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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE ADOPTION OF J.C.:

JEFFREY COLE, SR.,

Appellant-Respondent,

vs.

CURTIS A. BULLICK,

Appellee-Petitioner.

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No. 52A02-0701-CV-63

APPEAL FROM THE MIAMI CIRCUIT COURT
The Honorable Rosemary Higgins Burke, Judge
Cause No. 52C01-0505-AD-6 & 52C01-0505-AD-7

July 19, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARNACK, Judge

Jeffrey Cole, Sr., (“Father”) appeals the trial court’s grant of a petition for adoption filed by Curtis A. Bullick (“Stepfather”). Father raises two issues, which we restate as:

- I. Whether the trial court abused its discretion by admitting evidence of Father’s criminal convictions; and
- II. Whether the trial court’s grant of Stepfather’s petition to adopt is clearly erroneous.

We affirm.

The relevant facts follow. Father and Shaun (Cole) Bullick (“Mother”) were married in 1992 and had two children, Je.C, born January 3, 1993, and Jo.C., born December 17, 1993. Mother filed a petition for dissolution of marriage in August 1994, and Father was temporarily granted custody of the children because Mother was on active military duty in South Korea. Father was arrested in January 1995, and was charged with dealing in cocaine. The children’s maternal grandmother then took custody of the children until Mother returned from Korea. The decree of dissolution was granted in June 1995, giving custody of the children to Mother and ordering Father to pay support of \$59.00 per week. The decree of dissolution was silent with regard to visitation by Father.

While Father was in the Grant County Jail awaiting trial, he had occasional telephone contact with the children, and Father’s sister took the children to the jail for a visit. Father was found guilty of dealing in cocaine and was sentenced to serve twenty years in the Indiana Department of Correction. According to Mother, Father had no contact with the children after being transferred to the Indiana Department of Correction.

Father contends that he contacted the children every other week by telephone until 2001. It is undisputed that Father had no contact with the children after 2001.

Mother married Stepfather in October 2003. Father was released from prison in December 2003. In December 2003, Mother filed a petition for a protective order, which the trial court granted in January 2004. The protective order, which was in effect for two years, prohibited Father from “harassing, annoying, telephoning, contacting, or directly or indirectly communicating with [Mother], except for court ordered visitation or visitation as agreed to by the parties herein.” Appellant’s Appendix at 27.

After his release from prison, Father worked for Barr Brothers in Marion, Indiana. At the end of 2004, Father moved to Oklahoma and worked for the University of Central Oklahoma until June of 2006. At the time of the hearing, Father had been employed at both Trio Foods and Burger King for approximately six months. Father was making \$8.00 per hour at both jobs and was working close to forty hours a week at both jobs.

Father made no child support payments until February 2004. In 2004, Father paid \$140.00 in child support. Between January and May 2005, Father paid \$200.00 in child support. As of January 2006, Father had a child support arrearage of \$32,000.00.

In May 2005, Stepfather filed a petition to adopt Je.C. and Jo.C. After Stepfather filed the petition, Father filed a petition for parenting time with the children. The trial court denied Father’s request for parenting time until Father met two requirements: (1) successful completion of Project Growth; and (2) successful completion of anger management counseling. As of the hearing on Stepfather’s adoption petition, Father had

not met the two requirements. During the hearing on Stepfather's petition, Stepfather's counsel questioned Father regarding his criminal history. Stepfather's counsel questioned Father regarding his conviction for dealing in cocaine without objection from Father. Stepfather's counsel then questioned Father regarding other convictions over Father's relevancy objection.

After the hearing, the trial court entered findings of fact and conclusions thereon as follows:

* * * * *

3. Either at the time of marriage or shortly thereafter, [Mother] was called up to active duty in the Army and was deployed to Korea in 1993. While in Korea, she returned home on emergency leave several times because of issues with the children. In one instance, [Father] telephoned [Mother] and told her to say goodbye to the boys as he was going to kill them and then commit suicide.
4. [Mother] filed a petition for dissolution of marriage in 1994. While the petition for dissolution was pending, a temporary order for custody was issued on September 26, 1994. Custody was given to [Mother], but during her deployment in Korea, custody of the children was with [Father].
5. On January 31, 1995, Jeffery, Sr. was arrested and charged with Dealing in Cocaine. After [Father's] arrest and while he was detained in the Grant County Jail, the boys were placed with [Mother's] mother. While he was in jail, [Father] called the grandmother's home occasionally. [Mother] also sent a picture of the boys to [Father] while in jail, prior to their dissolution.
6. The decree of dissolution was entered June 13, 1995. [Mother] was given custody of the boys and [Father] was to pay support in the amount of \$59.00 per week.
7. [Mother] returned to the United States in July 1995 and was stationed in Savannah, Georgia for about six months. The boys were

with her in Savannah. Following her discharge, she returned to Grant County and lived with her mother and sons in Matthews.

8. [Mother] moved to Marion with her sons in 1997. While in Marion, [Father's] family, including his parents and his sister Pam were in touch with her and would visit at her home. For a brief period of time, the boys lived with Pam.
9. [Mother] met [Stepfather] in the spring of 2001. She moved to Miami County in October 2001 and married [Stepfather] in October 2003. [Stepfather] is employed as a munitions technician at Grissom Air Reserve Base, and is an active reservist.
10. In the meantime, [Father] was convicted of dealing in cocaine and received a twenty year sentence to the Department of Corrections [sic]. He served eight years and 11 months and was released December 6, 2003.
11. No support payments were received from [Father] until February 2004. A certified copy of the Grant County Clerk's support record indicates that [Father] made 4 support payments in 2004, totaling \$140.00. In 2005, [Father] made 7 support payments totaling \$200.00. Through August 15, 2006, no payments had been received. Two tax intercepts had been received in 2006 totaling \$389.16. An arrearage in excess of \$32,000 was established in January 2006.
12. Following release, [Father] lived in Grant County through most of 2004. He testified that he was employed at Barr Brothers. He states that he paid child support. He apparently left this employment and moved to Oklahoma either in the latter part of 2004 or in 2005. Some time in 2005, he was employed at the University of Central Oklahoma. He stated he had his position at Central Oklahoma in June 2006. He stated that child support was paid by wage withholding.
13. [Father] testified that he has eight children. Esther Cates is the mother of four of the children: [Jen.], d/o/b 10/10/89; [Ja.], d/o/b 1/4/91; [J'w.], d/o/b 1/4/89 and [J'l.], d/o/b 12/18/92. He is ordered to pay support for these children in the amount of \$75.00 and \$20.00 on an arrearage. He is also the father of [C.W.], d/o/b 4/24/89 and [A.I.] who is 1 year old. He has no support order for the latter two children. [Father] testified that he believed all of the support due for

his six children was being withheld while he was at Central Oklahoma.

14. At the time of adoption trial, [Father] reported he had two full time jobs, one at Trio Foods earning \$8.00 per hour and at Burger King earning \$8.00 per hour.
15. The clerk's child support docket for the Cates children indicate that between July 2005 and May 2006, payment was being received on a monthly basis. Most frequently the amount received was \$384.00, which totals a four week obligation in child support plus arrearage for the Cates children. The corresponding period of time for the Cole children indicates no support payments were made for their benefit.
16. [Father] testified that the last contact he had with the boys was over the telephone in 2001. [Mother] denied that any telephone contact took place between [Father] and the boys in 2001. She estimated it has been more than 10 or 11 years since any contact had taken place. While [Father] was awaiting trial, he was incarcerated in Grant County and would call [Mother's] home to speak to the boys. Although [Father] testified he was in contact with the boys every other week while incarcerated, by telephoning and writing, [Mother] testified that she had no knowledge of any contact after [Father] went to the DOC.
17. In December 2003, [Mother] filed her petition for protective order against [Father]. A hearing was held on January 9, 2004. Both [Mother] and [Father] were present at the hearing. An order for protection was entered in which [Father] was prohibited from harassing, annoying, telephoning, contacting or directly or indirectly communicating with [Mother], except for court ordered visitation or visitation as agreed to by the parties herein. (Emphasis added.).
18. It was [Father's] testimony that he had made no contact with the boys following his release from the DOC because he did not know where they were, and he was concerned that it would be a violation of the protective order to make contact for visits.
19. The Divorce Decree was silent on the issue of visitation as [Father] was incarcerated at that time. It wasn't until November 2005, almost two years after his release from the DOC, and six months after the

petition for adoption was filed, that [Father] filed a Motion to Establish Visitation in the dissolution cause. A hearing was held on that motion on December 27, 2005 and an order was entered on January 18, 2006.

20. The court found that [Father] had not exercised parenting time with the boys in over 10 years. In addition, a history of violence existed between [Father] and [Mother], and that he had battered one of the boys and threatened to kill [Mother] and the children. Further, he had been convicted of Operating While Intoxicated following his release from prison and served six months incarcerated.
21. The court denied parenting time until he had met the following requirements: 1) that he successfully complete Project Growth offered by Family Service Society of Grant County and 2) that he successfully complete anger management counseling with Mr. Ed Pereira of Family Service Society.
22. At the time of the adoption hearing, ten months after the order was entered, [Father] testified that he was “almost” finished with anger counseling, and he had decided to wait for the outcome of the adoption proceedings before going forward with Project Growth.
23. [Father] stated that he had arranged to have his court ordered counseling in Oklahoma. He was unsure of where he was having the counseling session, he thought his counselor’s name was Mike, he thought it was a 16 week program and he had completed 12 weeks.
24. [Father] testified that he had filed his petition to establish visitation and after that, [Stepfather] had filed his petition for adoption. In reality, the petition for adoption was filed six months before his petition to establish visitation.
25. The court finds that [Father] has had no significant or meaningful contact with the boys for at least 10 years. The court further finds that [Father] has failed to provide for the financial support of the boys when he had the ability to do so.
26. [Je.C.] will be 14 years old in January. The evidence points to the fact that, for all practical purposes, he has had no contact with his father since he was two years old. [Jo.C.] has recently turned

thirteen years of age, and he has had no contact with his father since he was merely one year old.

27. [Stepfather] has been an active participant in providing the care, love, affection and support [Je.C.] and [Jo.C.] need. While [Father] has made virtually no contribution to the care and support of the children, [Stepfather] has been both present and active in the lives of [Je.C.] and [Jo.C.].
28. Catholic Charities has filed a final report to the court and recommended the petition for adoption be granted.
29. The governing statute in this matter is Indiana Code § 31-19-9-8.

CONCLUSIONS OF LAW

Under Indiana Code § 31-19-9-8(a)(2)(A); [Father's] consent to the adoption is not required if the Court finds that (A) [Father] as the natural parent, failed, for a period of at least one year, without justifiable cause to communicate significantly with the child[ren] when able to do so; or (B) knowingly failed to provide for the care and support of the child[ren] when able to do so as required by law or judicial decree.

Indiana Code § 31-19-9-8(b) also provides that the natural parent's consent to an adoption is not required if the parent has made only token efforts to support or to communicate with the child. In such case, the Court may declare the child abandoned by the parent. The burden of proof is on [Stepfather] to present clear and convincing evidence of the failure to communicate or the failure to support. *M.A.S. v. Murray*, 815 N.E.2d 216 (Ind. App. 2004).

Indiana Appellate Courts have routinely concluded that attempts to communicate with a child must be substantial and communication must be significant. In *Williams v. Townsend*, 629 N.E.2d 252, 253 (Ind. App. 252), the trial court found that while incarcerated, Williams had only sent an occasional card or letter to his sister to be delivered to his child. Further, he had made no substantial effort to communicate with the child in any other manner or to visit with the child. Unlike the testimony in this present case, Williams testimony that he had sent "hundreds of letters" was supported by the testimony of his sister. In this cause, [Mother] has denied that [Father] had any contact with the boys following his commitment to the Department of Corrections.

In *Adoption of Herman*, 406 N.E.2d 277, 279 (Ind. App. 1980), the Court reiterated that incarceration, standing alone does not establish statutory abandonment to allow adoption to proceed without consent. However, confinement alone is not a justifiable reason for failing to maintain significant communication with one's child. Herman had argued that he had lost track of the child because the mother had moved. The court found the argument unpersuasive, and noted that Herman made no attempt to enforce his right to visitation through the courts for nearly four years. In addition, Herman could have enlisted the assistance of family members who had maintained contact with the child.

In the present case, [Father's] contact with the boys ended sometime shortly after his incarceration in the Department of Corrections [sic]. Following his release, no attempts were made on his part to enforce his visitation rights through post-dissolution proceedings until six months after the adoption proceedings were initiated. He apparently made no attempt to enlist the help of his parents or his sister who had maintained ties with the boys for several years. When ordered to participate in Project Growth and in anger management counseling, he procrastinated for several months before complying with one portion of the order, and still has not complied with the parenting classes.

[Father] has a child support arrearage in excess of \$32,000.00 as of January 2006. In August 2006, he had only paid \$389.00 by tax intercept. Clearly, in January, he was aware that no support was being received on behalf of the boys. While he testified that he believed child support was being withheld from his employment at Central Oklahoma for the benefit of the boys, his testimony lacks credibility after that date. He was released from incarceration in December 2003. His testimony was that he was employed in 2004 by Barr Brothers. In that same year, only \$140.00 in support was paid. Although he had substantial employment in Oklahoma, only token payments were received in 2005. For the 17 months from his release from prison until the petition for adoption was filed, only \$340.00 was paid. It appears that once the petition was filed, [Father] made a conscious decision to stop paying support.

The court concludes that [Stepfather] has proven by clear and convincing evidence [Father], as the natural parent, failed, for a period of at least one year, without justifiable cause to communicate significantly with the child[ren] when able to do so; and that he knowingly failed to provide for the care and support of the child[ren] when able to do so as required by

law or judicial decree. Pursuant to Indiana Code § 31-19-9-8(a)(2)(A) and (B), Jeffrey Cole, Sr.'s consent to the adoption is not required.

The court further concludes that it is in the best interests of [Je.C.] and [Jo.C.] that the Petition for Adoption by [Stepfather], be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Petition of [Stepfather], for the adoption of [Je.C.] and [Jo.C.], minor children, be and it hereby is, approved and granted.

* * * * *

Appellant's Appendix at 10-14.

I.

The first issue is whether the trial court abused its discretion by admitting evidence of Father's criminal convictions. The admission or exclusion of evidence is a determination entrusted to the discretion of the trial court. R.R. Donnelley & Sons Co. v. North Texas Steel Co., Inc., 752 N.E.2d 112, 126 (Ind. Ct. App. 2001), reh'g denied, trans. denied. We will reverse a trial court's decision only for an abuse of discretion, that is, when the trial court's decision is against the logic and effect of the facts and circumstances before the court. Id. at 126-127. Erroneously excluded evidence requires reversal only if the error relates to a material matter or substantially affects the rights of the parties. Id. at 127. Further, any error in the admission of evidence is harmless if the same or similar evidence is submitted without objection. Id.

Father argues that the trial court abused its discretion by admitting evidence regarding his criminal convictions. According to Father, his "character" was "simply not an issue" in the proceeding. Appellant's Brief at 8. First, we note that Father did not

object to evidence concerning his conviction for dealing in cocaine. Transcript at 16-17. Thus, Father waived any argument regarding the admission of his conviction for dealing in cocaine. See, e.g., Augspurger v. Hudson, 802 N.E.2d 503, 509 n.4 (Ind. Ct. App. 2004) (holding that the husband waived an argument that depositions should not have been admitted by failing to raise an objection at trial when the depositions were admitted into evidence).

As for his remaining convictions, we note that whether Father's consent to adoption is necessary is governed by Ind. Code § 31-19-9-8. One ground for concluding that a parent's consent is not necessary is if "(A) a petitioner for adoption proves by clear and convincing evidence that the parent is unfit to be a parent; and (B) the best interests of the child sought to be adopted would be served if the court dispensed with the parent's consent."¹ I.C. § 31-19-9-8(a)(11). Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ind. Evidence Rule 401. Father's criminal history would be relevant to whether he is "unfit to be a parent." I.C. § 31-19-9-8(a)(11). Consequently, Father's criminal history was relevant to whether his consent to the adoption of the children was required, and the trial court did not abuse

¹ Father contends in his reply brief that Stepfather's petition alleged only that Father's consent was unnecessary because he had abandoned the children for six months under Ind. Code § 31-19-9-8(a)(1). Appellant's Reply Brief at 14. However, Father did not provide a citation to the record for this proposition, and, in fact, Father did not include a copy of Stepfather's petition in Appellant's Appendix.

its discretion by admitting the evidence.² See, e.g., In re T.W., 859 N.E.2d 1215, 1219 (Ind. Ct. App. 2006) (discussing evidence of the father’s criminal history and past drug use in reviewing the trial court’s finding of parental unfitness).

II.

The next issue is whether the trial court erred by granting Stepfather’s petition to adopt Jo.C. and Je.C. When reviewing a trial court’s ruling in an adoption proceeding, we will not disturb that ruling unless the evidence leads to but one conclusion and the trial judge reached an opposite conclusion. Rust v. Lawson, 714 N.E.2d 769, 771 (Ind. Ct. App. 1999), trans. denied. We will not reweigh the evidence but instead will examine the evidence most favorable to the trial court’s decision together with reasonable inferences drawn therefrom to determine whether sufficient evidence exists to sustain the decision. Id. The decision of the trial court is presumed to be correct, and it is the appellant’s burden to overcome that presumption. Id.

Additionally, the trial court entered findings of fact and conclusions thereon pursuant to Ind. Trial Rule 52(A). We may not set aside the findings or judgment unless they are clearly erroneous. Menard, Inc. v. Dage-MTI, Inc., 726 N.E.2d 1206, 1210 (Ind. 2000), reh’g denied. In our review, we first consider whether the evidence supports the

² Father also appears to argue in his reply brief that the trial court should have recused itself “after allowing substantial, inadmissible evidence to be heard.” Appellant’s Reply Brief at 9. “The law is well settled that grounds for error may only be framed in an appellant’s initial brief and if addressed for the first time in the reply brief, they are waived.” Monroe Guar. Ins. Co. v. Magwerks Corp., 829 N.E.2d 968, 977 (Ind. 2005). Consequently, Father waived this issue.

factual findings. Id. Second, we consider whether the findings support the judgment. Id. “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996). A judgment is clearly erroneous if it relies on an incorrect legal standard. Menard, 726 N.E.2d at 1210. We give due regard to the trial court’s ability to assess the credibility of witnesses. Id. While we defer substantially to findings of fact, we do not do so to conclusions of law. Id. We do not reweigh the evidence; rather we consider the evidence most favorable to the judgment with all reasonable inferences drawn in favor of the judgment. Yoon v. Yoon, 711 N.E.2d 1265, 1268 (Ind. 1999).

Ind. Code § 31-19-11-1 provides that the trial court “shall grant the petition for adoption and enter an adoption decree” if the court hears evidence and finds, in part, that “proper consent, if consent is necessary, to the adoption has been given.” According to Ind. Code § 31-19-9-8:

- (a) Consent to adoption, which may be required under section 1 of this chapter, is not required from any of the following:
 - (1) A parent or parents if the child is adjudged to have been abandoned or deserted for at least six (6) months immediately preceding the date of the filing of the petition for adoption.
 - (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.

* * * * *

- (11) A parent if:
 - (A) a petitioner for adoption proves by clear and convincing evidence that the parent is unfit to be a parent; and
 - (B) the best interests of the child sought to be adopted would be served if the court dispensed with the parent's consent.

* * * * *

- (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.

Stepfather had the “burden of proving that the parent’s consent to the adoption [was] unnecessary.” Ind. Code § 31-19-10-1.2(a). Stepfather was required to meet this burden by proving by clear and convincing evidence that Father’s consent was not required under Ind. Code § 31-19-9-8(a). In re M.A.S., 815 N.E.2d 216, 220 (Ind. Ct. App. 2004).³

The trial court found that Father had failed, for a period of at least one year, without justifiable cause to communicate significantly with the children when able to do so and that he knowingly failed to provide for the care and support of the children when able to do so as required by law or judicial decree. Father challenges both conclusions.

We first address the trial court’s finding that Father had failed, for a period of at least one year, without justifiable cause, to communicate significantly with the children

³ Father argues that Stepfather had the burden of demonstrating “clear, cogent and indubitable” evidence and argues that M.A.S., which held that the burden was that of clear and convincing evidence, was wrongly decided. Appellant’s Reply Brief at 3. We disagree for the reasons stated in M.A.S., 815 N.E.2d at 219-220.

when able to do so. Specifically, the trial court found that “[Father] has had no significant or meaningful contact with the boys for at least 10 years.” Appellant’s Appendix at 12.

“One petitioning to adopt without parental consent has the burden of proving both a lack of communication for the statutory period and that the ability for communication during that time period existed.” Rust, 714 N.E.2d at 771. “Whether this burden has been met is necessarily dependent upon the facts and circumstances of each particular case, including, for example, the custodial parent’s willingness to permit visitation as well as the natural parent’s financial and physical means to accomplish his obligations.” Id. “Efforts of a custodial parent to hamper or thwart communication between parent and child are relevant in determining the ability to communicate.” Id. “Furthermore, under the present statute, the communication standard has an additional factor.” Id. “In order to preserve the consent requirement for adoption, the level of communication with the child must not only be significant, but it also must be more than ‘token efforts’ on the part of the parent to communicate with the child.” Id. (citing Ind. Code § 31-19-9-8(b)). “The reasonable intent of the statute is to encourage non-custodial parents to maintain communication with their children and to discourage non-custodial parents from visiting their children just often enough to thwart the adoptive parents’ efforts to provide a settled environment for the children.” Id.

On appeal, Father argues that he was not able to communicate with the children during this ten-year period from 1995 to 2005. According to Father, his ability to have contact with the children was impaired by his incarceration and by Mother's interference.

We observed in Lewis v. Roberts, 495 N.E.2d 810, 813 (Ind. Ct. App. 1986), that “[i]mprisonment standing alone does not establish statutory abandonment.” However, “[n]either should confinement alone constitute justifiable reason for failing to maintain significant communication with one’s child.” 495 N.E.2d at 813. Incarceration “unquestionably alters the means for significant communication.” Id. “What constitutes insignificant communication with a free parent may be significant in relation to an incarcerated parent with limited access to his child.” Id. In Lewis, we concluded that a stepfather failed to meet his burden of proof where the incarcerated father had displayed a “continuing interest in his daughter” by writing to her, sending her cards and gifts, and asking her to visit him. Id.

Here, Father testified that he contacted the children every other week by telephone until 2001. However, according to Mother, Father had no contact with the children after being transferred to the Indiana Department of Correction due to his 1995 conviction. The trial court discredited Father's testimony and concluded that he had no significant contact with the children during his imprisonment. Moreover, it is undisputed that Father had no contact with the children after 2001.

As for Father's allegation that Mother hampered his communication, Father's argument that he could not contact the children because Mother moved and did not

provide him with a new address or telephone number is inconsistent with his assertion that he called the children every other week until 2001. Regardless, even after his release from prison in December 2003, the record does not demonstrate that Father actually attempted any communication with the children or attempted to obtain court-ordered visitation until months after the adoption petition was filed. Although Mother obtained a protective order to prevent Father from contacting her, the protective order contained an exception for “court ordered visitation or visitation as agreed to by the parties herein.” Appellant’s Appendix at 27. Although he could have sought court-ordered visitation at that time, he made no effort to do so until months after the May 2005 adoption petition was filed.

Stepfather was required to prove that Father, for a period of one year, failed without justifiable cause to communicate significantly with the children when able to do so. After Father’s release from prison in December 2003, he did not attempt any communication with the children until after the May 2005 adoption petition was filed. The trial court’s finding that Father, for a period of one year, failed without justifiable cause to communicate significantly with the children when able to do so is not clearly erroneous. See, e.g., T.W., 859 N.E.2d at 1218 (holding that the guardians did not hamper or thwart communication where the incarcerated father did not demonstrate that he actually attempted communication); In re T.H., 677 N.E.2d 605, 607 (Ind. Ct. App. 1997) (holding that the father had failed to communicate with the child such that his consent to adoption was unnecessary even though the child’s “whereabouts changed

often” because the father presented no evidence concerning any efforts to communicate with the child and the “inconvenience of contacting” the mother did not amount to a showing that father was unable to communicate with the child); Williams v. Townsend, 629 N.E.2d 252, 254 (Ind. Ct. App. 1994) (holding that the father’s communications were “token” efforts where he sent an occasional letter or card while incarcerated and took no legal action to enable visitation or communication).

The provisions of Ind. Code § 31-19-9-8 “are disjunctive; as such, either provides independent grounds for dispensing with parental consent.” T.W., 859 N.E.2d at 1218. Consequently, the trial court’s finding that Father’s consent was unnecessary is supported by his lack of communication, and we need not address Father’s argument that the trial court erred by finding that he, for a period of one year, knowingly failed to provide for the care and support of the children when able to do so as required by law or judicial decree. I.C. § 31-19-9-8(a)(2)(B). The trial court’s conclusion that Father’s consent to adopt was not required is not clearly erroneous. See, e.g., T.W., 859 N.E.2d at 1219 (holding that the trial court’s judgment that the father’s consent to adoption was not required was not clearly erroneous).

For the foregoing reasons, we affirm the trial court’s grant of Stepfather’s petition to adopt Je.C. and Jo.C.

Affirmed.

MAY, J. and BAILEY, J. concur