

Children's Law Center of Indiana



Adoption

12/04/2007

In **In Re Adoption of B.R.**, 877 N.E.2d 217 (Ind. Ct. App. 2007) the Court reversed and remanded the trial court's denial of the petition of Step-Father to adopt the child. The child was born in 2001 and Mother and Father executed a paternity affidavit. Father never paid child support. Mother married Step-Father in 2006 and filed a petition to adopt the child December 13, 2006. Father filed a Motion to Contest Adoption. The trial court found that the Father had the ability to pay support at various times in the past five years, but had not. The trial court further found, however, that inasmuch as there was no court order or other requirement that Father pay child support, Father's consent to the adoption was necessary. Step-Father appealed.

The trial court erred in concluding that Father's consent to the adoption was required. Id. at 219. IC 31-19-9-8(a)(2) provides that consent to adoption is not required of:

- (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.

The Court held that the biological father had the common law duty of a parent to support his child, and that his failure to do so satisfied IC 31-19-9-8(a)(2)(B). Id. at 218.