

Children's Law Center of Indiana



Adoption

12/28/2006

In **In Re Adoption of T.W.**, 859 N.E.2d 1215 (Ind. Ct. App. 2006), the Court affirmed the trial court's granting of the petition to adopt the two children filed by their maternal great-uncle and great-aunt (Petitioners). Father and Mother, who were not married, were both users and sellers of methamphetamine. Their two children were born in 1997 and 2000 and lived with them for several years during which they moved frequently. In 2002, Mother ceased living with Father and the children, and moved in with another methamphetamine dealer. In October 2002, Father decided to turn himself in to face a charge of battery causing serious bodily injury, but could not find Mother so she could take the children. At Father's request, the Petitioners agreed to take them temporarily and were granted temporary guardianship of the children. The children had emotional outbursts and exhibited sexualized behaviors to such an extent that Petitioners sought counseling for them. When Father was released from incarceration in November 2002, he asked to see the children, but the Petitioners would not allow it pending conclusion of an investigation of the younger child's allegations she made to her therapist that she had been sexually abused. The allegation was classified as unsubstantiated when the medical examination showed no physical trauma to the child's sex organs. In 2003, the Petitioners sought and were granted permanent custody of the children. On August 16, 2004, Petitioners filed to adopt the children. Following three hearings, on November 2, 2005, the adoption petition was granted. Prior to the adoption hearings, Father had been convicted of criminal recklessness and dealing methamphetamine for which he had received sentences totaling twenty-one and one-half years. At the time of the adoption hearings, Father was on house arrest.

In accordance with I.C. 31-19-9-8(a), Petitioners presented clear and convincing evidence to obviate the necessity of Father's consent to the adoptions of the children. Id. at 1217-19. On appeal, Father challenged the trial court's determination that his consent to the adoptions was not required due to his failure to communicate significantly when he was able to do so, and argued that the evidence did not establish his unfitness as a parent such that the children's best interest would be served by dispensing with his consent. The Court quoted I.C. 31-19-9-8(a)(2) and (11) which pertain to when a parent's consent to adoption is not required. Subsection (a)(2) states parental consent is not required, if for a period of a year that the child is in the custody of another, the parent "fails without justifiable cause to communicate significantly with the child when able to do so." Subsection (a)(11) states that parental consent is not required 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 ... would be served if the court dispensed

with the parent's consent." The Court noted that either subsection provides independent grounds for dispensing with parental consent. The clear and convincing standard of proof applies in both instances. In re Adoption of M.A.S., 815 N.E.2d 216, 219 (Ind. Ct. App. 2004). T.W. at 1217.

The Court found that the trial court did not clearly err by concluding that Father failed, without justifiable cause, to communicate significantly with the children. It noted that: (1) even though Father was denied in-jail visitation, he was not prohibited from communicating with the children in writing or by telephone which he did not do; (2) Father did not take advantage of Petitioners' offer to fund Father's commissary account for the purchase of stamps and stationary; and (3) Father's argument that, if he had tried to communicate, Petitioners' would have impeded his efforts, was speculative. Id. at 1218.

The Court found that there was clear and convincing evidence to support the trial court's determination of Father's parental unfitness and that dispensing with his consent to the adoptions would serve the children's best interests. The Court noted evidence that showed: (1) Father had been unable to care for the children largely because of his drug use and criminal convictions; (2) Father did not provide financial support for the children during their guardianship, but used his income from employment to purchase methamphetamine; (3) although following his last release from incarceration, Father had been methamphetamine-free as reflected by his mandatory drug screening, he testified that he could barely take care of himself financially; and (4) there was ample evidence that the Petitioners had consistently provided for the children's needs, and the children have thrived in their care. Id. at 1218-19.