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STATE OF MICHIGAN

COURT OF APPEALS

In re OMM, Minor.

RACHELE MARIA WYSOCKI and LEIRIK WYSOCKI,

Petitioners-Appellants,

v

TONY LEE MOLSKI,

Respondent-Appellee.

UNPUBLISHED
September 14, 2026
8:50 AM

No. 376870
Emmet Circuit Court
Family Division
LC No. 25-001587-AY

Before: BAZZI, P.J., and PATEL and ACKERMAN, JJ.

PER CURIAM.

In this stepparent-adoption case, petitioners, mother and stepfather of the subject child, appeal the trial court's order denying their request to terminate respondent-father's parental rights to the child under MCL 710.51(6) and dismissing their petition for stepparent adoption. We vacate and remand for further proceedings.

I. FACTS

In 2015, petitioner-mother gave birth to OMM. Respondent acknowledged his paternity by executing an affidavit of parentage. See MCL 722.1003. They married in 2016. In 2017, when OMM was 16 months old, respondent was arrested and incarcerated for sexual misconduct involving his 17-year-old half-niece. He subsequently pleaded guilty to one count of third-degree criminal sexual conduct, for which he was sentenced to serve 10 to 22½ years in prison. His earliest release date is January 22, 2027, at which time OMM will be 11 years old.

In November 2017, petitioner-mother and respondent divorced. The judgment of divorce awarded petitioner-mother sole legal and physical custody of OMM while reserving judgment regarding respondent's parenting time because of his incarceration. The child-support order set his obligation at zero, subject to review upon respondent's release from prison.

In October 2023, petitioner-mother married petitioner-stepfather. In March 2025, they petitioned the trial court for a stepparent adoption and for termination of respondent's parental rights to OMM, then nine years old, under MCL 710.51(6). At the evidentiary hearing on the termination petition, petitioner-mother testified that she was OMM's sole provider, that neither respondent nor any of his family members provided financial support for OMM after she and respondent divorced, and that respondent never sent OMM money or gifts. Petitioner-mother asserted that she and petitioner-stepfather provided for all of OMM's financial, emotional, medical, and educational needs.

Respondent testified that he had no ability to provide financial support for OMM because of his incarceration. He stated that, although he earned some nominal income in prison from his job as a porter ($12 to $15 per month), attending college courses (64 cents per day, which totaled $7.67 for the preceding month), and selling his artwork ($25 per year), that income was "barely enough to get by," adding that he could "only buy the basic essentials," such as "[s]oap, stamps, envelopes, deodorant, and batteries for [his] electric shaver."[1] He testified that he had no other sources of income, that he was not able to contribute to the financial support of any of his children, that none of his family or friends made deposits to his prison account, that he had no savings or assets, that his family was not holding any significant savings or assets for him, that he owned no chattels of any value, and that he expected no inheritances.[2]

The trial court made the following factual findings regarding respondent's ability to provide financial support for OMM during the two-year lookback period in MCL 710.51(6)(a):

> Respondent has not paid any amount of money for [OMM]'s support since he was incarcerated in January 2017. While in prison, Respondent has been consistently employed earning between $12 and $15 per month, although he is currently waiting for a job to be available for him. He earns 64 cents per day for attending college, for which he has received one monthly payment of $7.67. Since 2020, he has participated in an annual art program, for which he receives $25. He testified that he makes "cards and portraits" in prison and, in at least one letter, refers to this as an intended "side business." Respondent testified he meant that making cards and portraits would be a side business when he is released. He has sold two or three cards for $1 each during his incarceration, but he is not permitted to have an on-going "side hustle." There was no evidence that he has regular income from selling cards or portraits. Respondent testified he only has funds to buy essentials, such as soap, deodorant, and batteries for his electric shaver.

The trial court then denied the termination petition on the ground that petitioners failed to establish the statutorily required showing that respondent, "having the ability to support, or assist

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[1] Respondent testified that he did not have a prison job at the moment because he had recently moved to a new housing unit.

[2] The parties also submitted proofs regarding the amount of contact respondent had with OMM as part of the showing required by MCL 710.51(6)(b), but that is not relevant to the issues presented in this appeal.

in supporting, the child, has failed or neglected to provide regular and substantial support for the child." MCL 710.51(6)(a). The court found that respondent "has the ability to earn between $10 and $25 per month," which it said was "an amount that would be quickly consumed by the purchase of the few essential items [r]espondent testified he purchases with his income." The trial court analogized this case to *In re LHH*, unpublished per curiam opinion of the Court of Appeals, issued November 30, 2023 (Docket Nos. 365553 and 365554). There, we said that the trial court had "incorrectly focused its inquiry on the father's sacrificial or symbolic support, as opposed to the substantive impact on the children." *Id*. at 5. The trial court here observed the parallel with *In re LHH*:

> Here, even if Respondent were to [forgo] purchasing some of the personal hygiene items and sent half of his income for [OMM]'s support, he would be able to pay support in an amount between $5 to $12.50 per month, or $1.25 to $3.12 per week. While such payments may demonstrate Respondent's "sacrifice or symbolic support" of OMM, the nominal amount he has the ability to pay would not make a meaningful difference in [OMM]'s life and, therefore, is not "substantial" support, as is required by MCL 710.51(6)(a).

The court therefore concluded that petitioners had failed to make the required showing under MCL 710.51(6)(a). This appeal followed.

II. STANDARDS OF REVIEW

> The petitioners in a stepparent adoption proceeding have the burden of proving by clear and convincing evidence that termination of the noncustodial parent's rights is warranted. The trial court's factual findings are reviewed for clear error. A finding is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake was made. [*In re NRC*, 346 Mich App 54, 58; 11 NW3d 296 (2023) (cleaned up).]

We review issues of statutory interpretation de novo. *Id*.

III. ANALYSIS

Petitioners argue that the trial court erred in assessing what constitutes "regular and substantial support" for purposes of MCL 710.51(6)(a), because our caselaw requires that the focus be on the noncustodial parent's overall ability to provide support for his or her child, not whether the support would have a meaningful impact on the child's life. We agree.

This case involves the application and construction of MCL 710.51(6). That provision "was part of a 1980 amendment to the Michigan Adoption Code[, MCL 710.21 *et seq*.]." Its "primary purpose was to foster stepparent adoptions in families where the natural parent had regularly and substantially failed to support or communicate and visit with the child" by "redress[ing] the unfairness of prior law, which had required the natural parent's consent in all proposed adoptions." *In re Colon*, 144 Mich App 805, 810; 377 NW2d 321 (1985). Under the statute, the parental rights of a biological parent may be terminated to facilitate a stepparent adoption if certain conditions are met. As relevant to this case, a stepparent adoption petition must show that "[t]he other parent, having the ability to support, or assist in supporting, the child, has

failed or neglected to provide regular and substantial support for the child . . . for a period of 2 years or more before the filing of the petition." MCL 710.51(6)(a). Therefore, the pertinent inquiry is whether respondent "had the ability to pay regular and substantial support but had neglected to do so for two or more years." *In re SMNE*, 264 Mich App 49, 56-57; 689 NW2d 235 (2004).

The specific question presented in this case is what constitutes "regular and substantial" support for purposes of MCL 710.51(6)(a) in the context of an incarcerated parent whose ability to provide support for his or her child is severely limited by indigency resulting from incarceration. Petitioners argue that the trial court erred in focusing on whether respondent was capable of providing support that would make a "meaningful difference in [OMM]'s life." Instead, they argue that the determination of what constitutes substantial support is properly measured relative to the noncustodial parent's overall ability to provide support. According to petitioners, although respondent's modest prison income undoubtedly constrained his ability to support OMM, he was still obligated to regularly and substantially assist in supporting her during his incarceration to the extent he was able, however minimally. On the other hand, respondent argues that the trial court correctly determined that, in light of his meager prison income barely covering his necessities, he did not have the ability to provide substantial support for the child.

As an initial matter, the trial court properly recognized that no exception for incarcerated parents inheres in MCL 710.51(6). *In re Caldwell*, 228 Mich App 116, 118, 120-121; 576 NW2d 724 (1998). As we have recognized in the related context of proceedings under MCL 710.39, "incarceration . . . does not necessarily preclude [a parent] from providing support for the[ir] child." *In re Lang*, 236 Mich App 129, 140; 600 NW2d 646 (1999). Accordingly, "an incarcerated parent may still retain the ability to comply with the support and contact requirements of the statute." *Caldwell*, 228 Mich App at 121. Therefore, respondent's ability to support his child must be assessed in the context of his incarceration.

In *In re MSL*, 351 Mich App 570; 36 NW3d 349 (2024), this Court recently applied the support provision of MCL 710.51(6)(a) in the context of an incarcerated parent. There, the child's parents divorced during the respondent-father's incarceration, and the trial court ordered that the father, who received benefits as a military veteran, pay zero child support while incarcerated. *In re MSL*, 351 Mich App at 575-576. The petitioner-mother remarried and sought to terminate the respondent-father's parental rights under MCL 710.51(6)(a) in order to effectuate a stepparent adoption. *In re MSL*, 351 Mich App at 578.

Throughout the requisite two-year lookback period under MCL 710.51(6)(a), the respondent-father had a health insurance policy through the military that provided coverage for his child. *In re MSL*, 351 Mich App at 575, 577-578. Otherwise, he never provided financial support for the child, despite evidence that, while incarcerated, he received military disability payments of $1,200 per month and possibly additional prison income. *Id*. at 575, 577-578, 589.

The respondent-father moved to dismiss the termination petition, relying on his provision of health insurance to establish that he had provided regular and substantial support. *Id.* at 578-579. The petitioner-mother responded that the insurance coverage was a military benefit at no cost to the respondent-father, and also that it did not benefit their child because the child had health insurance through the mother's policy, which, according to the mother, provided better coverage with lower out-of-pocket costs. *Id*. at 579-580. She also emphasized that the respondent-father

received $1,200 in military disability income. *Id*. at 579. The trial court ruled, as a matter of law, that the respondent-father's provision of health insurance itself constituted regular and substantial support for his child and therefore that his parental rights could not properly be terminated under MCL 710.51(6). *In re MSL*, 351 Mich App at 580-581.

On appeal, the petitioner-mother argued that the trial court erred by failing to assess the father's overall ability to provide support, particularly by overlooking his monthly disability income. *Id*. at 581-582. She argued that "the determination of what amount constitutes 'substantial' support is relative, depending on the ability to pay and the income of the parent." *Id*. at 581.

This Court first held that the respondent-father's provision of health insurance for his child constituted "regular" support within the meaning of MCL 710.51(6)(a), whether or not the custodial parent actually took advantage of it. *In re MSL*, 351 Mich App at 589. In considering whether the insurance coverage also constituted "substantial" support, this Court concluded as follows:

> With respect to the question whether the support was "substantial," the trial court found as a matter of law that providing the healthcare insurance to MSL was indeed substantial; however, the court did not appear to take into consideration or evaluate the evidence that [the respondent-father] received $1,200 a month in military disability payments and possibly additional prison income given that his gross annual income back in 2017 was $18,500. In other words, the trial court did not assess [the respondent-father]'s overall ability to support MSL. Under the circumstances posed in this case, MCL 710.51(6)(a) requires contemplation of a parent's ability to provide support. This would entail consideration of the noncustodial parent's income, expenses, and general financial status and situation. And *measuring whether support is "substantial" in any given case necessarily requires an examination of the noncustodial parent's income and finances.* For example, if a parent provided a child $500 a month in support on a monthly income of $800, the support would easily be characterized as "substantial." But if that same parent provided $500 in monthly support on a monthly income of $10,000, it would be difficult to reach the conclusion that the support was substantial. MCL 710.51(6)(a) effectively mandates an analysis in which the "ability to support" a child sets the parameters of what constitutes "regular and substantial support." The trial court erred by not conducting an analysis and examination of [the respondent-father]'s ability to support MSL in relation to the question whether simply providing her with healthcare insurance was "substantial." [*In re MSL*, 351 Mich App at 589-590 (emphasis added).]

This Court therefore remanded the case to the trial court to consider that issue. *Id*. at 591.

In assessing whether the incarcerated parent's support was "substantial" for purposes of MCL 710.51(6), this Court focused on the parent's overall ability to provide support during the two-year lookback period, rather than the impact of the support on the child's life. That is, what constitutes substantial support depends on the incarcerated parent's overall ability to contribute to the support of his or her child considering the parent's income, expenses, finances, and situation.

It follows that, if respondent had some means to assist in supporting his child while incarcerated, even if his ability to do so was constrained by his incarceration, he remained obligated to provide support that was substantial relative to his overall ability to pay. See *In re MSL*, 351 Mich App at 589-590.

In the instant case, the trial court, in assessing respondent's ability to assist in providing regular and substantial support for his child, considered his income, expenses, and finances in light of his incarceration and found that he had modest prison earnings that were "quickly consumed" by his purchases of essential personal items. However, the court did not explicitly find that the evidence established that respondent did not have the requisite "ability to support, or assist in supporting," his child under MCL 710.51(6)(a). Rather, taking instruction from *In re LHH*, the trial court focused on the substantive impact of the support on the child and concluded that respondent could manage only "symbolic support" for the child falling short of making "a meaningful difference" in the child's life, and therefore was not able to provide "substantial" support for purposes of MCL 710.51(6)(a).

The trial court's focus on the impact on the child of what support respondent might be able to provide was erroneous in light of *In re MSL*.[3] As a published opinion of this Court, *In re MSL* now binds this Court unless and until superior authority overrules it. See MCR 7.215(J)(1). We therefore hold that under *In re MSL*, if an incarcerated parent is able to provide any financial support for his or her child, however modest, the parent is obligated to provide regular support that is substantial in relation to his or her ability to pay. That is, the proper focus in evaluating whether support is "substantial" for purposes of MCL 710.51(6)(a) is on the parent's ability to pay, not the impact of support on the child's life.

Respondent-father asserts that, although there is "no brightline test or rule on the precise dollar amount that the respondent must cross in order to be considered able to pay support from prison," *In re Caldwell* has established earnings of $50 to $150 per month as a threshold for when an incarcerated parent has the ability to support his or her child, and points out that his income is only $10 to $25 per month. This Court in *In re Caldwell*, 228 Mich App at 122-123, did conclude that an incarcerated parent who earned $50 per month in a prison apprenticeship program, and was earning $150 per month by the time of the termination hearing, had the ability to assist in supporting his child. But that case is distinguishable because a child support order was in place there requiring the parent to pay $10 per month. The existence of a support order with a payment obligation triggers a different analysis under MCL 710.51(6)(a). See *In re MSL*, 351 Mich App at 587. In *Caldwell*, the parent's failure to substantially comply with the order satisfied the criterion for termination of parental rights set forth in MCL 710.51(6)(a). Respondent is wrong to construe *Caldwell* as establishing a brightline earnings threshold below which a noncustodial parent cannot be shown capable of providing substantial support.

In light of this defect in the trial court's analysis, we must vacate its decision holding that petitioners cannot satisfy MCL 710.51(6)(a) and remand for a proper analysis. Accordingly, we direct the trial court on remand to redetermine whether respondent was able to provide substantial

[3] We note that this Court issued *In re LHH* before it issued *In re MSL*, but the latter is now binding under MCR 7.215(C)(2).

support for the two-year lookback period by considering respondent's income, finances, and situation from respondent's standpoint, rather than the extent to which respondent's potential support would have affected the child's life.[4]

Vacated and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Mariam S. Bazzi
/s/ Sima G. Patel
/s/ Matthew S. Ackerman

[4] Because the trial court did not reach the question of whether petitioners can make the contact showing required by MCL 710.51(6)(b), we need not comment on it beyond reminding all parties that by remanding for a re-evaluation of MCL 710.51(6)(a), we do not mean to imply that MCL 710.51(6)(b) need not also be satisfied. It does.