



Adoption

5/19/2006

In **In Re Adoption of C.E.N.**, 847 N.E.2d 267 (Ind. Ct. App. 2006), the Court affirmed the judgment of the trial court granting the petition to adopt the child without the mother's consent. The child was born out of wedlock on August 2, 2000 to her fifteen-year-old mother. The paternal grandmother was granted custody of the child in October 2001, and, on November 12, 2004, she and her husband filed this petition to adopt the child along with a Consent by the father. The mother filed a motion to contest the adoption and a request for court appointed counsel for her. The counsel was appointed on April 19, 2005. The trial court held a hearing on August 11, 2005, and on October 31, 2005 entered Findings of Fact and Conclusions of Law in which the adoption was granted. The mother appealed, arguing that the petitioners failed to present clear and convincing evidence that she failed to communicate significantly with the child or knowingly failed to provide care and support for him.

There was sufficient evidence in the record to support the trial court's conclusion that the mother failed without justifiable cause to communicate significantly with the child when she was able to do so. Accordingly, the trial court properly granted the petition to adopt. *Id.* at 272. The Court noted that (1) a petitioner for adoption without parental consent bears the burden of proving the statutory criteria for dispensing with such consent in I.C. 31-19-9-8(a)(2) by clear, cogent and indubitable evidence; (2) if the evidence most favorable to the judgment clearly, cogently, and indubitably establishes one of the criteria for granting the adoption without parental consent, the appeal court will affirm the judgment; and (3) the decision of the trial court is presumed to be correct, and it is the appellant's burden to overcome that presumption. Rust v. Lawson, 714 N.E.2d 769, 771 (Ind. Ct. App. 1999), *trans. denied*. The Court cited (1) I.C. 31-19-9-1 for its provision that a petition to adopt a child under the age of eighteen may be granted only if written consent to the adoption has been executed by the mother of a child born out of wedlock and the father of a child whose paternity has been established; and (2) I.C. 31-19-9-8(a)(2) which provides that the consent required under section 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: (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. The Court pointed out that, under I.C. 31-19-9-8(a)(2), parental consent is not required if only one of the two criteria is met. C.E.N. at 271-72.

The Court reviewed the evidence noting that (1) the six-year-old child has been in the care and custody of the petitioners since the age of eight months; (2) the mother's communication

and visitation with the child has been sporadic over the last few years, and has been no longer than ten to fifteen minutes at a time; (3) contrary to the mother's contention that the paternal grandmother hampered the mother's communication with the child, the evidence shows that, although the paternal grandmother eventually became discouraged by the mother's lack of interest in visiting the child, she initially encouraged visitation between the mother and the child; (4) until about July 2004, the mother lived within a very close distance to the child and thus was able to visit the child when she chose to; and (5) the mother had not visited the child since July of 2004, and even that visit occurred because the mother unexpectedly saw the child during a visit to the maternal grandmother's house. Id. at 272.