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**IN THE
COURT OF APPEALS OF INDIANA**

In the Matter of the Adoption of E.F., Minor,)
R.F. and S.F.,)
Appellants-Respondents,)
vs.)
J.N. and K.N.,)
Appellees-Petitioners.)

No. 67A01-1009-AD-502

APPEAL FROM THE PUTNAM CIRCUIT COURT
The Honorable Matthew L. Headley, Judge
Cause No. 67C01-0903-AD-2

May 10, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

R.F. and S.F. (collectively, “the biological parents”) appeal from the trial court’s order granting the adoption of E.F., their biological son, by J.N. and K.N. (collectively, “the adoptive parents”). The biological parents raise the following restated issue for our review: whether the trial court erred by finding that the biological parents’ consent was not required for the adoption because the adoptive parents did not prove by clear, cogent, and indubitable evidence that the biological parents had failed to have significant communication with E.F. for a period of at least one year despite their ability to do so.

We affirm.

FACTS AND PROCEDURAL HISTORY

The adoptive parents were the guardians of E.F. and petitioned to adopt him. K.N. is the mother of R.F. and the paternal grandmother of E.F. J.N. is married to K.N. and is the step-father of R.F. E.F. was born on February 3, 2003 and is the third child born to the biological parents. K.N. is retired from the Indiana Department of Correction (“DOC”), and J.N. is presently employed by DOC, where he has worked for the past twenty-two years. Both of the biological parents are unemployed and receive disability income.

On December 5, 2004, the biological parents were involved in a domestic dispute that resulted in the police being called to their home. As a result of this incident, Child Protective Services placed E.F. and his two older siblings with J.N. and K.N. The biological parents consented to a guardianship, where J.N. and K.N. would be the guardians of E.F. and the two older siblings. The biological parents were not given any specific visitation or parenting time pursuant to the guardianship.

Until March 2006, the biological parents visited the children, including E.F., one day per weekend at the home of J.N. and K.N. In March 2006, R.F.'s step-grandfather passed away, and he and S.F. traveled to Kentucky for the funeral and to help out the family. While in Kentucky, R.F.'s cousin asked R.F. to stay for awhile and help with some things around the cousin's home. The biological parents decided that this was opportunity to get away from drug-related influences in Indiana, so they came back to Indiana to get some belongings and moved down to Kentucky. Initially, after moving, the biological parents made monthly trips to visit E.F. and his siblings. However, after three or four months, the parents were unable to make trips to visit E.F. because their car broke down, and they could not afford to fix it.

The biological parents' next visit did not occur until November 2007. During the time between visits, the biological parents occasionally sent cards and telephoned, usually on a major holiday. In November 2007, R.F. and S.F., who had been in town for about five days without any contact with the children, called K.N. and asked to visit E.F. K.N. invited the biological parents to Thanksgiving dinner, which they attended, although they brought uninvited guests. R.F. and S.F. spent approximately two to four hours with the children. In the fall of 2008, K.N. was telephoned by the biological parents for assistance in checking into a drug rehabilitation facility. R.F. wanted to talk to K.N. and asked to see E.F.,¹ so K.N. told the biological parents to meet her at a nearby park. During the time since their last visit with E.F., the biological parents had again occasionally sent cards and telephoned on some holidays. K.N. brought E.F. to the park, and while R.F. spoke with K.N., S.F. spent

¹ Both of the older children were teenagers at this point and refused to speak to the biological parents.

approximately fifteen minutes with E.F. on the swings. The biological parents' physical appearance was terrible due to their drug abuse. K.N. took E.F. home and returned alone to speak with the biological parents. After speaking with them, she called several places trying to locate a rehabilitation facility for R.F. and S.F. She was able to get them into a yearlong program called Teen Challenge in Chicago. The biological parents failed to complete the program and left after five weeks. They returned to Kentucky and resumed their limited contact with E.F. via telephone calls and cards.

Sometime in either February or March 2009, K.N. called R.F. and told him she was going to adopt E.F. The adoptive parents filed a petition for adoption, alleging that the biological parents' consent was not necessary pursuant to Indiana law. The biological parents moved to contest the adoption, and a bench trial was held to determine whether the biological parents could contest the adoption. At the conclusion of the bench trial, the trial court issued an order, finding that the biological parents had failed to significantly communicate with E.F. when they were able to do so for a period of time greater than one year, and therefore, their consent was not required for the adoption. R.F. and S.F. now appeal.

DISCUSSION AND DECISION

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. *In re the Adoption of M.A.S.*, 815 N.E.2d 216, 218 (Ind. Ct. App. 2004) (citing *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.* at 218-19. The decision of the trial court is presumed to be correct, and it is the appellant's burden to overcome that presumption. *Id.*

The biological parents argue that the trial court erred when it issued its order finding that their consent was not required for E.F.'s adoption because they did not have significant communication with him for at least one year when they were able to do so. The biological parents contend that the adoptive parents did not prove by clear, cogent, and indubitable evidence that the biological parents had failed to significantly communicate with E.F. for a period of at least one year. The biological parents claim that, considering the circumstances of their lives, which included that they did not have a working vehicle to make visits, their attempts at communication with E.F. through telephone calls, cards, and chatting over the internet via a web camera should be considered to be significant communication. The biological parents also allege that K.N. thwarted their communication with E.F. by not returning telephone calls when messages were left and by not encouraging the children to call the biological parents.

Indiana Code section 31-19-9-1 provides, in pertinent part, that a petition to adopt a child who is less than eighteen years of age may be granted only if written consent to the adoption has been executed by each living parent of a child born in wedlock. However, Indiana Code section 31-19-9-8(a)(2) states that the consent required under section 31-19-9-1

is not required from a “parent of a child in the custody of another person if, for a period of at least one year, the parent fails without justifiable cause to communicate significantly with the child when able to do so.” We note that a petitioner for adoption without parental consent bears the burden of proving the statutory criteria for dispensing with such consent in Indiana Code section 31-19-9-8(a)(2) by clear, cogent, and indubitable evidence. *In re the Adoption of C.E.N.*, 847 N.E.2d 267, 271 (Ind. Ct. App. 2006). If the evidence most favorable to the judgment clearly, cogently, and indubitably establishes one of the criteria for granting adoption without parental consent, we will affirm the judgment. *Id.* It is the appellant’s burden to overcome the presumption that the trial court’s decision was correct. *Id.*

Here, the evidence most favorable to the trial court’s decision shows that, at the time of the bench trial, E.F. was seven years old and had been in the care and custody of the adoptive parents since he was one year old. From the time E.F. was three years old, in approximately June 2006, until the time of the trial, the biological parents had two face-to-face visits with him, with one being on Thanksgiving 2007 for approximately two to four hours and the other being in the Fall of 2008 for fifteen minutes. In the year prior to the filing of the adoption petition, the biological parents only saw E.F. once for a very brief amount of time. Although the evidence showed that the biological parents sent cards and presents and called E.F. on the telephone, this contact was sporadic, and as E.F. was only three years old when they moved to Kentucky, this kind of communication was not significant for a child his age. We therefore find that sufficient evidence was presented to support the trial court’s decision that the biological parents had failed without justifiable

cause to communicate significantly with E.F. when able to do so for a period of time greater than one year and that the consent of the biological parents was not required for the adoption of E.F. Any arguments of the biological parents to the contrary are just a request for this court to reweigh the evidence, which we cannot do. *In re the Adoption of M.A.S.*, 815 N.E.2d at 218-19.

Affirmed.

MATHIAS, J., and VAIDIK, J., concur.