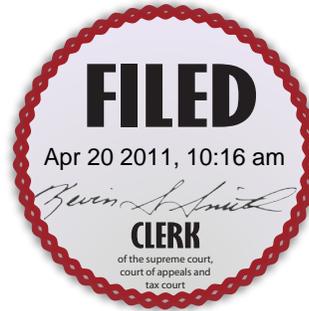


**Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**



APPELLANT PRO SE:

**J.T.**  
Pendleton, Indiana

ATTORNEY FOR APPELLEE:

**MARK F. JAMES**  
Anderson, Agostino & Keller, P.C.  
South Bend, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN RE THE ADOPTION OF R.S.T., )  
)  
J.T., )  
)  
Appellant, )  
)  
vs. ) No. 71A03-1008-AD-475  
)  
)  
G.N., )  
)  
Appellee. )

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APPEAL FROM THE ST. JOSEPH PROBATE COURT  
The Honorable Peter J. Nemeth, Judge  
Cause No. 71J01-1003-AD-32

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**April 20, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Appellant-respondent J.T. (“Father”) appeals the trial court’s order granting appellee-petitioner G.N.’s (“Stepfather”) petition for adoption of Father’s child, R.S.T. We affirm.

## **Issues**

Father raises two issues for our review, which we restate as:

- I. Whether the trial court erred in concluding that his consent to R.S.T.’s adoption was not required; and
- II. Whether the trial court erred by concluding that Stepfather’s adoption was in R.S.T.’s best interests.

## **Facts and Procedural History**

Father is incarcerated in the Indiana Department of Correction. Stepfather married A.N. (“Mother”) on March 5, 2010, and on March 19, 2010, he filed a petition for the adoption of R.S.T., along with the consent of Mother. Father filed a motion to contest the adoption and request for summary dismissal on May 19, 2010.

On August 5, 2010, the trial court held a hearing on the adoption, and approved Stepfather’s petition on August 6, 2010. The trial court found that Father’s consent to the adoption was not required because of his failure to pay child support for a period of at least one year, and that it was in R.S.T.’s best interests to be adopted by Stepfather. Father now appeals.

## **Discussion and Decision**

### Standard of Review

When we review a probate court’s ruling in an adoption proceeding, we will not

disturb the ruling unless the evidence leads to but one conclusion, and the court reached an opposite one. In re Adoption of D.C., 928 N.E.2d 602, 604 (Ind. Ct. App. 2010), trans. denied. We will not reweigh the evidence, but instead will examine the evidence most favorable to the probate court's decision, together with the reasonable inferences drawn therefrom, to determine whether sufficient evidence exists to sustain the decision. Id. The probate court's decision is presumed to be correct, and it is appellant's burden to overcome that presumption. In re Adoption of A.S., 912 N.E.2d 840, 851 (Ind. Ct. App. 2009), trans. denied.

#### Lack of Consent to Adoption

Father challenges the trial court's conclusion that his consent to adoption was not required. Indiana Code section 31-19-11-1 provides that the trial court "shall grant the petition for adoption and enter an adoption decree" if it hears evidence and finds, in part, that "the adoption requested is in the best interests of the child" and "proper consent, if consent is necessary, to the adoption has been given." Consent to an adoption is not required if a parent of a child in the custody of another person "knowingly fails to provide for the care and support of the child when able to do so as required by a judicial decree" for a period of at least one year. I.C. §31-19-9-8(a)(2)(B). Here, the trial court explained that Father's consent was obviated because, although he was incarcerated and thus unable to work, he nevertheless failed to make child support payments even after they were reduced to \$1.00, and that a token payment would have sufficed to prevent imputed consent to the adoption. Father argues in his appellate brief that he was under the impression that his child support payments would

automatically be deducted from his inmate trust account.

Father did not submit a transcript of the proceedings or a verified statement of the evidence pursuant to Indiana Trial Rule 31 with his appeal, and has thus waived the issue of consent for our review. “Generally, a transcript of the evidence and proceedings at trial must be included in the record for it to be deemed sufficient.” Campbell v. Criterion Group, 605 N.E.2d 150, 160 (Ind. 1992). Although not fatal to an appeal,<sup>1</sup> failure to include a transcript waives any specifications of error which depend upon the evidence. Id. Despite Father’s arguments in his brief that he did not knowingly fail to pay child support, he has submitted no evidence corroborating that assertion, and, regardless, we would be unable to reweigh any such evidence. Father has thus waived the issue of consent, and the trial court’s determination is affirmed.

#### Best Interests of the Child

Father next argues that the trial court erred when it determined that Stepfather’s adoption was in R.S.T’s best interests and lists several alleged errors in his brief. The purpose of Indiana’s adoption statutes is to protect and promote the welfare of children by providing them with stable family units. D.C., 928 N.E.2d 602, 607 (Ind. Ct. App. 2010), trans. denied. The best interests of the children are paramount. Id. Again, Father has waived the issue on appeal. Because he did not submit a transcript of the proceedings or a verified statement of the evidence, we are unable to review the evidence before the trial court

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<sup>1</sup> Failure to provide any record of the lower court proceedings is fatal to an appeal, depriving us of jurisdiction. Campbell, 605 N.E.2d at 160. Here, Father submitted an appendix with his brief so we have not outright dismissed his appeal. However, as we explain below, Father’s failure to submit a hearing transcript means that he has waived our review of both contested issues.

concerning the best interests of the child. Moreover, his arguments on appeal are essentially an invitation to reweigh the evidence, which we will not do. We therefore affirm the trial court's conclusion that R.S.T.'s best interests are served by Stepfather's adoption.

### **Conclusion**

Although we understand that “the expense of preparing transcriptions often runs in the hundreds or thousands of dollars,” Campbell, 605 N.E.2d at 160, without at least some indication of the evidence before the court, we are unable to review its decision for error.

Affirmed.

FRIEDLANDER, J., and BROWN, J., concur.