



## **Adoption**

12/11/2019

In **D.T. v. J.M.**, 136 N.E.3d 323 (Ind. Ct. App. 2019), the Court held that the trial court failed to make the specific findings required by the adoption statute.

Mother and Father had two children together, and later divorced. Father was incarcerated for dealing methamphetamines, and will be incarcerated until November 2029. Mother brought the children to see Father at first, but stopped the visits once she met Stepfather. Father tried to stay in contact with the children by sending cards and letters and making calls; Mother blocked these communications. Father filed a petition for visitation but the divorce court denied it, noting that the children's therapist did not believe it to be in the children's best interests. Stepfather filed an adoption petition, alleging Father's consent was not necessary because he had failed to communicate with the children significantly, and because he was incarcerated. At trial, Mother admitted to blocking Father's attempts at communication, and did not dispute that Father had a zero child support order. The trial court noted that it believe Father's consent would be required, but continued on to the best interests portion of the case. The trial court granted Stepfather petition, noting that Father's consent was required, but the primary concern was the child's best interests, and that Father could not provide any type of environment for the child. The trial court concluded that Stepfather had shown it was in the children's best interests to be adopted and granted the adoption.

**Although the trial court made findings regarding the child's best interests, the trial court did not make adequate findings regarding Father's unfitness to support the adoption decree; the Court remanded the matter to address this deficiency. Id. at 326.** IC 31-19-9-8 provides that consent to an adoption is not needed when a parent fails, for a period of one year, without justifiable cause to significantly communicate with their child when able to do so, or for the same time period, fails to support their child when able and required to do so. The same statute also provides that if a parent is unfit and the adoption is in the child's best interests, the parent's consent is not needed. The trial court specifically found the provisions regarding communication and support did not apply, and that Father's consent was needed according to those provisions. Id. at 326. In order to determine that Father's consent was not needed under the unfitness provision, the trial court needed to make findings, according to a clear and convincing standard, that Father was unfit, and that the adoption was in the child's best interests. Id. The Court opined that the while the trial court made findings regarding the child's best interests, it did not make adequate findings regarding unfitness, and whether that unfitness obviated the need for Father's consent. Id. The Court remanded the case for the trial court to determine whether was unfit and whether the unfitness obviated the need for his consent, and to make findings accordingly. Id.