



Adoption 6/21/2019

In **In Re Adoption of C.P.**, 130 N.E.3d 117 (Ind. Ct. App. 2019), the Court affirmed the trial court's decision that Mother's consent to the adoption was required, and held that the statute allowing for a child to be adopted without parental consent if the parent has not communicated significantly with the child for at least one year did not apply.

The child was born to Mother and Father in December 2013. A CHINS case closed in 2017 with Father ultimately being awarded custody, and in 2018, Stepmother filed a petition to adopt the child. Stepmother alleged that Mother's consent was not required pursuant to IC 31-19-9-8(a)(1), (2), and (11). Mother had zero dollar support order. When questioned by opposing counsel and the trial court as to why she had not contacted the child, Mother indicated that while she very much wanted to see the child and have a relationship with the child, she thought it was in both his and her best interests to wait and make sure she had her properly treated and established herself. The trial court ultimately issued an order denying the adoption, finding that Stepmother did not prove by clear and convincing evidence that Mother failed without justifiable cause to communicate with the child for a period of at least one year. In particular, the trial court found that: (1) Mother's testimony was convincing; (2) due to Mother's substance abuse and criminal matters, it was in the child's best interests to not have contact with Mother until she resolved these issues; (3) before the adoption was filed, Mother filed a request for parenting time; (4) the relationship between Mother and the child could be re-established; and (5) adoption was not in the child's best interests, and Mother had a justifiable cause for not communicating with the child.

Stepmother did not meet her burden of overcoming the presumption that the trial court's decision was correct; the Court affirmed the trial court's judgment that Mother had a justifiable cause for failing to communicate with the child. Id. at 122. IC 31-19-8(a)(2) provides that a parent of a child in the custody of another person if for a period of at least one year the parent fails without justifiable cause to communicate significantly with the child when able to do so. Id. at 121. The adoption petitioner has the burden of proof. Id. Stepmother argued that Mother in fact failed to communicate with the child, and that Mother's poor choices and circumstances do not excuse her from the lack of effort to communicate at all with the child. Id. Stepmother argued that to find otherwise would circumvent what the statute was intended to do. Id. The evidence most favorable to the trial court's decision, in addition to the trial court's findings, indicated that Mother had asked to see the child, was told to talk to DCS about it, Mother eventually requested parenting time, and then Stepmother filed her petition to adopt the child. Id. at 122. The Court declined to reweigh the evidence or judge the credibility of the witnesses. Id.