking and drug use in his testimony and that his demeanor on the stand was consistent with Adoptive Parents' description. Id. at 1223-24. The Court also noted evidence that: (1) in the child's six years of life, Father has had eight different addresses and five different jobs; (2) the child came to Adoptive Parents with developmental delays in his speech and growth, which have been improving under their care; (3) Father has contributed little to the child's support and continues to struggle financially; and (4) Father has not been able to provide the stable home that the child needs. Id. at 1224.

With regard to the child's best interests, the Court noted the following in support of the trial court's conclusion that adoption was in his best interests: (1) it was undisputed that Adoptive Parents have provided the child with a stable, nurturing environment and that the child has a strong bond with his half-brother, Adoptive Parents' grandson; (2) the child views Adoptive Parents as his parents and their home as his home; (3) the child is not bonded with Father on that level; and (4) Adoptive Parents are able to provide for all the child's needs, including his special developmental needs. Id.