



Adoption

10/17/2019

In **In Re Adoption of D.H.**, 135 N.E.3d 914 (Ind. Ct. App. 2019), the Court held that the trial erred in finding that Mother's consent to the adoption was not needed on grounds of abandonment and failure to communicate.

The child was born in April 2015, and tested positive for controlled substances at birth. DCS eventually filed a CHINS petition, which ultimately concluded with Father being given custody of the child, and Mother's parenting time being supervised. After Mother away, her contact with the child was inconsistent; Mother visited with the child in September 2016, and did not visit with the child again until February 2018. Mother worked towards sobriety, passed drug screen, and maintained employment. She resumed more regular visits with the child. Stepmother filed a petition to adopt the child in April 2018, alleging, among other things, that Mother's consent was not needed due to her failure to significantly communicate with the child for a period of at least one year. Mother argued that her efforts to gain and maintain sobriety were why she was not in contact with the child, and this counted as justifiable cause. Father testified that Mother never tried to contact the child other than text messages for Father to pass on, that he never denied her parenting time, and that the child was bonded with Stepmother. The trial court issued an order granting the adoption, finding that Mother had provided no significant support for the child; that Mother "abandoned or deserted the child"; and that Mother lacked justifiable cause to her failure to communicate with the child. Mother appealed.

Mother's February 2018 visit with the child and her other contacts with the child were sufficient to preserve her right to consent to the adoption; furthermore, her efforts to achieve and maintain her sobriety were justifiable cause for her failure to maintain significant contact with the child for over one year. Id. at 924. Mother argued that she relinquished custody to Father in order to get her life back together, that she worked for two years to do so, and when she was in a better place, she sought visitation; at that time, Stepmother filed a petition to adopt the child. Id. at 918. The Court noted that the most protected status in an adoption case is that of the biological parent, and all adoption statutes are strictly construed. Id. at 919. IC 31-19-9-8(a) provides that consent to an adoption is not needed from: (1) A parent or parents if the child is adjudged to have been abandoned or deserted for at least six (6) months immediately preceding the date of the filing of the petition for adoption; (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. The Court noted that drug addiction was an overwhelming problem in Indiana, and that drug addicted parents struggle with a difficult choice between keeping custody of their children and exposing them to unsafe circumstances, or to give up custody of the child for the child's safety, and risk the possibility of being deemed unfit. Id. at 919-920. The Court

cited prior case, including In Re Adoption of E.B.F., 93 N.E.3d 759 (Ind. 2018), which provides for the possibility of a justifiable cause for failure to contact a child to be recovery from addiction, and efforts to shield the child from addiction. D.H. at 920. A single significant communication in a one year period is enough to preserve a noncustodial parent's right to consent to an adoption. Id. The Court also noted in E.B.F. that nothing showed that the mother in that case intended to abandon her child; rather was placing her child in a position of safety. Id. The D.H. Court found E.B.F. to be controlling.

The evidence showed that Mother intended to maintain a connection with the child; as such, the trial court's finding that Mother abandoned the child was in error. Id. at 922. IC 31-19-9-8(b) provides that if a parent has made token efforts to support or communicate with the child, the court may declare that the child has been abandoned, and the trial court relied upon this statute in making its abandonment findings. Id. at 921. The Court noted the following evidence: (1) Mother testified she never intended to abandon the child; (2) the circumstances supported this claims; and (3) although the visitation record was sparse, there were still visits and text messages from Mother where she stated she missed the child. Id. at 921-22.

Since there was no support order in place, and since Father had refused Mother's offers of financial assistance for the child, the Court determined that the trial court erred in using failure to support as a ground for dispensing with Mother's consent. Id. at 925. IC 31-19-9-8(a)(2)(B) provides that consent to an adoption is not needed from a parent of a child in the custody of another person if that parent has knowingly failed for a period of at least one year to provide for the care and support of the child when able to do so as required by law or judicial decree. The Court noted that there was no court order, and that Father refused Mother's efforts to provide support. Id. at 925. The Court said, "Based on *E.B.F.*, this finding is clearly erroneous." Id.

Lastly, the Court opined that if this was a termination of parental rights proceeding, the evidence of Mother's recent progress would weigh heavily against termination; however, the Court opinion did not foreclose the possibility of Stepmother adopting the child in future. Id. at 925.