

Children's Law Center of Indiana



Adoption

6/13/2014

In **In Re Adoption of M.S.**, 10 N.E.3d 1272 (Ind. Ct. App. 2014), the Court held that the trial court did not err in concluding that Mother's consent was not needed because of Mother's knowing failure, for a period of a year, to support the child when able to do so, and in concluding that the adoption was in the child's best interests. The Court affirmed the trial court's judgment granting the adoption.

Mother and Father had two children while married, and approximately one month after the birth of the youngest child, Mother filed for dissolution. Mother was granted custody of the two children. Two years later, after a hearing, Mother submitted to a drug screen and tested positive for marijuana, methamphetamines, and amphetamines. Father was given custody of the children; Mother was ordered to pay child support as of April 17, 2009, and was ordered to schedule an addiction assessment and complete any recommended treatment. Mother participated in a few supervised parenting sessions, but again testified positive for marijuana, and the trial court terminated her parenting time rights. Mother had no contact with the child who was the subject of the adoption petition from that time forward. Mother left messages for the child's Guardian ad Litem ("GAL"), telling the GAL that she wanted to see the child. However, the GAL felt that Mother had not demonstrated that she could complete the addictions assessment or treatment that the trial court had ordered her to complete. In February 2010, the trial court denied Mother's request to reinstate her parenting time. Mother made no further attempts to reinstate her parenting time or to contact the child. Mother was unsuccessfully discharged from her treatment programs. Maternal Grandmother began making payments to cover Mother's mortgage, and began helping Mother financially. Mother began working for Maternal Grandmother's business. Mother's work was limited due to medical issues that limited Mother's ability to work during 2011. Maternal Grandmother testified that Mother repaying the loans towards the end of 2011. Maternal Grandmother bought a new house for Mother to live in Michigan, and gave her money for improvements to the home. Maternal Grandmother also gave Mother a dog, a cat, and two horses, and pays to maintain these animals. In 2010 and 2011, Mother was convicted of a felony and violated her probation for the felony. Mother pled guilty to Class D felony maintaining a common nuisance, and violated her probation by committing Class B misdemeanor cruelty to an animal. Throughout this time, Father maintained custody of the child, and Mother made inconsistent child support payments. Between January 2011 and January 2012, Mother made no payment. She made three payments in 2012, and one payment in 2013. Father remarried and in

December 2011, Stepmother filed a petition to adopt the child, alleging that Mother's consent was not necessary because Mother to support the child for over a year and had failed to communicate with the child for at least a year prior to the petition. In May 2013, the trial court found that Mother's consent was not required because Mother failed to pay support for one year, Mother failed to communicate for at least one year, and the adoption was in the child's best interests.

The Court found that the trial court did not err in determining that Mother failed to provide support to the child, and consequently, her consent was not needed under IC 31-19-9-(8)(2). *Id.* at 1279. The Court first noted that IC 31-19-9-8(2) provides that consent to an adoption is not need from a parent of a child in the custody of another person, if for at least a year, the parent "(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." *Id.* at 1278. The trial court determined that this provision applied to Mother because she had failed to pay the equivalent of over fifty-eight weeks of her court-ordered child support payments; however, Mother argued that the trial court erred by aggregating her child support arrearage so that it was equivalent to a year of missed payments, rather than determining whether Mother had failed to pay for entire calendar year. *Id.* at 1279. The Court determined that it did not need to address Mother's arguments about the trial court's aggregation of child support arrearage, because even if the Court were to interpret the word "year" to only mean a calendar year, Mother still failed to support the child for over a year. *Id.* The relevant time period for determining whether a non-custodial parent has supported or failed to support his or her child is "any year in which the parent had an obligation and the ability to provide support, but failed to do so." *In Re Adoption of J.T.A.*, 988 N.E.2d 1250, 1255 (Ind. Ct. App. 2013). *M.S.* at 1279. In the *M.S.* case, Mother had failed to provide support for the child between January 12, 2011 and January 18, 2012, which is a period of time that is longer than a calendar year. *M.S.* at 1279.

The Court determined that the payments that Mother did make over a year and four month time period were insufficient to provide support for the child. *Id.* at 1280. The Court noted the term "one year" is not interpreted strictly, and that token payments are not sufficient to comply with the terms of the statute to make consent from the parent necessary. *In Re Adoption of Infants Reynard*, 251 N.E.2d 413, 416 (Ind. 1969). *Id.* at 1279-80. The Court quoted prior case law, which stated that "[t]o hold that under the statute there must be a complete... failure to pay any sum...for one year before consent would be dispensed with... would permit an unworthy parent, in complete disregard of his obligation to his child, to prevent an adoption which might be to the best interest of the child by making a token payment of a nominal sum once each year insufficient to provide for maintenance and support. Such a strict construction would lead to absurd consequences and make the statute meaningless and ineffective." *Infants Reynard*, 251 N.E.2d at 417. *M.S.* at 1280. In light of this holding from the Indiana Supreme Court, the *M.S.* Court determined that Mother failed to provide sufficient support for the child. *M.S.* at 1280. In addition to the one calendar year in which Mother made no support payments, Mother also made only one payment of \$300 between September 17, 2010 and January 18, 2012. *Id.* Although this exceeded to amount noted as a token payment in prior case law, it was only the equivalent of six weeks worth of child support payments, was the only payment Mother made in one year and four months, and was insufficient to provide for the child's maintenance and support. *Id.*

The Court concluded that there was clear and convincing evidence to show that Mother did not support the child when she was able to do so. *Id.* at 1281. Mother argued on appeal that IC 31-19-9-8(2) only applies to parents who are able to financially support their children, and that she was unable to financially support the child because of the loss of business and her medical issues. *Id.* at 1280. However, the Court noted the trial court's findings contradicted Mother's arguments; these findings included: (1) Mother maintained consistent gainful employment; (2) although her hours varied, Mother was paid \$10.00 to \$12.00 per hour and even worked fifteen to twenty hours a week while she was hospitalized; (3) Mother was able to live in a house purchased and paid for by Grandmother, redecorate that house, and support multiple pets; (4) a substantial amount of money was spent on the home and pets that could have been directed to child support; (5) Mother's and Grandmother's testimony about Mother's income were evasive and lacking credibility; and (6) Mother's medical expenses and illness did not account for why she had failed to provide sufficient support prior to August of 2011. *Id.* at 1280-81. The Court declined to reweigh the evidence and concluded that this was clear and convincing evidence that Mother was able to support the child, and failed to do so, thus obviating the need for her consent. *Id.* at 1281.

The Court held that the trial court did not err in finding that the adoption was in the child's best interests. *Id.* at 1282. Mother argued on appeal that: (1) Stepmother's petition to adopt the child was based on the concern that she would lose custody of the child if something happened to Father; (2) the fact that the child was thriving in Stepmother's care did not justify terminating Mother's parental rights; and (3) a child's need for stability and permanence may not be the sole reason for terminating a parent-child relationship. *Id.* The Court deemed Mother's first argument to be waived, as Mother failed to state a cogent argument or cite any precedent relevant to her argument. *Id.* With regard to the other arguments, the Court noted that while it was true that neither of those factors alone could support a finding that the adoption was in the child's best interests, multiple other factors supported the trial court's judgment. *Id.* These factors included: (1) Mother's own failure to support and communicate with the child; (2) Mother's own criminal record and history of substance abuse and failure to follow court orders; (3) Stepmother's contrasting close and loving relationship with the child; (4) Stepmother's involvement in the child's day to day life and activities; (5) the Guardian ad Litem's recommendation that the adoption was in the child's best interests and would give the child a sense of peace; (6) evidence that the child looked to Stepmother as her maternal figure; and (7) Stepmother's lack of criminal history and full time employment. *Id.* In light of these factors, the Court could not say that the trial court erred in finding that the adoption was in the child best interests. *Id.*

The Court noted that a Guardian ad Litem's recommendations can be a relevant factor in supporting a finding that a child's best interests are served by adoption. *Id.* at 1281, 1282 In language addressing what factors were relevant to a child's best interests in an adoption case, the Court noted that adoption statutes do not provide such guidance, but adoption statutes and termination of parental rights statutes share strong similarities. *In Re Adoption of M.L.*, 973 N.E.2d 1216, 1224 (Ind. Ct. App. 2012). *M.S.* at 1281. One of the relevant factors is the recommendations of the child's case worker or guardian ad litem. *Id.* The *M.S.* Court stated "As

we note above, a guardian ad litem's recommendation is relevant to support a finding that adoption is in a child's best interest. See [A.J. v. Marion Cnty. Office of Family and Children, 881 N.E.2d 706, 718 (Ind. Ct. App. 2008).” M.S. at 1282.

Since the Court found that the trial court did not err in concluding that Mother's consent was not necessary because of her failure to support the child when able to do so, the Court did not address Mother's arguments that the trial court erred in determining that Mother failed to communicate with the child for a period of a year. Id. at 1279. Mother argued on appeal that the trial court erred in finding that she failed to communicate with the child because a court order was preventing Mother from communicating with the child. Id. However, the Court found that the trial court did not err in determining that Mother's consent was not needed on other grounds and that the child's best interests were served by adoption, and consequently declined to address this argument. Id.