

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of HAYDEN TATE LONG, a/k/a  
HAYDEN TATE RIDEOUT, Minor.

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SARAH CELINE RIDEOUT and LARRY  
ROBERT RIDEOUT,

UNPUBLISHED  
February 28, 2006

Petitioners-Appellees,

v

JOHNNY JEFFERSON WYRICK,

Respondent-Appellant.

No. 264358  
Oakland Circuit Court  
Family Division  
LC No. 2005-705690-AY

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Before: Borrello, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor child pursuant to a stepparent petition for adoption, MCL 710.51(6). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The petitioner in a stepparent adoption proceeding, MCL 710.51(6), has the burden of proving by clear and convincing evidence that termination of the noncustodial parent's rights is warranted. *In re Hill*, 221 Mich App 683, 691; 562 NW2d 254 (1997). In order to terminate parental rights under the MCL 710.51(6), the court must determine that the requirements of subsections a and b of this provision are both satisfied. *Id.* at 692. Thus termination of the parental rights of a noncustodial parent may be granted upon a stepparent's petition for adoption when both of the following conditions are met: (1) the noncustodial parent, having the ability to support or assist in the support of the child, fails to provide regular and substantial support, *or*, if a support order has been entered, fails to substantially comply with the order for a period of two or more years preceding the filing of the petition, MCL 710.51(6)(a), and (2) where the noncustodial parent, having the ability to visit, contact or communicate with the child, regularly and substantially fails to do so for a period of two years preceding the filing of the petition, MCL 710.51(6)(b). This Court reviews the factual findings of the trial court for clear error. *In re Caldwell*, 228 Mich App 116, 221; 576 NW2d 724 (1998).

Because there is a previous support order in this matter, the inquiry for the court under MCL 710.51(6)(a) was whether respondent failed to substantially comply with that order; petitioner was not required to prove that respondent had the ability to pay. *Id.* at 122. The trial

court did not clearly err by finding that respondent, who has been incarcerated since late 2000, failed to substantially comply with the support order for the two years preceding the filing of the stepparent adoption petition. The support order required respondent to pay \$74 per week, further providing that support would be suspended during the payer's incarceration "unless the payer has or had income or assets from which support can be paid." The record supported the trial court's conclusion that respondent had some level of income while incarcerated, by virtue of employment in prison, and by receiving funds from outside sources, such that the support obligation was not suspended by his incarceration. Indeed, respondent testified that he paid support for another child when he received outside funds. Moreover, a respondent's failure to substantially comply with a support order may include failure to pay confinement expenses, testing fees and medical expenses of the child. *In re Hill, supra* at 693-694. In the instant case, the support order required respondent to pay the expenses during confinement for the birth of the minor child, an obligation that was not suspended by his incarceration. Petitioner mother testified that the sole support received from respondent for the minor child was \$20 received before respondent's incarceration. Respondent admitted that he never sent money to the Friend of the Court or to petitioner mother for the child, and Friend of the Court records reflected no payment received from respondent. Thus, the testimony at trial clearly established that respondent failed to substantially comply with the support order, including the provision requiring the payment of confinement expenses, in the two years preceding the filing of the stepparent petition for adoption, and the trial court did not clearly err in so finding.

Turning to statutory subsection (b), we conclude that the trial court did not clearly err by finding that respondent regularly and substantially failed to communicate with the child in the two years preceding the filing of the stepparent petition for adoption. MCL 710.51(6)(b). Petitioner mother testified that respondent had sent only two birthday cards and an Easter card to the minor child, and the most recent of these was received in the spring of 2002. The trial court credited the testimony of petitioner mother, as it was entitled to do. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondent argues, citing *In re ALZ*, 247 Mich App 264; 636 NW2d 284 (2001), that the trial court erred by finding that he failed to communicate with the child because his efforts to have contact and communication with the child were thwarted by petitioner mother. However, the record does not support this claim. When petitioner mother changed addresses 3½ to 4 years before the hearing in this matter, she advised the Friend of the Court of her new address and left a forwarding address with the postal service. Until just recently, her telephone number could be obtained by calling information. Under these circumstances, the trial court was amply justified in finding that respondent had the ability to communicate with and contact the child but failed to do so.

Respondent finally challenges the trial court's determination that the termination of his parental rights was in the best interests of the child. The court's authority to terminate parental rights under MCL 710.51(6) is permissive rather than mandatory, and the court need not grant termination, even if the statutory grounds are established, if it finds that termination would not be in the best interests of the child. *In re Newton*, 238 Mich App 486, 493-494; 606 NW2d 34 (1999). The factors to be evaluated in the best interests determination, MCL 710.22(g), include the proposed adoptive parent's emotional ties with the child, his or her ability to provide love and guidance as well as food, clothing and medical care, the length of time the adoptee has lived in a stable environment, and the permanence of the family unit in the proposed adoptive home.

Respondent claims on appeal that the court failed to evaluate the appropriate factors. However, the trial court's express findings clearly reflect that the court did consider the relevant factors:

Testimony is very clear that father is incarcerated, and he doesn't participate at all in this child's life. He only participated in maybe two or three correspondences, since he's gone to prison, no financial correspondence. On the other hand the proposed adoptive father here has been living with the child. **Testimony is very clear that he does participate in all those factors which are including [sic] in the best interest factors, giving love, attention, medical attention and support, participating in school, participating in the community, activities with the child, neighborhood, providing love and attention in the home. He provides stability.** The mother indicates that they are going to have another child, and that they're family, and that the father – father here would provide all the essentials that this child needs, and has been providing them since they were married. (emphasis added).

Finally, respondent's claim that the trial court's best interests determination was erroneous because respondent mother rebuffed and precluded him from forming a relationship with the child warrants no relief. As we have already noted, the evidence does not support this factual assertion.

Affirmed.

/s/ Stephen L. Borrello  
/s/ David H. Sawyer  
/s/ E. Thomas Fitzgerald