

Children's Law Center of Indiana



Adoption

2/14/2018

In **J.H. v. S.S.**, 93 N.E.3d 1137 (Ind. Ct. App. 2018), the Court held that the evidence was sufficient to support the trial court's conclusion that Mother was unfit and that her consent to the child's adoption by Grandmother was not necessary.

Two years after giving birth to the child, Mother and Father divorced in part because Mother was abusing alcohol. Mother entered court-ordered inpatient therapy, and the child was placed with Father. After a brief reconciliation, Mother and Father separated permanently. Five years later, Father filed a petition to suspend Mother's parenting time, alleging that Mother had an ongoing drug and alcohol addiction. Mother agreed to alter her parenting time to supervised parenting time and again began treatment for her addictions. Mother's treatment was not successful, and she was arrested two times for substance abuse related matters and started treatment again both times. After the second arrest, when the child was eleven years old, Paternal Grandmother filed a petition to adopt the child, alleging Mother's consent was not necessary because (1) Mother had abandoned the child; (2) Mother failed to significantly communicate with the child; (3) Mother had knowingly failed to support the child when able to do so, and made only token efforts to support the child; and (4) Mother was unfit. After the filing of the adoption petition, Mother was charged with invasion of privacy and operating a motor vehicle while intoxicated and possession of a controlled substance again. At the hearing on Grandmother's petition to adopt the child, Mother testified that a few days before the hearing, she used hydrocodone that was not prescribed to her. Father consented to the adoption, and testified that Mother's mental health was unstable. The child's therapist testified that the child had positive relationship with Grandmother and that the adoption was in the child's best interests. The Guardian ad Litem testified the adoption was in the child's best interests, and that Mother was unfit, in part because of her nine probation violations within one year, and her six failed treatments in three different states over the past eight years. Further evidence showed that despite Mother's master's degree in social work, she had trouble maintaining steady employment, she had not seen the child in over two years and was limited to only supervised visits with the child for the past six years. The last support of any kind Mother contributed to the child's care was two to three years before the petition for adoption was filed. The trial court concluded Mother's consent was not needed and granted Grandmother's petition to adopt the child.

The trial court did not err in granting the adoption, as the evidence was sufficient to support the trial court's conclusion that Mother was unfit and that her consent to the adoption was not necessary. Id. at 1138. IC 31-19-9-8 provides multiple grounds upon which a parent's consent to an adoption may be deemed to be unnecessary; Grandmother alleged several of these grounds. Id. at 1140 n.1. Grandmother had the burden of proving by clear and convincing evidence that Mother's consent was not required; ultimately, the trial court concluded that Mother's consent was not necessary because Mother was unfit. Id. at 1140. Mother argued

there was insufficient evidence to show her unfitness, and further challenged the trial court's other conclusions that Mother's consent was not required because she failed to communicate and support the child. Id. at 1140 n.1. However, the Court noted that the provisions of IC 31-19-9-8 are written in the disjunctive, and each ground is a separate ground on which parental consent could be deemed unnecessary. Id. at 1140. Because the Court ultimately agreed with the trial court that Mother was unfit and her consent was not necessary, the Court did not need to address Mother's arguments. Id.

The Court noted that while there is no statutory definition of unfitness, prior case law holds that termination of the parent-child relationship case law provides useful guidance as to what unfitness entails. Id. at 1141 (citing In Re Adoption of M.L., 973 N.E.2d 1216 (Ind. Ct. App. 2012)). The Court noted that unfitness may be comprised of factors such as substance abuse, untreated mental health concerns, willingness to follow treatment recommendations, lack of insight, instability in housing and employment, inability to care for special needs of a child, and criminal records. Id. The Court noted the following evidence supporting the trial court's determination that Mother was unfit and her consent was not needed: (1) Mother's long history of substance abuse and mental health issue; (2) Mother's long history of failed treatment of those addictions and issues; (3) Mother's multiple arrests related to controlled substances and alcohol; (4) Mother's apparent unwillingness to change her behavior and cease abusing various illicit substances; (5) Mother's long history of instability in housing and employment; and (6) Mother's lack of support of the child. Id.