



Adoption

1/28/22

In **D.G. v. D.H.**, 182 N.E.3d 247 (Ind. Ct. App. 2022), the Court held that the trial court did not err when it determined that natural father's consent **was** required for Stepfather to adopt the child.

Stepfather, who had been a part of the child's life since infancy, filed a petition to adopt the child after father did not pay child support for over a year. At the consent hearing, Father acknowledged that he did not pay child support for thirteen months because of financial hardship. He also presented evidence that he had regularly exercised his parenting time with Child, during which time he spent money for her benefit, and had become current on his child support obligation shortly after the filing of the adoption petition. Based on the totality of the evidence, the trial court determined that Father's consent was required, and denied Stepfather's adoption petition. Stepfather appealed arguing the trial court's determination regarding consent was not supported by sufficient evidence.

The trial court's determination that Father's consent was required was supported by evidence. *Id.* at 252-53. Under IC 31-19-9-8(2)(B), parental consent is not needed if the parent, for at least one year, "fails to provide for the care and support of the child when able to do so as required by law or judicial decree." A determination regarding the ability to pay requires a consideration of the totality of the circumstances, not just income alone. *Matter of Adoption of E.M.L.*, 103 N.E.3d 1110, 1116 (Ind. Ct. App.2018). Further, a petitioner for adoption without parental consent has the burden of proving the statutory criterion by clear and convincing evidence. *In re Adoption of T.L.*, 4N.E.3d 658, 662(Ind. 2014). Father admitted he did not pay child support for a period of approximately thirteen months due to limited income and mental illness which affected his ability to obtain employment. Yet, during the child's life, Father was actively involved, was present to litigate child support and parenting time modifications under the child's paternity case, and consistently provided what financial support he could despite his mental illness, job loss, inability to gain new employment, and reliance on family to provide financial assistance. After receiving the notice of the adoption petition, Father, with the help of family, paid off his arrearage and filed to contest the adoption. A hearing regarding the contested consent was held after almost eighteen months, and during this time Father remained current on his child support, maintained employment, and consistently participated in parenting time with the child.

Although Father did not pay child support for more than a year, Stepfather did not meet his burden by clear and convincing evidence because when looking at the totality of the circumstances Father's mental health issues related directly to his job loss and financial insecurity which led to his inability to pay his child support. Despite this, Father still attempted to provide for the child directly and exercised parenting time. Because the evidence in the record supported the trial court's determination, the trial court's ruling was not clearly erroneous.