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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UNPUBLISHED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.

ACKERMAN, J. (*concurring*).

When reduced to its essence, this case asks whether respondent risks termination of his parental rights for failing to provide "substantial support" out of his prison earnings of roughly $10 to $25 per month. Under our binding precedent, the answer is "yes," because we have held that "measuring whether support is 'substantial' in any given case necessarily requires an examination of the noncustodial parent's income and finances." *In re MSL*, 351 Mich App 570, 590; 36 NW3d 349 (2024). But I question whether *MSL* properly construed the statute's requirement that the parent have "the ability to support, or assist in supporting" the child. That said, for a variety of reasons I do not consider it prudent to confront *MSL* at this time. I therefore join the majority opinion.

As the majority opinion explains, MCL 710.51(6) permits a minor's stepparent to seek the involuntary termination of the minor's natural parent's rights to facilitate the stepparent's adoption of the minor. That is, of course, a delicate inquiry, and our law does not lightly terminate the legal relationship between a parent and child. As relevant here, the petitioning parent must demonstrate 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).

The statutory language is not ideally crafted, but its structure matters. The subject of the sentence is "[t]he other parent," who must have "failed or neglected to provide regular and substantial support for the child." The intervening phrase "having the ability to support, or assist in supporting, the child" modifies "[t]he other parent" and limits the application of MCL 710.51(6)(a) to parents who have the ability to provide such support. In other words, before a parent's failure to provide regular and substantial support may be held against the parent, the parent must have had "the ability to support, or assist in supporting, the child."

Under the grammar and logic of the sentence, a court determining whether a parent had the ability to provide the support contemplated by the statute must first establish what qualifies as "regular and substantial support." The court then must determine whether the noncustodial parent had the ability to provide such support.[1] It follows that "substantial" support cannot itself be defined by reference to the noncustodial parent's means. The parent's ability is a threshold condition, not the measure of what constitutes "substantial support" in the first place.[2] Only then, having established both the requisite amount of support and the noncustodial parent's ability to provide it, can the court ask whether the noncustodial parent in fact provided it. If not, MCL 710.51(6)(a) is satisfied, and the possibility of termination moves forward.

Compare that sequence with *In re MSL*. There, an incarcerated father who was a military veteran received $1,200 per month in disability benefits as well as health insurance. *In re MSL*, 351 Mich App at 575. The health insurance policy covered his daughter, although his ex-wife elected not to use it because the coverage available through her employer was superior. *Id*. at 577. The respondent paid no other child support, and when his ex-wife remarried, she and her new husband sought a stepparent adoption. *Id*. at 578. The trial court held that the respondent's provision of the health coverage to his daughter—whether or not it was used—qualified as regular and substantial support and prevented the petitioners from satisfying MCL 710.51(6)(a). *Id*. at 580-581.

On appeal, this Court agreed "that making healthcare insurance available for a child plainly constitutes an act in which 'support' is provided to the child for purposes of MCL 710.51(6)(a) . . . regardless of whether the custodial parent utilizes the support or insurance for the benefit of the child." *Id*. at 589. But this Court faulted the trial court for failing to "take into consideration or

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[1] The fact that the phrase "having the ability to support, or assist in supporting, the child" includes the more limited circumstance of a parent who has the ability to "assist in supporting" the child does not change this analysis. If the possession of literally any income necessarily established the "ability to . . . assist in supporting" a child merely because the parent could contribute *some* portion of that income, the threshold phrase would be deprived of any meaningful effect. That illustrates why what qualifies as "regular and substantial support" must be determined *first*, after which the parent's ability to provide it is assessed.

[2] I take no position on whether "regular and substantial support" should be measured by an objective standard or relative to the child's circumstances, such that more would be required to constitute substantial support for a child in an upper-income family. Under either approach, what qualifies as "substantial" cannot logically be determined as a function of the noncustodial parent's means.

evaluate the evidence that respondent received $1,200 a month in military disability payments and possibly additional prison income," which meant it "did not assess respondent's overall ability to support MSL." *Id*. The Court went on to state that "measuring whether support is 'substantial' in any given case necessarily requires an examination of the noncustodial parent's income and finances," meaning that $500 in monthly support might be substantial for a parent earning $800 per month but not for a parent earning $10,000 per month. *Id*. at 590. It concluded that 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.' " *Id*.

That reasoning, in my view, reverses the sequence the statute's text compels. A parent's ability to support a child does not set the parameters of what constitutes "regular and substantial support." Instead, "regular and substantial support" supplies a benchmark *against which* the parent's means are compared to determine whether the parent had the *ability* to provide that support. Similarly, whether support is "substantial" should not itself turn on the parent's income and finances. The parent's income and finances instead bear on whether the parent had the ability to provide the support the statute requires. In short, I believe it is incorrect for a trial court to "focus[] its inquiry on the father's sacrificial or symbolic support." *In re LHH*, unpublished per curiam opinion of the Court of Appeals, issued November 30, 2023 (Docket Nos. 365553 and 365554), p 5.

All that said, as published authority, *In re MSL* binds us now, and I am not convinced that it would be prudent at this juncture to declare a conflict. MCR 7.215(J)(1)-(2). This statutory language does not exist in a vacuum, because a similar standard supports termination of parental rights in abuse and neglect cases under MCL 712A.19b(3)(f)(*i*). This Court has construed that statute in a manner resembling the reasoning of *In re LHH*. See *In re LCP*, unpublished per curiam opinion of the Court of Appeals, issued September 17, 2025 (Docket No. 373274), p 8. Other decisions, however, have construed that statute in a manner consistent with *In re MSL*. See *In re Madkin*, unpublished per curiam opinion of the Court of Appeals, issued December 3, 2024 (Docket No. 369704), pp 2-3. Moreover, *In re MSL* itself was preceded by unpublished decisions employing similar reasoning. See *In re NJAR*, unpublished per curiam opinion of the Court of Appeals, issued June 29, 2023 (Docket No. 363929), pp 4-5; *In re MJM*, unpublished per curiam opinion of the Court of Appeals, issued March 10, 2022 (Docket No. 358753), p 5. A special panel to resolve a conflict with *MSL* would also likely need to consider not only the proper interpretation of MCL 710.51(6)(a), but also how that interpretation relates to MCL 712A.19b(3)(f)(*i*) and the cases applying it. In my view, that broader question is best left to our Supreme Court. I therefore concur with the majority.

/s/ Matthew S. Ackerman