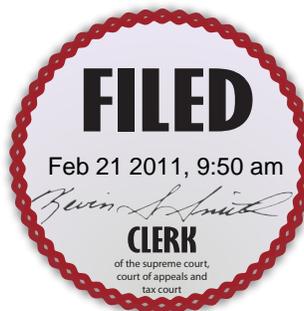


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEY FOR APPELLEES:

KELLY A. MIKLOS
Greenwood, Indiana

KIMBERLY J. BACON
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE ADOPTION OF T.L.,)	
)	
D.F, K.F.,)	
)	
Appellant,)	
)	
vs.)	No. 49A04-1005-AD-310
)	
M.J.,)	
)	
Appellee.)	

APPEAL FROM THE MARION SUPERIOR COURT, PROBATE DIVISION
The Honorable Gerald S. Zore, Judge
Cause No. 49D08-0705-AD-18381

February 21, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issues

D.F. and K.F. (“Foster Parents”) appeal the trial court’s denial of their cross-petition for adoption of T.L., contending the trial court’s decision denying their cross-petition and granting instead the petition for adoption filed by T.L.’s half-brother, M.J. (“Brother”), was clearly erroneous. Foster Parents raise one issue for our review, which we expand and restate as three: 1) whether the trial court’s findings of fact are clearly erroneous; 2) whether the trial court’s finding that it was unnecessary for DCS to consent to Brother’s petition was clearly erroneous; and 3) whether the trial court’s determination that granting Brother’s adoption petition is in T.L.’s best interest is clearly erroneous. Concluding the trial court did not clearly err in any of these respects, we affirm.

Facts and Procedural History

T.L. was born cocaine-positive on March 31, 2005, and removed immediately from her parents pursuant to a CHINS petition filed by the Marion County Department of Child Services (“DCS”). T.L.’s biological parents consented to the termination of their parental rights and T.L. became a ward of DCS. In September of 2005, T.L. was placed in relative care in Kentucky with Brother and his girlfriend, M.E., pursuant to an Interstate Compact Placement Contract (“ICPC”) between Indiana and Kentucky.¹ As part of the ICPC, the home Brother and M.E. shared was approved as a placement for T.L. and any change in

¹ The Interstate Compact on the Placement of Children recognizes that placement of a child outside the home state may be in the child’s best interest. Matter of C.B., 616 N.E.2d 763, 767 (Ind. Ct. App. 1993); see Ind. Code §§ 31-28-4-1 et seq. When a placement is made pursuant to the Compact, the sending state retains jurisdiction of the child, but the appropriate state agency of the receiving state monitors the placement and reports to the sending state. C.B., 616 N.E.2d at 767.

T.L.'s housing arrangement required prior approval. T.L.'s placement was monitored by both DCS and Kentucky authorities.

On May 3, 2007, Brother and M.E. filed a joint petition to adopt T.L. In November 2007, Kentucky authorities informed Brother that the fingerprints he and M.E. had provided as one of the requirements of their petition for adoption had been lost. Brother and M.E. provided a second set of fingerprints. In mid-January 2008, M.E. suddenly ended her relationship with Brother and had his name taken off their lease. Brother moved with T.L. to the home of his friend, D.D., and her mother. D.D. is now Brother's fiancée and the mother of his child. Brother did not receive prior approval for this move, and did not notify DCS of his and T.L.'s whereabouts for a few weeks, although he did notify Kentucky authorities of his move immediately. On February 6, 2008, Brother was told to bring T.L. to his Kentucky caseworker's office, where DCS removed T.L. from his custody and control and returned her to Indiana. On February 15, 2008, T.L. was placed with Foster Parents, where she continues to reside at this time.

After T.L. was removed from his custody, Brother made numerous phone calls to both DCS and Kentucky authorities in an attempt to find out what had happened and what he could do to regain custody of or at least get visitation with T.L. Not all of his phone calls were returned, and no assistance in arranging visitation or regaining custody was offered. Brother also petitioned for adoption of T.L. in Kentucky. A Kentucky order granting custody of T.L. to Brother was issued but the Indiana juvenile court overseeing T.L.'s CHINS case denied the validity of the Kentucky order, citing its own exclusive jurisdiction over T.L.

Brother then sought to intervene in the Indiana CHINS case, but was denied. He attended a CHINS hearing in August 2008, at which his request to have T.L. placed with him was denied. On March 24, 2009, Brother amended his petition for adoption to remove M.E. as a joint petitioner. On August 12, 2009, Foster Parents filed a cross-petition for adoption. On September 4, 2009, DCS filed a “Notice of Intent to Contest Petition of [Brother] and to Withdraw Consent to Adoption by [Brother]” in which it stated: “DCS now withdraws its consent to [Brother’s] Petition because DCS asserts that it is not in the best interest of the child and that there is no Interstate Compact approval for said placement and adoption. DCS intends to consent to the adoption of [T.L.] by cross petitioners, [Foster Parents].” Appendix to Brief of Appellants at 29. DCS filed a consent for T.L. to be adopted by Foster Parents on October 23, 2009.

A contested adoption hearing was held on March 9, 2010. At the conclusion of the hearing, the trial court requested the parties submit proposed findings of fact and conclusions of law within thirty days and ordered Brother to submit a home study prior to that deadline. On April 26, 2010, the trial court entered its findings of fact and conclusions of law in which it found DCS was withholding consent to Brother’s adoption of T.L. for reasons not in T.L.’s best interest and further found it is in T.L.’s best interest to be adopted by Brother. Brother’s petition for adoption was granted and Foster Parents’ cross-petition was denied. Foster Parents appeal the trial court’s order granting Brother’s petition for adoption of T.L. and denying their cross-petition for adoption. At Foster Parents’ request, the order has been

stayed pending the outcome of this appeal. Further facts will be discussed as appropriate below.

Discussion and Decision²

I. Standard of Review

On review, we will not disturb the trial court's decision in an adoption proceeding unless the evidence at trial leads to a single conclusion and the trial court reached the opposite conclusion. In re Adoption of H.N.P.G., 878 N.E.2d 900, 903 (Ind. Ct. App. 2008), trans. denied, cert. denied, 129 S.Ct. 619 (2008). We will neither reweigh the evidence nor assess the credibility of witnesses, and we will examine only the evidence most favorable to the trial court's decision. In re Adoption of D.C., 928 N.E.2d 602, 604 (Ind. Ct. App. 2010), trans. denied. We owe no deference to the trial court's legal conclusions, however. In re Adoption of M.M.G.C., 785 N.E.2d 267, 269 (Ind. Ct. App. 2003).

The trial court issued findings of fact and conclusions of law, apparently *sua sponte*.

Our standard of review is well-settled:

[W]hen reviewing the specific findings and conclusions thereon, we must first determine whether the record supports the factual findings, and then whether the findings support the judgment. On appeal, we will not set aside the findings or judgment unless they are clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of witnesses. We therefore consider only the evidence favorable to the judgment and the reasonable inferences flowing therefrom, and we will neither reweigh the evidence nor assess witness credibility. A judgment is clearly erroneous when there is no evidence to support the findings, the findings do not support the

² Foster Parents have filed a Motion to Strike certain documents submitted as part of Brother's appendix and certain references in his brief as being inappropriate for our consideration since they were not before the trial court prior to jurisdiction vesting with this court. We grant the Motion to Strike because the matters referenced therein are irrelevant to our decision. We have considered only those matters before the trial court as of the date of the order being appealed.

judgment, or the trial court applies the wrong legal standard to properly found facts.

However, because the trial court entered findings and conclusions *sua sponte*, the specific findings control only as to the issues they cover, and a general judgment standard applies to those issues on which the trial court has not found. We may affirm a general judgment on any theory supported by the evidence of record. We review questions of law *de novo*.

M.S. v. C.S., 938 N.E.2d 278, 281-82 (Ind. Ct. App. 2010) (citations and quotations omitted).

II. Findings of Fact

Foster Parents argue the following findings of fact and conclusions of law are clearly erroneous and undermine the trial court's ultimate findings that DCS was withholding consent to Brother's petition for reasons not in T.L.'s best interest and that it is in T.L.'s best interest to grant Brother's petition:

FINDINGS OF FACT

12. On or about January 10, 2008, [Brother] was forced to relocate with [T.L.] because [M.E.] demanded that he leave their home. . . .

* * *

14. Neither Kentucky [authorities] [n]or [DCS] came to [Brother's] new residence to review or complete background checks on the new home and its occupants after notice was given.

* * *

17. [Brother] continuously and repeatedly made efforts to secure the return of [T.L.] to his custody, care and control. [Brother] called [his DCS] caseworker . . . and received no return call

* * *

22. [Brother] has requested visits with [T.L.], however [Foster Mother] has conditioned the visitation upon his withdrawal of his petition for adoption.

* * *

28. [Brother] receives disability income in the amount of \$672.00 and Kentucky TAP in the amount of \$225.00 per month

* * *

30. The Court finds [Brother] is able to parent [T.L.] and provide [T.L.] a safe, stable and appropriate home.

* * *

32. [Foster Parents] have had approximately 12 or more foster children in their care in the past and are unable to recall all of the children's names. . . .

33. . . . [T.L.] attends a private home daycare and [Foster Parents'] other four year old child . . . , who suffers from special needs, attends township daycare.

34. [Foster Father] was raised by an aunt in foster care from birth until third grade. Thereafter he was returned to his mother. . . . He has been employed with U.S. Postal Service for 25 years. His hours are from 7:00 a.m. to 6:00 p.m.

* * *

36. . . . The Court finds the [Foster Parents] are able to provide a safe, stable and appropriate home for [T.L.] However, because of the large number of children in their care and the [Foster Parents'] "mission" to parent many children, [T.L.] may not receive a great deal of individual attention.

* * *

39. [The DCS] caseworker . . . has been familiar with [Foster Parents] for several years and . . . has completed three previous adoptions for [them]. [The caseworker] and [Foster Mother] have become friends.

* * *

41. [DCS] refused to communicate with [Brother] after T.L.'s removal from his care, refused to review his new home before removing [T.L.], refused to submit the completed home study to the court and did not provide information to [Brother] so that he could communicate, send presents or visit with [T.L.] after her removal.

* * *

CONCLUSIONS OF LAW AND ORDER

10. . . . [DCS] and Kentucky [authorities] failed to assist [Brother] in securing permanency in a timelier manner. . . . The first set of fingerprints was lost by Kentucky [authorities] and a second set of prints had to be taken. Although [a DCS] caseworker had agreed to personally conduct a home study for [Brother] (due to his limited financial means), she failed to complete the home study or file a home study with the court. Kentucky [authorities] did not notify [DCS] once [Brother] notified Kentucky that he and [T.L.] were forced to change residence when he and [M.E.'s] relationship ended. Neither [DCS] [n]or Kentucky [authorities] conducted a home review of [Brother's] new residence, instead the child was removed and placed in foster care.

11. . . . [DCS] arbitrarily withdrew its consent to [Brother's] adoption in favor of the [Foster Parents], a family [with] whom the caseworker had developed a friendship. . . .

13. There is absolutely nothing lacking in [Brother's] ability to parent his sister and provide her with individual care and support. But for DCS [sic] failure to assist [Brother] with services and allow him continuous contact with

his sibling, [T.L.] would have had permanency in a more expeditious manner. [Brother] is currently a student and stay at home father, and he will be able to provide a great deal of care and attention to [T.L.]. [Foster Parents] have an admirable “mission” to parent children through foster care and adoption, however this mission will not allow them to provide the individualized care and attention that [Brother] can provide. Although his financial means are limited, [Brother] has adequate housing and sufficient income and assistance to support [T.L.]

App. at 10-18.

Some of the findings with which Foster Parents take issue are merely a matter of the trial court characterizing the evidence differently than Foster Parents would. For instance, the trial court found Foster Father’s work hours are 7 a.m. to 6 p.m. and Foster Parents claim that is erroneous because Foster Father testified his work hours are 8 a.m. to 5 p.m. However, Foster Father also testified that the time he is gone from the house for work is approximately 7 a.m. to 6 p.m., including travel time. See Transcript at 186. As another example, the trial court found T.L. is in daycare and Foster Parents claim this is erroneous because T.L. actually participates in a preschool program. However, Foster Mother characterized T.L.’s out-of-home care as “part daycare, part preschool,” id. at 143, and answered affirmatively when asked if T.L. is “currently in a licensed home daycare,” id. at 155.

Several of the findings of fact with which Foster Parents take issue are a matter of the trial court’s interpretation of the evidence differing from Foster Parents’ interpretation. For example, the trial court found Foster Mother conditioned Brother’s ability to visit T.L. while in her care on Brother withdrawing his petition for adoption. Foster Mother testified that she called Brother and asked him not to fight Foster Parents’ petition for adoption and further

testified that she told him if he did withdraw his petition, she “would be willing to setup whatever . . . he wanted to be able to see her,” id. at 165, although she never told him he had to withdraw the petition. The trial court’s finding is a reasonable interpretation of the evidence. Also, the trial court found Foster Parents and the DCS caseworker had become friends. It is true that no one testified that Foster Parents and the caseworker are friends, but we will not second-guess the trial court’s interpretation of the demeanor and interaction between the parties. Further, the trial court found Brother was “forced” to take T.L. from M.E.’s home when their relationship ended. Foster Parents argue there was no evidence M.E. specifically told Brother he had to take T.L. with him when she removed his name from the lease and told him to leave; however, it is reasonable to infer M.E. did not intend her now ex-boyfriend to leave his half-sister in her care when she ended their relationship and kicked him out of their home.

Some of Foster Parents’ objections are patently wrong. For instance, Foster Parents claim the trial court’s finding that they were unable to recall the names of all their foster children is clearly erroneous. However, Foster Mother testified, when asked the names of the children they fostered but did not adopt, “I couldn’t tell you the names of every one of them . . .” Id. at 152. Foster Parents also object to findings that, even if we were to find them clearly erroneous, would not affect the judgment. For instance, the trial court found Foster Father had himself been in foster care as a child. Foster Father actually testified that although he was raised for some time by his aunt “who ran a foster program at her home,” he

was “[n]ot officially” in foster care. Id. at 173. Nonetheless, this finding would have little impact upon the judgment either way.

Some of Foster Parents’ objections are to findings that would more appropriately be considered conclusions based upon the findings and evidence. For instance, the trial court “found” that Brother is able to parent T.L. and provide her a safe, stable, and appropriate home, and further “found” that T.L. may not receive a great deal of individual attention in Foster Parents’ family because they have seven children and apparently intend to continue providing foster care to additional children as well. These are conclusions based upon the trial court’s consideration of the evidence. To the extent Foster Parents challenge these conclusory statements, we will address them below as part of a discussion of whether the trial court’s judgment is clearly erroneous in light of the best interest of the child.

We have considered each of Foster Parents’ allegations of error with respect to the findings of fact, and the only finding for which we can find no support either from the evidence or a reasonable inference therefrom is the trial court’s finding that Brother receives \$225.00 per month from Kentucky TAP. This one erroneous finding of fact does not alone undermine the trial court’s judgment, and we will disregard this factual finding in our consideration of the trial court’s judgment.

III. DCS’s Consent

A. Statutory Framework

A petition to adopt a child less than eighteen years old may be granted only if written consent to the adoption has been executed by “[e]ach person, agency, or county office of

family and children having lawful custody of the child whose adoption is being sought[.]” Ind. Code § 31-19-9-1(a)(3),³ except consent is not required from “[a] lawful guardian or lawful custodian of the person to be adopted who has failed to consent to the adoption for reasons found by the court not to be in the best interests of the child[.]” Ind. Code § 31-19-9-8(a)(10). Moreover, once consent is given, it cannot be withdrawn without filing a motion with the trial court. Ind. Code § 31-19-10-1(c).⁴ Consent cannot be arbitrarily revoked because a specific reason why revoking consent is in the best interest of the child must be given. In re Adoption of S.A., 918 N.E.2d 736, 742 (Ind. Ct. App. 2009), trans. denied.

As of March 9, 2010, the date of T.L.’s adoption hearing, the Indiana Code did not specifically address second or subsequent consents. In In re Adoption of A.S., 912 N.E.2d 840, 850 (Ind. Ct. App. 2009), trans. denied, we noted the Code limited the ability to withdraw a consent or substitute a petitioner, but did not likewise limit the ability to file additional consents. Thus, we held parties whose consent was required for adoption may execute subsequent consents regardless of whether prior consents have been withdrawn, and two sets of consents given to two different petitioners were both valid, giving the court a choice between two families, avoiding a race to obtain parental consent, and allowing changing circumstances to be addressed. Id.⁵

³ Consent may also be required from other parties, including, most relevant to this case, the mother of a child born out of wedlock and the father of a child whose paternity has been established. Ind. Code § 31-19-9-1(a)(2). However, because T.L.’s biological parents’ rights had been terminated, their consent was not required in this case and DCS was the only party from whom consent might be required.

⁴ In addition, certain time limitations also impact the ability to withdraw a consent. See Ind. Code § 31-19-10-3.

⁵ Effective March 12, 2010, the adoption statutes were amended to state that a party who has executed a written

B. Trial Court's Finding that DCS's Consent was Unnecessary

With the above framework in mind, we turn to the specific facts of this case. Although the record does not contain a written consent by DCS to Brother's petition for adoption of T.L., DCS filed with the trial court a notice of intent to withdraw its consent to Brother's petition in which it summarily stated it "now withdraws its consent to [Brother's] petition because DCS asserts that it is not in the best interests of the child" and indicated it intended to consent to Foster Parents' petition instead. Assuming DCS's consent had been given to Brother's petition, as DCS's notice seems to imply, DCS did not follow the appropriate steps to withdraw it. DCS did not petition the trial court for permission to withdraw its consent, and did not articulate in its notice any specific reason why it believed consent to Brother's adoption was no longer in T.L.'s best interest. The trial court never issued an order authorizing DCS to withdraw its consent to Brother's adoption. Absent an appropriate withdrawal of consent, we are left with the situation presented by A.S.: two valid consents for two different parties. Thus, the trial court need not have found that DCS withheld its consent for reasons not in T.L.'s best interest, as DCS has, in fact, consented to Brother's adoption.⁶ Nevertheless, because the record is ambiguous⁷ and the trial court

consent to the adoption of a child "may not execute a second or subsequent written consent to have another person adopt the child" except under certain circumstances, including that the party consenting to the adoption has been permitted to withdraw the first consent as described by chapter 31-19-10 above. Ind. Code § 31-19-9-2(e).

⁶ Moreover, if the amended statute were applicable to this case, the result would not change. Having given consent to Brother's adoption of T.L., DCS would be unable under the amended statute to execute a second consent until and unless it had requested and received authorization from the trial court to withdraw its original consent. Having failed to obtain such authorization, the only valid consent would be that given to Brother.

⁷ Foster Parents assert in their brief that if DCS consented, it was to the adoption of T.L. by both Brother and M.E., not to Brother's adoption of her alone. Because no written consent appears in the record,

proceeded as if DCS was withholding consent to Brother's petition, we address the trial court's finding that DCS's consent was not required because it was being withheld for reasons not in T.L.'s best interest.⁸

During the adoption hearing, DCS case managers testified that prior to February 2008, their assessment of T.L.'s placement with Brother was positive. In August 2007, DCS became concerned about Brother's mental and physical health as he dealt with the trauma and grief of his brother being murdered, but T.L. continued to be appropriately and well cared for. Around the same time, DCS began to have concerns about the stability of Brother's and M.E.'s relationship and Brother's ability, if necessary, to care for T.L. by himself. Nonetheless, T.L.'s placement with Brother was continued and Brother tried to proceed on his adoption petition. However, fingerprints Brother was required to submit for the adoption proceeding were lost by Kentucky officials. A home study DCS conducted was never submitted to the trial court. Brother's attempts to arrange a home study on his own were unsuccessful. Brother testified DCS never indicated to him any concern over his care of T.L.

T.L. was removed from Brother's custody in February 2008 because he moved out of M.E.'s home and into D.D.'s, changing the composition of the home in which T.L. was placed without approval. Brother's breakup with M.E. was sudden and he immediately

we cannot verify that assertion. Foster Parents also assert no formal consent was ever finalized. Again, no written consent appears in the record; however, if no formal consent was entered, DCS would not have needed to file a notice of intent to withdraw its consent with the trial court, as there would have been no consent to withdraw.

⁸ Foster Parents argue that the trial court's clearly erroneous factual findings, addressed in Section II, supra, undermined its determination that DCS's consent was being withheld for reasons not in T.L.'s best interest. However, we have determined the challenged findings of fact are not clearly erroneous and therefore consider them as appropriate in assessing the trial court's finding regarding DCS's consent.

notified Kentucky authorities of his move; however, he did not notify DCS until sometime later. Upon learning of Brother's change of circumstance, DCS did not attempt to determine if D.D.'s home was an appropriate place for T.L. to reside, nor did it attempt to determine if Brother was able and willing to live on his own with T.L. Instead, DCS called Brother, told him to pack T.L.'s things and take her to the office of his Kentucky caseworker that same day. After T.L.'s removal, DCS did not offer Brother any meaningful opportunity to have T.L. returned to him, although he did pursue several avenues of relief himself, including petitioning for adoption of T.L. in Kentucky and attempting to intervene in T.L.'s CHINS case here in Indiana. DCS also did not cooperate in or facilitate Brother's efforts to remain in contact with T.L. DCS may believe that Foster Parents can provide a better home for T.L., but that does not in turn mean Brother cannot provide a suitable home for her, as well. DCS's stance at the adoption hearing was that T.L. was bonded with Foster Parents, as she has been placed with them for over two years, and it would be disruptive and unsettling to remove her from their home at this point. However, T.L. was also bonded with Brother when she was unceremoniously removed from his custody after two years and they were given no opportunity to continue their relationship after her removal.

Although biological ties are not in themselves determinative, Brother and T.L. are half-siblings. Brother's household consists of his fiancée and their toddler son, for whom Brother is the primary caregiver. His fiancée supports his petition for adoption of T.L. They live in a newly-remodeled three-bedroom home within walking distance of many services and amenities in their small community. He is currently taking art instruction classes in

hopes of obtaining employment as a cartoonist. He has a plan for T.L.'s schooling and has looked into extracurricular and recreational opportunities for T.L. should she be returned to his custody. DCS has not pointed to any deficiencies in Brother's care of T.L. while she was in his custody or in the life he has built since she was removed that would justify withholding consent to his petition. DCS's consent to Foster Parents' petition seems to be largely a product of Foster Parents providing care for T.L. most recently in time; that Brother has not had contact with T.L. recently is not Brother's fault but a product of DCS's actions.

In light of the above, the trial court did not clearly err when it determined DCS's consent was not necessary for Brother's petition to adopt T.L. to be granted because DCS failed to consent for reasons that were not in T.L.'s best interest. Lack of consent by DCS is not fatal to Brother's petition for adoption.

IV. Best Interest of T.L.

The trial court determined that granting Brother's adoption petition was in T.L.'s best interest. The best interest of the child is paramount in any adoption case. S.A., 918 N.E.2d at 742. Foster Parents, as appellants, have the burden of overcoming the presumption that the trial court's decision is correct. Id. at 745. We will only reverse the trial court if the evidence leads to but one conclusion and the trial court reached the opposite conclusion. H.N.P.G., 878 N.E.2d at 903.

At the core of Foster Parents' arguments is the notion that they would provide the better home and better family for T.L.⁹ They have not shown that Brother could not also

⁹ Foster Parents also allege the trial court erred in failing to observe comity with respect to the juvenile court's CHINS proceedings; specifically, the CHINS court's denial of Brother's petition for kinship placement

provide a safe, secure, stable, and appropriate home and family life for T.L. At most, they have shown that either home would be appropriate for T.L., and essentially ask that we reweigh the evidence and find in their favor, which we will not do. Id. Although we acknowledge the unfortunate passage of time in which the relationship between Brother and T.L. has not been fostered, after carefully reviewing the evidence, we conclude the trial court properly determined that granting Brother's adoption was in T.L.'s best interest.

Conclusion

The trial court's findings of fact and judgment are not clearly erroneous and Foster Parents have failed to show that there is but one conclusion to be made from the evidence before the trial court and the trial court reached the opposite conclusion. The trial court's judgment is affirmed, and this case is remanded to the trial court for further proceedings.

Affirmed and remanded.

RILEY, J., and BROWN, J., concur.

with him and continuation of placement with Foster Parents. We first note Foster Parents did not make a motion to dismiss pursuant to Indiana Trial Rule 12(B)(8) or otherwise object to the trial court proceeding on this basis, and therefore their argument regarding comity is waived. In re Infant Girl W., 845 N.E.2d 229, 239 (Ind. Ct. App. 2006), trans. denied. We also note, however, that this court has determined comity does not preclude a probate court from exercising its jurisdiction over an adoption proceeding when there is a pending CHINS proceeding because the consent statute allows DCS – the child's legal guardian and petitioner in a CHINS case – to voice its concerns and opinions in the adoption case. Id. at 241.