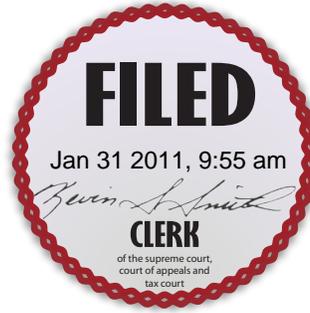


**Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**



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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN RE THE ADOPTION OF D.M.C., )  
K.Z.C., and B.C.C., Minor Children, )  
 )  
D.L.C., Father, )  
 )  
Appellant-Respondent, )  
 )  
vs. )  
 )  
Chr.P. and Cha.P., )  
 )  
Appellees-Petitioners. )

No. 43A03-1007-AD-370

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APPEAL FROM THE KOSCIUSKO SUPERIOR COURT  
The Honorable Duane G. Huffer, Judge  
Cause No. 43D01-0909-AD-19

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**January 31, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

D.L.C. (Father) appeals the adoption of the minor children D.M.C., K.Z.C., and B.C.C. (hereinafter “the children”) by Chr.P. (Stepfather). The evidence supports the trial court’s finding the adoption could proceed without Father’s consent because he had failed to communicate significantly with the children for over a year, and we therefore affirm.

### **FACTS AND PROCEDURAL HISTORY**

Father and Mother were married in 1990. The three children who are the subject of this adoption proceeding were born of the marriage – D.M.C. in 1992, K.Z.C. in 1995, and B.C.C. in 1998. When the parties divorced in 1999, Mother retained primary physical custody, and Father was awarded parenting time.

Mother married Stepfather in 2003. In September 2009, Stepfather petitioned to adopt the children. Father refused to consent to the adoption. The two children over fourteen years old, D.M.C. and K.Z.C., consented to the adoption pursuant to Ind. Code § 31-19-9-1(a)(5). After a hearing, the court granted Stepfather’s petition for adoption.

### **DISCUSSION AND DECISION**

We will not disturb a decision in an adoption proceeding unless the evidence leads to but one conclusion and the trial judge reached an opposite conclusion. *In re Adoption of M.A.S.*, 815 N.E.2d 216, 218 (Ind. Ct. App. 2004). We will not reweigh the evidence. *Id.* Instead we examine the evidence most favorable to the decision together with reasonable inferences drawn therefrom to determine whether there is sufficient evidence to sustain the decision. *Id.* The decision of the trial court is presumed correct, and it is the appellant’s burden to overcome that presumption. *Id.*

Generally, courts may not grant a petition for adoption without the consent of the child's biological parents. Ind. Code § 31-19-9-1(a). There are, however, exceptions to that general rule. *See, e.g., id.* The exception at issue herein provides:

(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.

\* \* \* \* \*

(b) If a parent has made only token efforts to support or to communicate with the child, the court may declare the child abandoned by the parent.

Ind. Code § 31-19-9-8. It is not necessary that the year of non-communication be the year immediately preceding the filing of the petition for adoption. *In re Adoption of J.P.*, 713 N.E.2d 873, 876 (Ind. Ct. App. 1999).

“The thrust of the statute is to foster and maintain communication between non-custodial parents and their children, not to provide a means for parents to maintain just enough contact to thwart potential adoptive parents’s [sic] efforts to provide a settled environment to the child.” *Id.* Thus, the significance of communication between a parent and a child is not measured in terms of the number of visits. *Id.* Rather, our focus should be on whether the contacts were sufficient for the parent “to maintain a significant presence in [the child’s] life.” *Id.*

Father argues his consent was required because he maintained communication with his

children after his divorce from Mother in 1999.<sup>1</sup> In contrast, the trial court found “[Father] has failed, without justifiable cause, to communicate significantly with the children when able to do so; any efforts made by [Father] to communicate with his children were only token efforts.” (App. at 13.)

Father testified during the adoption hearing that he sent “birthday cards and stuff like that,” (Tr. at 78), to the children while he was incarcerated from 2007 to 2009. Father admitted he had not arranged to visit the children, but he argued Mother thwarted his visitation with his children to such an extent that he decided to “go through the courts because over the period of years she still wasn’t letting me have the kids spend the night so I decided that I was just going to go through the courts and get something done with visitation.” (*Id.* at 79.) Father filed a petition to modify parenting time in early 2009, and the court granted his request. But “[c]ourt action does not constitute communication.” *Matter of Ryan L.*, 435 N.E.2d 624, 626 (Ind. Ct. App. 1982). Father’s arguments are an invitation for us to reweigh the evidence, which we cannot do. *See In re Adoption of M.A.S.*, 815 N.E.2d at 218.

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<sup>1</sup> Father also argues his consent was required because he paid child support. However, because the subsections of Ind. Code § 31-19-9-8(a)(2) are framed in the disjunctive, demonstrating either is sufficient to permit an adoption without parental consent. *In re Adoption of J.P.*, 713 N.E.2d 873, 875 (Ind. Ct. App. 1999). Thus, if the evidence supports the trial court’s finding regarding communication, we need not address Father’s argument regarding child support. *See id.* (addressing only communication). Nevertheless, we note Father was convicted in 2004 of Class C felony nonsupport of a dependent child, Ind. Code § 35-46-1-5, for failing to pay over \$15,000 in support that he was ordered to pay for these children.

The record contains ample evidence Father did not communicate with his children while he was incarcerated in 2007, 2008, and 2009. Mother testified Father did not communicate with the children from 2007 – 2009. Mother testified she did not receive in the mail any of birthday cards for the children that Father alleged he mailed. Mother also testified Father had not contacted her to arrange visits with the children. This evidence supports finding Father did not “communicate significantly” with his children for that two-year period, such that his consent to their adoption was not required. *See In re Adoption of J.P.*, 713 N.E.2d at 876 (holding mother’s once-a-month visits, to which the child did not respond favorably, were not “significant communication” that preserved mother’s right to object to adoption). Therefore, we affirm the trial court’s judgment.

Affirmed.

FRIEDLANDER, J., and MATHIAS, J., concur.