

# Children's Law Center of Indiana



## Adoption

4/29/2014

In **D.D. v. D.P.**, 8 N.E. 3d 217 (Ind. Ct. App. 2014), the Court held that the trial court did not err in denying Stepfather's petition to adopt the children on the grounds of Father's failure to communicate with the children, and that Father had demonstrated justifiable cause for his failure to communicate with the children.

Mother's and Father's marriage was dissolved in 2004. Mother was awarded sole legal and physical custody of the children, Father was given parenting time with no overnight visits, and he was ordered to pay child support. Father relocated out of state for work, and between 2004 and 2010, Father did not see the children. Father made many and repeated attempts to obtain visitation during this time and continued to pay child support. Mother refused to cooperate with Father, refused to address most of his requests, led Father to believe that visitation would be traumatic for the children, expressed a wish to have Father's rights terminated, and once she remarried, requested Father to consent to Stepfather's adoption petition. In November 2009, Stepfather filed a petition to adopt the children and gave no notice to Father. An adoption decree was issued in January 2010 without Father's knowledge or consent. Later in January 2010, Father moved to vacate the adoption and moved to establish parenting time. The adoption decree was vacated in March 2010 for lack of proper service on Father, and a hearing was reset on Stepfather's adoption petition. A hearing was held on the consent matter in October 2012, and the trial court ruled that Father's consent to the adoption was necessary. Stepfather appealed, and the appellate court determined that the trial court had used the incorrect standard in examining Stepfather's burden of proof. The trial court reexamined the evidence, and in November 2013, it ordered that Father's consent to the adoption was necessary, determining that Stepfather had not clearly and convincingly shown that Father failed to communicate with the children for more than one year without justifiable cause. Stepfather appealed.

**The Court determined that the trial court had not erred when it found that Mother hampered and thwarted Father's efforts to communicate with the children.** *Id.* at 220-1. Stepfather argued that that he had proved by clear and convincing evidence that Father's consent was not necessary because he had shown that Father failed to communicate with the children for five years, and that the trial court's finding that Mother hampered and thwarted Father's attempts at communication with the children was erroneous. *Id.* at 220. IC 31-19-9-8(a)(2)(A) provides that a parent's consent to adoption is not required if the parent fails, without justifiable cause, to

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communicate when able to do so with the child not in his custody for a period of at least one year. While it was clear from the record that Father had not had contact with the children for at least one year, the trial court also found that Mother prevented Father from communicating with the children. Id. In determining that the trial court did not err in finding that Mother thwarted communication between the children and Father, the Court noted the following evidence: (1) the children were very young when Mother and Father divorced; (2) Father relocated out of state; (3) Mother only responded to five of Father's sixty emails to her, in which he attempted to gain visitation with the children; (4) when Mother did respond to Father's emails, she only seemed interested in terminating his parental rights or in obtaining his consent to Stepfather's adoption petition; and (5) Father testified about his efforts to communicate with Mother and Mother's non-cooperative responses. Id. at 221.

**The Court held that Father had demonstrated justifiable cause for not initiating direct communication with his children; as such, Stepfather had not met his burden of showing by clear and convincing evidence that Father's consent was not needed as provided in IC 31-19-9-8(a)(2)(A).** Id. at 222. Stepfather argued that although Father contacted Mother regarding visitation with the children, there was no direct contact between Father and the children for a period of at least one year. Id. The Court previously determined that the trial court had not erred when it found that Mother thwarted Father's attempts to see the children. Id. at 221. The Court stated that, for the sake of argument, even if Father was required to directly communicate with the children, there were multiple emails where Father had laid out plans to re-establish contact between himself and the children, and Mother never responded to these emails. Id. The Court opined that this was an indication that Father was attempting to establish parenting time in a way that was least disruptive to the children, and stated that "[w]e would think that under these circumstances, Mother... would prefer that Father contact her regarding communications to determine how to proceed in the best interests of the children." Id. at 222. Because Father demonstrated that he had justifiable cause for his failure to communicate with the children, Stepfather did not meet his burden of showing that Father's consent was unnecessary because of Father's failure without justifiable cause to communicate with the children when able to do so. Id.