



Adoption

3/2/21

In **The Matter of the Adoption of I.B.**, 163 N.E.3d 270 (Ind. 2021), the Court affirmed the trial court's order granting the adoption and held that Mother's consent to the adoption was not needed on grounds of failure to communicate without justifiable cause and failure to provide support when required and able to do so.

Mother and Father had a child in 2010. They divorced in 2014 and Mother was awarded physical and legal custody with parenting time to Father. Mother began using drugs and the court awarded legal and physical custody to Father. Mother did not exercise her supervised parenting time with the child and did not pay court-ordered child support. Father remarried, and in 2019, Stepmother petitioned for stepparent adoption with the consent of Father. Stepmother alleged that Mother's consent was not necessary because she had failed to pay child support for more than a year, failed to significantly communicate with the child for more than a year, had abandoned the child, and was overall unfit. Mother contested the adoption. The trial court granted Stepmother's adoption petition finding that the failure to pay child support, failure to significantly communicate with the child, and abandoning the child dispensed with the need for Mother's consent.

Mother's consent was not needed; there was sufficient evidence showing that Mother failed to significantly communicate with the child without justifiable cause for a period of at least one year. Id. at 276. Mother argued that she was in constant contact with the child based on the several phone calls she made. Id. at 273. The Court noted that what constitutes significant communication is not a mathematical formula; in some cases, multiple relatively consistent contacts may be insignificant, while in others, one contact may be incredibly significant. Id. at 276. The Court agreed with Mother that the amount of her contact could be considered significant, the other evidence noted by the trial court in its findings indicated that the contact was not actually significant. Id. Although Mother regularly contacted the child by phone, the time Mother and the child spent talking was approximately thirteen minutes per month. Id. Furthermore, Mother never sent letters, never visited with the child while choosing to exercise supervised parenting time with her other child, could not name any of the child's friends, and could not name where the child attended school. Id. at 276-277. The Court could not say that the trial court erred.

Mother further argued that her struggles with substance abuse constituted justifiable cause for her lack of financial support but did not advance this argument for her lack of contact. Id. at 277. The Court noted, in the face of any lack of argument made by Mother on this topic, that while Indiana courts have sometimes found substance abuse to be a reason for a lack of contact, those cases involved parents who are in active pursuit of recovery and their reduced communication was a result of their determination to succeed in recovery. Id.

Mother's consent was not needed; there was sufficient evidence showing that Mother failed to support the child when able and required to do so. Id. at 278. Mother argued that she was unable to hold meaningful employment and support the child because of her incarceration, her lack of transportation due to a suspended license, her efforts to regain custody of her other children, and her schooling. Id. at 277- 278. Mother argued that these factors made her unable to support the child. Id. Consent to an adoption is not required from a biological parent when that parent knowingly fails to provide for the care and support of a child when they are required to do so by law or judicial decree. IC 31-19-9-8(a)(2)(B). The Court noted that both case law and IC 31-19-9-8(a)(2)(B) require that an adoption petitioner show that a noncustodial parent had the ability to make payments that they ultimately failed to make. The Matter of the Adoption of I.B., at 277. Ability to pay must take into account the totality of a parent's circumstances, not just their income. Id. The Court noted that while Mother's income for the disputed year was very small, it was almost enough to cover her annual support obligation, and Mother's income was earned during a year when all her other expenses were paid for by someone else. Id. During that year, Mother lived with her father, received financial assistance from her fiancé, and paid nothing towards rent, food, utilities, and other essentials. Id. The Court noted that assistance in covering expenses is relevant to a finding that a parent was able to pay child support. Id. Since Mother received assistance, a larger portion of the money she did earn should have been available to support the child, and her actual earnings indicated an ability to pay at least a minimal amount of support. Id. at 277-278.

Mother further argued that her struggles with substance abuse constituted justifiable cause for her financial support of the child; however, the Court determined that the trial court's findings that neither Mother's substance abuse nor her schooling prevented her from obtaining employment was supported by the evidence. Id. at 278. Mother had counseling and recovery coaching once per week and had supervised visitation with her other children between four and eight hours per week. Id. Between her schooling and her incarceration, Mother was not able to work for twenty-five of the fifty-two weeks in the year but was available to work for twenty-seven of those weeks. Id. Mother's lack of a driver's license did not excuse her nonpayment; Mother clearly indicated that she was driving without a license for other reasons. Id.

Since Mother failed to develop and make arguments about the trial court's finding that Mother's consent was not needed due to Mother's abandonment of the child, the Court declined to address her argument on this issue. Id.