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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE ADOPTION OF)
P.B., Minor Child)

GALEN BYERS,)
Appellant-Petitioner,)

vs.)

RANDALL D. RATLIFF,)
Appellee-Respondent.)

No. 68A04-0605-CV-232

APPEAL FROM THE RANDOLPH CIRCUIT COURT
The Honorable Jay L. Toney, Judge
Cause No. 68C01-0509-AD-0125

December 12, 2006

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-petitioner Galen Byers appeals the trial court's order granting appellee-respondent Randall Ratliff's petition for the adoption of P.B.—Byers's biological daughter. Specifically, Byers argues that the trial court erred when it granted the petition because it erroneously found that (1) Byers's consent was not required to grant the petition, and (2) Byers was an unfit parent and the adoption was in the best interests of the child. Finding no error, we affirm the judgment of the trial court.

FACTS

Byers is the biological father of P.B., a six-year-old girl born during his marriage to Diane Ratliff (Diane). Byers and Diane divorced on October 31, 2001. In the original dissolution decree, Diane was granted custody of P.B. and Byers was granted parenting time pursuant to the Randolph County Guidelines.

Diane married Ratliff on October 18, 2002, and Ratliff began financially supporting P.B. On October 30, 2002, Diane filed a petition to suspend Byers's visitation, and the trial court issued an order on November 25, 2002, limiting Byers's visitation with P.B. On November 18, 2003, Diane filed another petition to suspend Byers's visitation. After Byers failed to appear for the hearing, the trial court issued an order on February 12, 2004, suspending Byers's parenting time and prohibiting him from "communicat[ing], either directly or indirectly, with Diane J. (Byers) Ratliff, any member of her household or any member of her family." Appellant's App. p. 19. Thereafter, Ratliff filed his petition to adopt P.B. on September 30, 2005.

Byers was incarcerated from March 24, 2004, through November 22, 2004, and again from February 15, 2005, through October 16, 2005. Upon his release, Byers was

placed in a work-release program through Riverside Residential Center (Riverside) in Marion County. While at Riverside, Byers completed a substance abuse program, a parenting course, and an anger management course.

On February 13, 2006, Byers filed a motion with the trial court to reinstate his visitation privileges regarding P.B. However, the proceeding on Ratliff's petition to adopt P.B. superseded Byers's motion, and the trial court held a hearing on the petition on March 14, 2006. On April 4, 2006, the trial court issued a decree of adoption in favor of Ratliff. Byers now appeals.

DISCUSSION AND DECISION

We note at the outset that Ratliff has failed to file an appellate brief. When an appellee fails to file an appellate brief, we apply a less stringent standard of review. In re Adoption of R.L.R., 784 N.E.2d 964, 968 (Ind. Ct. App. 2003). We may reverse the decision of the trial court if the appellant establishes prima facie error. Id. Prima facie error is "error at first sight, on first appearance, or on the face of it." Id. We will affirm the decision of the trial court if the appellant fails to sustain this burden. Finally, we will not undertake the burden of developing arguments in favor of the appellee. Id.

I. Consent

Byers argues that the trial court erred when it granted Ratliff's petition because Byers did not consent to the adoption. Specifically, Byers argues that the trial court erred by finding that Byers' consent was not required under Indiana Code section 31-19-9-8.

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 the mother of a child born out of wedlock and the father of a child whose paternity has been established. 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:

- (2) A parent of a child in the custody of another person if for a period of at least one (1) 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.

Here, the burden was on Ratliff to present clear and convincing evidence to the trial court that Byers's consent was not required under section 31-19-9-8(a)(2). In re Adoption of M.A.S., 815 N.E.2d 216, 220 (Ind. Ct. App. 2004). Based on the evidence presented, the trial court found that Byers's consent was not required:

9. That consent of the natural father is not required pursuant to I.C. 31-19-9-8(a)(2)(A), in that he has, for a period of at least one year, failed without justifiable cause to communicate significantly with the child when able to do so, as follows:
 - a. That the last visit that natural father had with the minor child was October 24, 2003.
 - b. That following [a] hearing concerning natural father's parenting time, the Randolph Superior Court issued an Order suspending natural father's parenting time on February 12, 2004.

- c. That natural father did not appear at the hearing which resulted in the suspension of his parenting time.
 - d. That natural father was incarcerated from March 24, 2004, to November 22, 2004, and from February 15, 2005, to October 16, 2005, due to his criminal behavior.
 - e. That natural father made no effort to re-establish his parenting time prior to the filing of the Petition for Adoption on September 30, 2005.
10. That Consent of the Natural Father is not required pursuant to I.C. 31-19-9-8(a)(2)(B), in that he has for a period of at least one year he [sic] knowingly failed to provide for the care and support of the minor child when able to do so as required by law or judicial decree, as follows:
- a. That prior to the filing of the Petition for Adoption, natural father's last child support payment was September 5, 2003.
 - b. That although natural father claims an inability to pay child support for the period of more than two years from September 5, 2003, to September 30, 2005, natural father used drugs for a portion of that time, was arrested for other offenses, and paid a minimum of \$585.00 for bail, without paying any child support.
 - c. That although natural father was an able-bodied man, he paid no child support during any of the periods that he was not incarcerated after September 5, 2003, and prior to September 30, 2005.
 - d. That Petitioner has shown by clear, cogent and indubitable evidence that natural father was able to pay child support, but failed and refused to do so.

Appellant's App. p. 6.

On appeal, Byers argues that the trial court erroneously found that his consent was not required pursuant to section 31-19-9-8(a)(2)(A) because the trial court's February 12,

2004, order suspending Byers's visitation time with P.B. included a no-contact provision that he would have had to violate to contact his daughter. Even if we assume, merely for argument's sake, that Byers's contention is correct, we can still affirm the trial court's adoption decree if the trial court properly found that Byers's consent was not required pursuant to the "care and support" subsection of the statute. I.C. § 31-19-9-8(a)(2) (note the disjunctive "or" between the two subsections). We turn, therefore, to the trial court's findings pursuant to the second subsection.

Byers argues that the trial court erred when it found that his consent was not required pursuant to section 31-19-9-8(a)(2)(B). Specifically, Byers argues that he was unable to pay child support because he was imprisoned, and therefore unemployable, during the majority of the two-year period in question. Before Ratliff's petition was filed on September 30, 2005, Byers had last paid child support for P.B. on September 5, 2003. While we acknowledge that Byers was incarcerated from March 24, 2004, through November 22, 2004, and again from February 15, 2005, through October 16, 2005, Byers made no effort to obtain employment or pay child support during the ten months that he was not incarcerated. Instead of obtaining employment and making child support payments, Byers purchased a 1998 Lincoln Navigator, bonded out of jail on November 9, 2003, and December 20, 2003, and told Diane that "it would probably make [her] sick that he could spend \$3000.00 on wheels and tires but he wasn't paying his child support." Tr. p. 10-12. Therefore, contrary to Byers's assertion on appeal, Ratliff did present evidence to the trial court that Byers had the means to provide financial support yet failed to provide care and support for P.B. In light of this evidence, Byers has failed to establish

that it was prima facie error for the trial court to find that it did not need Byers's consent to grant Ratliff's petition pursuant to section 31-19-9-8(a)(2)(B).

II. Best Interests of the Child

Byers argues that the trial court erred when it found that he was an unfit parent and granted Ratliff's petition after finding that it was in P.B.'s best interest. Specifically, Byers argues that the trial court failed to provide specific findings in its adoption decree that took Byers's recently improved lifestyle into account.

The primary concern in every adoption proceeding is the best interest of the child. In re Adoption of J.B.S., 843 N.E.2d 975, 977 (Ind. Ct. App. 2006). In the adoption decree, the trial court provided:

11. That it is in the best interest of the minor child that the Petition for Adoption should be granted, as follows:
 - a. That [Ratliff] has developed a good and loving relationship with the minor child.
 - b. That [Ratliff] has been financially supporting the minor child since [his] marriage to the natural mother on October 18, 2002.
 - c. That [Ratliff] is able to continue to care for and educate the minor child.
 - d. That the natural father has shown neglectful behavior toward the child, has failed to support the child emotionally and financially, has a history of drug use, and has engaged in other criminal activity that has resulted in his incarceration.

Appellant's App. p. 7. Byers argues that the trial court, when making its decision, did not consider his release from jail, his placement in a work-release program, or his completion

of a parenting class, anger management class, and substance abuse program because it did not list those factors in the adoption decree.

As noted above, it is well settled that concern for the child's best interests permeates the entire adoption proceeding. After hearing evidence from both Byers and Ratliff, the trial court concluded that it was in P.B.'s best interests for it to grant Ratliff's petition. While Byers contends that the trial court did not consider his recently improved lifestyle because the adoption decree does not explicitly list these positive changes, Byers cites no legal or statutory precedent that requires a trial court to cite every piece of evidence that it considers when it makes a decision regarding the best interests of the child in an adoption proceeding.¹

Here, the trial court explicitly listed Ratliff's relationship with P.B., his current financial support of the child, and his ability to care for P.B. in the future. It also cited Byers's criminal history, his history of drug use, and his failure to emotionally and financially support P.B. The trial court weighed the evidence that was presented to it and determined that it was in P.B.'s best interests for it to grant Ratliff's petition. Essentially, Byers is inviting us to reweigh the evidence—an invitation that we decline. Consequently, we cannot say that the trial court erred when it determined that it was in P.B.'s best interests for it to grant Ratliff's petition.

¹ Byers directs us to Rowlett v. Vanderburgh County Office of Family and Children, which provides, "In determining whether the conditions that led to the children's removal are likely to be remedied, the trial court must assess the parent's ability to care for the children as of the date of the termination proceeding and take into account any evidence of changed conditions." 841 N.E.2d 615, 620 (Ind. Ct. App. 2006), trans. denied. While Ratliff's adoption of P.B. is a termination of Byers's parental rights, the court's holding does not stand for Byers's proposition that the trial court must explicitly list each factor that it considers when it makes a decision.

The judgment of the trial court is affirmed.

DARDEN, J., and ROBB, J., concur.