



Adoption

10/5/20

In **W.M. v. H.T.**, 157 N.E.3d 1231 (Ind. Ct. App. 2020), the Court held that the trial court did not specify under which provision it found Father's consent was not necessary; further the trial court did not make any findings supporting its decision to dispense with Father's consent to the adoption. Therefore, the matter was remanded to the trial court to make the statutorily required findings.

The trial court failed to make any findings supporting its decision to dispense with Father's consent to the adoption; therefore, the matter was remanded to the trial court to make findings as required by statute. Father argued that the trial court erred in granting Adoptive Mother's petition to adopt the children. The Court noted that a trial court must determine whether a biological parent's consent is necessary. Some of the reasons provided by IC 31-19-9-8 as to why a parent's consent may not be needed can include:

(a) Consent to adoption, which may be required under Section 1 of this chapter, is not required from any of the following:

...

(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.

...

(11) A parent if:

(A) a petitioner for adoption proves by clear and convincing evidence that the parent is unfit to be a parent; and

(B) the best interests of the child sought to be adopted would be served if the court dispensed with the parent's consent.

The Court noted that the record showed Father last communicated with the children in 2015, and Adoptive Mother filed her petition in 2019. The record contained evidence showing that Father's failed to communicate with the children for more than one year, and this could support a conclusion that his consent was not required; however, the Court noted that adoption orders did not reference this fact at all, and only deemed Adoptive Mother to be a fit parent. The Court also noted that if calling Adoptive Mother a fit parent was an oblique reference to the unfitness provision that provides a parent's consent is unnecessary, it was still insufficient because of the lack of findings. The Court opined that the trial court did not indicate under which provision it found Father's consent to be unnecessary, and did not make sufficient findings as to why his consent was unnecessary.