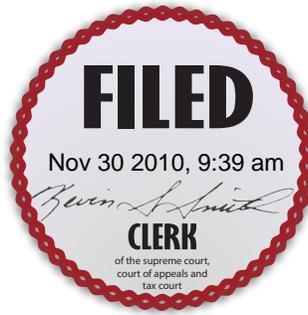


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE ADOPTION)
OF E.L.,)
)
J.N.,)
)
Appellant-Petitioner,)
)
vs.)
)
R.J.,)
)
Appellee-Respondent.)

No. 49A02-1005-AD-569

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Tanya Walton Pratt, Judge
The Honorable Patrick E. Chavis IV, Judge Pro Tempore
Cause No. 49D08-0705-AD-18747

November 30, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

A stepfather appeals the trial court's denial of his petition to adopt his wife's now six-year-old daughter. Although the natural father, through his behavior, impliedly consented to the adoption, he seeks to preserve the parent-child relationship. The trial court determined that it is in the child's best interests to maintain a relationship with her natural father and therefore, the trial court denied the stepfather's petition for adoption. Finding sufficient evidence to sustain the trial court's decision, we affirm.

Facts and Procedural History

The relevant, yet convoluted, facts and procedural history indicate that E.L. was born on June 30, 2004, to V.N who, was unmarried. V.N. had a brief sexual relationship with R.J., and, based upon a paternity test taken shortly after E.L.'s birth, they believed that R.J. was E.L.'s father. During the first sixteen months of E.L.'s life, R.J. cared for E.L. two nights per week while V.N. worked, but R.J. neither resided with E.L. and V.N. nor provided financial support for E.L. R.J.'s mother frequently purchased clothing for E.L. during E.L.'s early months, but moved to Florida when E.L. was six months old. In October or November of 2005, R.J. also moved to Florida and ceased having regular contact with E.L. for the next several months. Thereafter, on January 29, 2006, V.N. married J.N. ("Stepfather"), and E.L. has resided with V.N. and Stepfather ever since.

In April of 2006, R.J. returned from Florida, but was permitted by V.N. to visit with E.L. only one time. R.J. attempted to contact V.N. on other occasions in order to visit with E.L., but V.N. sometimes refused to answer R.J.'s telephone calls. R.J. was incarcerated

from June 2006 until February 2007 based upon successive operating while intoxicated convictions. R.J. wrote letters to V.N. to inquire about E.L.'s well-being while he was incarcerated. When R.J. was released, R.J. was again permitted to visit E.L. on only one occasion. Thereafter, Stepfather informed R.J. that R.J. was not going to be able to see E.L. anymore.

On May 7, 2007, Stepfather filed a petition to adopt E.L. with V.N.'s consent. R.J. refused to consent to the adoption. On May 21, 2007, R.J. filed a paternity action on his own behalf and as "next friend" on behalf of E.L. Appellant's App. at 95. The petition named R.J. and E.L. as "Co-Petitioners." *Id.* The paternity petition requested that R.J.'s paternity be established and also requested that the trial court determine R.J.'s parenting time and child support obligation. The trial court consolidated the adoption matter and the paternity matter under the adoption cause number.

On November 20, 2007, the trial court appointed a guardian ad litem ("GAL") to represent E.L.'s interests. On April 18, 2008, the GAL filed his report recommending that Stepfather's adoption petition be denied. The report recommended that paternity be established in R.J, and that a parenting time schedule be established. Following both oral and written motions to dismiss the paternity petition by V.N., the trial court held a hearing and subsequently dismissed R.J.'s paternity petition, determining that R.J. was time-barred from filing a paternity petition. R.J. appealed the trial court's dismissal and, by published opinion, this Court affirmed in part, reversed in part, and remanded to the trial court. *See In Re Adoption of E.L.*, 913 N.E.2d 1276 (Ind. Ct. App. 2009). Specifically, we concluded that

although the trial court properly dismissed the paternity petition as filed by R.J. on his own behalf, the trial court erred in dismissing the paternity petition as filed by R.J. on behalf of co-petitioner E.L. *Id.* at 1283. In addition to leaving R.J.'s paternity a live controversy for remand, we also stated in a footnote that the trial court had properly concluded that R.J. impliedly consented to the adoption of E.L. by Stepfather. *Id.* at 1281 n.5. However, we noted that the trial court cannot approve the adoption unless it ultimately finds that the adoption is in E.L.'s best interest. *Id.*(citing Ind. Code § 31-19-11-1(a)(1)).

Upon remand, the GAL submitted an updated report recommending that Stepfather's adoption of E.L. now be granted. The GAL opined that although R.J. verbalized a desire to maintain a relationship with E.L., he exhibited behavior inconsistent with that desire, such as again moving to Florida and also failing to provide financial support to E.L. The GAL also observed that adoption of E.L. by Stepfather would preserve consistency, structure, and a sense of security for E.L. On February 11, 2010, the trial court held a final hearing on all matters. During the hearing, the parties stipulated to the issue of R.J.'s paternity of E.L. The trial court heard testimony regarding E.L.'s best interests and took the adoption under advisement. After accepting additional briefs from the parties, the trial court issued its order denying Stepfather's petition for adoption on March 19, 2010. The trial court concluded that it was in E.L.'s best interest that the parent-child relationship with her natural father, R.J., be maintained. This appeal ensued.

Discussion and Decision

When reviewing the 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. *McElvain v. Hite*, 800 N.E.2d 947, 948-49 (Ind. Ct. App. 2003). We do not reweigh the evidence on appeal, but instead we 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.* Moreover, we generally give considerable deference to the trial court's decision in family law matters as we recognize that the trial judge is in the best position to judge the facts, determine witness credibility, get a feel for the family dynamics, and get a sense of the parents and their relationship with their children. *MacLafferty v. MacLafferty*, 829 N.E.2d 938, 940 (Ind. 2005); *Shelton v. Shelton*, 835 N.E.2d 513, 516 (Ind. Ct. App. 2005), *aff'd* 840 N.E.2d 835 (Ind. 2006). The trial court's decision is presumed to be correct, and it is the appellant's burden to overcome that presumption. *In Re Adoption of M.A.S.*, 815 N.E.2d 216, 218 (Ind. Ct. App. 2004).

By instituting adoption proceedings, Stepfather seeks to adopt E.L. and thereby sever the parent-child relationship between E.L. and her natural father, R.J.¹ We begin by noting that the most protected status in any adoption proceeding is that of the natural parent. *Stout v. Tippecanoe County Dep't of Pub. Welfare*, 182 Ind. App. 404, 411, 395 N.E.2d 444, 449 (1979). On occasion we have observed that the relationship between parent and child is a bundle of human rights of such fundamental importance that adoption statutes, being in derogation of the common law, should be strictly construed in favor of a worthy parent and the preservation of such relationship. *In Re Adoption of K.S.P.*, 804 N.E.2d 1253, 1258 (Ind. Ct. App. 2004). Nevertheless, in evaluating the parent-child relationship, the best interest of the child is paramount, and this Court's main concern should lie with the effect of the adoption on the reality of the minor child's life. *Id.*

Stepfather dedicates most of his brief on appeal to his argument that R.J.'s consent to Stepfather's adoption of E.L. was not required for the trial court to approve the adoption because R.J. impliedly consented to Stepfather's adoption of E.L. due to his abandonment of E.L. and/or his failure to communicate with or support E.L. *See* Ind. Code § 31-19-9-8

¹ Indiana Code Section 31-19-15-1 is referred to as the divesture statute and provides that, following an adoption, a biological parent is divested of all rights with respect to the child and the parent-child relationship is terminated. Our statutory and case law provides for some specific exceptions to this general rule. *See* Ind. Code § 31-19-16-1 (post-adoption visitation privileges may be granted to birth parents); Ind. Code § 31-19-15-2 (stepparent adoption does not divest biological parent of rights when adoptive parent is married to biological parent); *see also In Re Adoption of M.M.G.C.*, 785 N.E.2d 267 (Ind. Ct. App. 2003) (second adoptive parent may adopt child without divesting rights of first adoptive parent); *In Re Adoption of K.S.P.*, 804 N.E.2d 1253, 1256 (Ind. Ct. App. 2004) (prospective adoptive parent may adopt child without divesting biological parent of rights when prospective adoptive parent and biological parent, although unmarried, are both in fact acting as parents); *In Re Adoption of A.M.*, 930 N.E.2d 613, 621 (Ind. Ct. App. 2010) (grandfather could adopt child without divesting biological mother of rights because grandfather and mother, although not cohabiting, were both acting as parents).

(parental consent to adoption not required under certain circumstances). In our prior published opinion, we indeed determined that the trial court properly concluded that R.J. impliedly consented to the adoption of E.L. by Stepfather. *Adoption of E.L.*, 913 N.E.2d at 1281 n.5. However, we reminded the parties that even if consent of the natural parent is implied, the trial court may not approve the proposed adoption unless it finds that such adoption is in the child's best interest. *Id.* (citing Ind. Code § 31-19-11-1(a)(1)). R.J. concedes his implied consent to E.L.'s adoption by Stepfather but maintains that there is sufficient evidence to support the trial court's ultimate conclusion that adoption by Stepfather is not in E.L.'s best interest. Because E.L.'s best interest is determinative here, we focus our discussion on the trial court's determination of that issue.

The evidence most favorable to the trial court's denial of Stepfather's adoption petition indicates that, although paternity had not been officially established, R.J. played a significant role in E.L.'s life during her first sixteen months. Although R.J. subsequently moved to Florida in late 2005 for financial reasons, upon his return shortly thereafter, he did attempt to play a role in E.L.'s life, but those attempts were often rebuffed by V.N. The record indicates that V.N.'s marriage to Stepfather significantly changed what had been an amicable dynamic between R.J. and V.N. Moreover, the adoption and paternity proceedings that have been pending since May of 2007 have damaged the ability of these parties to work together for the benefit of E.L. Indeed, R.J. testified that Stepfather and V.N. thwarted his attempts at communicating with and establishing a bond with E.L. in recent years, and it is

safe to assume that the various legal proceedings and strained relationship between these parties resulted in such circumstances.

It is quite evident that R.J. wishes to remain in his daughter's life. The trial court heard R.J.'s testimony and judged his credibility when he testified that he believes that, if permitted, he can reestablish what once was a strong bond and play an important role in E.L.'s future. Now that his paternity has been established, he desires court-ordered parenting time with E.L. on a gradual basis until she is comfortable, and he intends to pay child support.² Despite the fact that he recently again relocated to Florida, R.J. stated that he can easily move back to Indiana in order to enjoy parenting time with E.L. Additionally, R.J. testified that he has another biological child, and he believes that E.L. would benefit from being permitted to meet and know her half-brother.

Although Stepfather questions R.J.'s commitment to maintaining a consistent relationship with E.L., Stepfather does not claim, and there is no evidence, that R.J. is an unfit parent. Instead, Stepfather points out that he, unlike R.J., has developed a strong, healthy, and loving relationship with E.L. We are delighted that Stepfather and E.L. have a strong relationship, but our overriding concern remains whether it is in E.L.'s best interest that her relationship with her natural father be forever severed.

The evidence supports an inference that R.J. formed a relationship with E.L. during the first few years of her life and that he is willing, able, and committed to reestablishing a

² Obviously, we do not condone R.J.'s past failure to provide financial support to E.L. as Indiana law imposes a duty upon a parent to support his children despite the absence of a court order. *See Irvin v. Hood*, 712 N.E.2d 1012, 1015 (Ind. Ct. App. 1999). However, failure to provide support goes to the issue of consent to the adoption, which we have already determined was implied. *See Ind. Code § 31-19-9-8.*

relationship with his daughter and becoming a consistent participant in her life.³ Although it is in E.L.'s best interest to maintain a stable and healthy relationship with her Stepfather, it is also in her best interest to maintain a relationship with her natural father whom, as we stated, appears committed to that relationship. While we recognize that reintroduction of R.J. into E.L.'s life may be somewhat disruptive, such disruption is outweighed by the importance of maintaining a relationship between E.L. and her natural father. Based upon the evidence presented, the trial court determined that it was in E.L.'s best interest that the parent-child relationship between R.J. and E.L. be maintained and, accordingly, denied Stepfather's petition for adoption. Stepfather has not demonstrated that the evidence leads to but one conclusion and the trial court reached the opposite conclusion. Thus, we will not second-guess the trial court's decision.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.

³ Stepfather makes much of the updated GAL report which recommended that the trial court grant his petition to adopt E.L. The trial court here was presented with two GAL reports, the former one recommending denial of Stepfather's adoption petition and the latter one recommending that the adoption petition be granted. We are mindful of the GAL's updated report indicating that R.J.'s recent action of moving back to Florida and his failure to make an effort to currently provide financial support for E.L. is behavior inconsistent with his stated desire to remain a participant in E.L.'s life. While the GAL reports are definitely a piece of the puzzle to be considered, they are by no means the sole determining factor as to whether an adoption petition should be granted or denied. The responsibility for making the determination as to whether adoption is in the best interest of the child rests solely with the trial court. *In Re Adoption of Subzda*, 562 N.E.2d 745, 750 (Ind. Ct. App. 1990).