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Adoption

3/16/22

In **In re the Adoption of I.B.**, 185 N.E.3d 428 (Ind. Ct. App. 2022), the Court held that the trial court erred in finding Father did not have significant communication with the child one year before the filing of the petition; and, therefore, ruled that Stepfather could not adopt the child without Father's consent.

Mother and Father had Child. After establishing paternity, Mother was awarded primary custody with parenting time to Father. Seven years later, Mother married Stepfather. Shortly after, the trial court suspended Father's parenting time due to pending criminal charges against Father and "Father's non-compliance regarding anger management and drug screens." Stepfather then filed a petition to adopt Child, and Mother filed her consent the same day. Father filed his motion to contest the adoption. During the evidentiary hearing on whether Father's consent was required, Father presented evidence of multiple unanswered calls and texts to Mother asking to speak to Child, Mother relocating with Child without filing a notice with the court, and gifts Father sent for Child being returned unopened over a period of about a year. Father also presented evidence that he had paid \$49,000 in child support to date and that he maintained health insurance for Child. Ultimately, the trial court issued its order finding Father's consent to Child's adoption was not required because Father did not significantly communicate with Child for one year prior to the date Stepfather filed his petition for adoption. The trial court granted the adoption and Father appealed.

The trial court erred when it found Father had not communicated significantly with Child for one year prior to the filing of Stepfather's petition to adopt Child because Mother thwarted Father's attempts to communicate with Child. Id. at 433. The Court applied a two-tiered standard of review: first, whether the evidence supports the findings, and second, whether the findings support the trial court's conclusion. In part, IC 31-19-9-1(a) does not require a parent's adoption consent if that parent "*fails without justifiable cause to communicate significantly with the child when able to do so[.]*" Father provided sufficient evidence to prove his attempts to communicate with his child from late June 2018 through June of 2019. He sent Mother numerous texts, called Mother numerous times, and attempted to send the child two gifts via the grandmother's home since Mother had moved residences without filing a request to relocate in the paternity matter or providing Father with her and the child's new address. Subsequently, Mother never returned the text messages, the phone calls went straight to voicemail, and one of the gifts was left unopened while the second one was returned to Father as undeliverable. In response, Mother provided evidence that she did not respond to the text messages because the child "would not have wanted to speak with her Father" without providing any further context as to why Child would avoid Father. The Court noted Mother should have taken reasonable steps to encourage communication with Father despite her own personal

feelings or the child's alleged wishes. Because Mother thwarted Father's attempts to communicate with the child, the trial court erred when it found that Father's consent was not necessary for Child's adoption.