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STATE OF MICHIGAN

COURT OF APPEALS

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In re VEJ, Minor.

No. 380825
Lapeer Circuit Court
Family Division
LC No. 25-003769-AY

Before: ACKERMAN, P.J., and BORRELLO and KOROBKIN, JJ.

PER CURIAM.

In this stepparent adoption case, respondent, the noncustodial parent, appeals by right the trial court's order terminating his parental rights under MCL 710.51(6). We agree with respondent that the trial court clearly erred by finding that he "had the ability to support, or assist in supporting, the child . . . for a period of 2 years or more before the filing of the petition." MCL 710.51(6)(a). We therefore reverse the trial court's order terminating respondent's parental rights.

I. BACKGROUND AND FACTS

The relevant facts as testified to at trial and established via exhibits admitted at trial are as follows. Petitioner-mother and respondent share one minor child, VEJ. On May 9, 2023, respondent suffered a severe traumatic brain injury from a self-inflicted gunshot wound. At the time of the incident, petitioner-mother and respondent were separated and divorce proceedings were underway. Initially, petitioner-mother was granted temporary sole custody of the child and respondent had parenting time. Shortly after respondent suffered his injury, a stipulated order was entered suspending parenting time until further order of the court. The divorce became final in January 2024. A child support order, entered with the judgment of divorce, set respondent's support obligation at $0.00.

Dr. Kirk Stucky, an expert qualified at trial in the field of neuropsychology and rehabilitation psychology, examined respondent in the hospital on May 18, 2023 and recommended a guardian and conservator for respondent given his post-injury condition. Respondent's father was later appointed respondent's full guardian.

Following his hospitalization, respondent was discharged to a skilled nursing facility in July 2023 and later transferred to inpatient brain injury rehabilitation, before ultimately being discharged home in late August 2023. Respondent's care was ongoing, and when Dr. Stucky saw respondent in September 2023 for a follow-up appointment, Dr. Stucky noted that respondent "had significant neurocognitive impairments marked by an initiation disorder," was unable to make informed medical or financial decisions, and was dependent on others for his care. Respondent was also admitted to the hospital in February 2024 for a cranioplasty, a neurosurgery in which "a s[k]ull flap on the brain" is replaced to reduce pressure on the brain, and he suffered a postoperative seizure. When Dr. Stucky saw respondent next in late July 2024, respondent had just begun a residential brain injury program at Lighthouse and Dr. Stucky found that respondent had made some progress, but that he continued to need a guardian and conservator and 24-hour care.

Dr. Stucky last met with respondent in October 2025, when he conducted a full neuropsychological evaluation of respondent. By that time, according to Dr. Stucky, although respondent still struggled with some issues, respondent had made a "relatively miraculous recovery." Dr. Stucky thus recommended that respondent no longer needed a guardian and conservator, and based on that evaluation, respondent's guardianship was terminated later in October 2025.

Respondent was previously employed as an electrical apprentice and equipment operator for Carbs Contracting and Electrical. He was unable to continue working as a result of his injury in May 2023 and was officially terminated in August 2023. Respondent eventually began doing electrical work "side jobs" with his father in late 2024 or early 2025 and was compensated for that work. Respondent also began receiving Social Security Disability benefits in January 2025, and continued to receive those monthly payments through at least February 2026. Portions of those benefits were provided to petitioner-mother for the child's care.

In December 2025, petitioner-mother and her husband, petitioner-stepfather, filed a petition to terminate respondent's parental rights so as to facilitate a stepparent adoption. Trial proceeded over three days in March, April, and May 2026, during which the trial court heard testimony from respondent, petitioner-mother, petitioner-stepfather, respondent's father, Dr. Stucky, and Jeff Swartz, the owner of Carbs Contracting. Following trial, the trial court found that respondent, for a period of two or more years before the filing of the petition, "having the ability to support or assist in supporting the child, . . . failed or neglected to provide regular and substantial support" and "having the ability to visit, contact, or communicate with the child, . . . regularly and substantially failed or neglected to do so[.]" The trial court accordingly terminated respondent's parental rights under MCL 710.51(6).

Respondent now appeals.

II. STANDARD 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." *In re NRC*, 346 Mich App 54, 58; 11 NW3d 296 (2023). We review a trial court's factual findings for clear error. *In re NRC*, 346 Mich App at 58. "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake was made." *In*

re ALZ, 247 Mich App 264, 271-272; 636 NW2d 284 (2001). We decide issues of statutory interpretation de novo. *In re NRC*, 346 Mich App at 58.

III. ANALYSIS

Respondent contends that the trial court clearly erred by finding, as required under MCL 710.51(6)(a), that he had the ability to support or assist in supporting the child for a period of two years or more before the petition was filed. We agree.

"In a stepparent-adoption proceeding," like that here, "MCL 710.51(6) governs the termination of the noncustodial parent's rights." *In re MSL*, 351 Mich App at 586. "The purpose of [this statute] is to 'foster stepparent adoptions in families where the natural parent had regularly and substantially failed to support or communicate and visit with the child' and refuses to consent to the adoption." *In re NRC*, 346 Mich App at 59-60, quoting *In re Colon*, 144 Mich App 805, 810; 377 NW2d 321 (1985). MCL 710.51(6) provides:

> If the parents of a child are divorced . . . and if a parent having custody of the child according to a court order subsequently marries and that parent's spouse petitions to adopt the child, the court upon notice and hearing may issue an order terminating the rights of the other parent if both of the following occur:
>
> (a) The 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 or if a support order has been entered, has failed to substantially comply with the order, for a period of 2 years or more before the filing of the petition. A child support order stating that support is $0.00 or that support is reserved shall be treated in the same manner as if no support order has been entered.
>
> (b) The other parent, having the ability to visit, contact, or communicate with the child, has regularly and substantially failed or neglected to do so for a period of 2 years or more before the filing of the petition.

"To prove that termination of the noncustodial parent's rights is warranted, a petitioner must satisfy the requirements of Subsection (6)(a) and Subsection (6)(b) of MCL 710.51 by clear and convincing evidence." *In re NRC*, 346 Mich App at 60. "The clear and convincing evidence standard is the most demanding standard applied in civil cases." *In re Pederson*, 331 Mich App 445, 472; 951 NW2d 704 (2020) (citation modified). It must be "evidence so clear, direct and weighty and convincing as to enable the factfinder to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (citation modified).

In determining whether petitioners have met their burden of satisfying MCL 710.51(6)(a) and (b), "courts are to look at the two-year period immediately preceding the filing of the termination petition." *In re TALH*, 302 Mich App 594, 597-598; 840 NW2d 398 (2013). In this case, the relevant two-year period is December 12, 2023 through December 12, 2025, the date on which the petition to terminate respondent's parental rights was filed. See *id.* at 598.

Our analysis in this case starts and ends with MCL 710.51(6)(a). As this Court has explained, this subsection "reflects that the Legislature contemplated two broad settings with respect to support, one in which there is no underlying support order or an order does exist but provided for either '$0.00' in support or reserved the issue of support, and the second in which there exists an underlying support order that sets support in any amount above zero." *In re MSL*, 351 Mich App at 587. The parties agree that this case concerns the first setting; because the child support order accompanying respondent's judgment of divorce set support at $0.00, this Court treats the order "in the same manner as if no support order ha[d] been entered." MCL 710.51(6)(a). And in such cases where there is no support order, an inquiry into a noncustodial parent's ability to pay is necessary. *In re Newton*, 238 Mich App 486, 492; 606 NW2d 34 (1999); see also *In re SMNE*, 264 Mich App 49, 51-52; 689 NW2d 235 (2004) (explaining that "it was proper for the trial court to inquire into [a respondent's] ability to pay support" when the parties' divorce judgment did not require the respondent to pay any child support). Deciding whether a noncustodial parent had the ability to provide support "entail[s] consideration of the noncustodial parent's income, expenses, and general financial status and situation." *In re MSL*, 351 Mich App at 589-590.

Applying this framework here, we will examine the evidence by working backwards in time from December 12, 2025, the date the petition was filed. There is no dispute that petitioner-mother received about $770 per month for the child as a portion of respondent's Social Security Disability benefits beginning in January 2025 and extending through the end of the relevant two-year period in December 2025. These payments show that respondent had the ability to assist in supporting the child for the final 11 months of the relevant two-year period. See MCL 710.51(6)(a); cf. *Fisher v Fisher*, 276 Mich App 424, 427; 741 NW2d 68 (2007), citing *Frens v Frens*, 191 Mich App 654, 656-658; 478 NW2d 750 (1991) ("Social Security benefits paid directly to a custodial parent, on behalf of a minor child and as a result of the disability of the noncustodial parent, may be credited against child support obligations that arise during the disability[.]"). Moving back another eight months, from early April 2024 through December 2024, there is also evidence that respondent at least had financial assets that could have been used to assist in supporting the child during this period. There were deposits into respondent's savings account of about $1,400 for "escrow funds" on April 10, 2024 and about $32,500 for the sale of his home on April 29, 2024, and over $18,000 was retained in the savings account through the end of 2024.

During the period from December 12, 2023 until early April 2024, however, we detect virtually no evidence in the record that respondent had the ability to support or assist in supporting the child. As stated, petitioners were required to prove by clear and convincing evidence that respondent had the ability to support or assist in supporting the child for a period of at least two full years before the filing of the petition. See *In re TALH*, 302 Mich App at 597-598. Given the lack of evidence that respondent had such an ability during the first few months of the relevant two-year period, we are left with a definite and firm conviction that a mistake has been made. See *In re ALZ*, 247 Mich App at 271-272.

Again, determining whether a noncustodial parent can provide support requires consideration of the "parent's income, expenses, and general financial status and situation." *In re MSL*, 351 Mich App at 589-590. Concerning respondent's income, petitioners state that respondent was able to financially support the child when he worked with his father and throughout his employment with Carbs Contracting from 2023 to 2025. But there is a lack of clear and convincing

evidence that respondent began working with his father before he finished inpatient treatment at Lighthouse, which occurred in November or December 2024. Further, Swartz explained that he had not reemployed respondent at Carbs Contracting since respondent's injury in May 2023, and included in the record is a letter from Carbs Contracting terminating respondent effective in August 2023. Moreover, respondent's bank account statements reflect no receipt of income or other extraneous additions to his account balances[1] during this period.

Regarding respondent's general financial status from December 12, 2023 until early April 2024, the evidence is clear that he was heavily, if not entirely, dependent on family members' help at the time. Respondent lived with family, stating that his step-grandmother charged him $300 in rent, although the frequency and timing of the $300 rent payment was not clarified. Further, respondent's bank statements show at most about $400 combined in his checking and savings accounts during this period, with only about $135 combined in those accounts from early January through April 10, 2024. And respondent's father testified that he and respondent's mother managed respondent's money until October 2025, and that he gave respondent a debit card for the first time in January 2025. Additionally, it appears that payment of respondent's expenses during this period was managed substantially if not entirely by his parents given his lack of control over his bank accounts. And petitioners did not establish that respondent effected any of the withdrawals from his bank accounts managed by his parents between December 12, 2023 and early April 2024.

As to respondent's situation more generally from December 12, 2023 until early April 2024, respondent's guardianship and Dr. Stucky's testimony and neuropsychological evaluation demonstrated that respondent was suffering from impairments that made him unable to provide for the child during that period. More specifically, respondent was appointed a full guardian in September 2023, and that guardianship was not terminated until a year and a half after April 2024. "[A] guardianship is one available legal mechanism for ensuring the safety and well-being of individuals who are not capable of independently making decisions and caring for themselves." *In re Guardianship of Malloy*, 513 Mich 148, 156; 15 NW3d 142 (2024). The fact that respondent was appointed a full, rather than limited, guardian indicates that respondent was "totally without capacity to care for himself" rather than unable "to do some, but not all, of the tasks necessary to care for himself." MCL 700.5306(3) and (4) (describing the conditions that must be met before a full versus limited guardian is appointed). Further, Dr. Stucky reported that as of September 2023, respondent "had significant neurocognitive impairments marked by an initiation disorder," meaning that he often needed prompting to start tasks, and was "dependent on others for his care" and unable "to make informed medical or financial decisions." Dr. Stucky next observed that respondent was admitted to the hospital in February 2024 for a cranioplasty and that he suffered from a postoperative seizure. And upon Dr. Stucky's next meeting with respondent in July 2024, Dr. Stucky noted that there were some "improvements, but due to [respondent's] persistent impairments, he continued to require a guardian and conservator as well as 24-hour care."

[1] There was an approximately $11 deposit made into respondent's savings account in late December 2023, but that money was just a transfer from another savings account that he closed on that date.

Thus, although respondent's bank accounts contained some very meager funds that hypothetically could have been used to help support the child, at that time these accounts were managed by respondent's father as full guardian and his mother, and there is no evidence that respondent could have provided those funds to the child given his physical and mental condition and lack of even a debit card until 2025. Further, there is a total lack of evidence that respondent had any income or acquired any assets from December 12, 2023 through early April 2024. Cf. *In re Kaiser*, 222 Mich App 619, 621; 564 NW2d 174 (1997) (concluding that a respondent was able "to contribute to her children's support" given her "receipt of a legal settlement, rental income, . . . money from her parents[, and] wages she earned at various jobs"). Indeed, based on Dr. Stucky's testimony as to respondent's condition at that time and respondent's need for a full guardian, the record shows that respondent was unable to even care for himself during that period.

Given the evidence regarding respondent's financial, medical, and legal circumstances, we conclude that the trial court clearly erred by finding that petitioners established by clear and convincing evidence that respondent was able to support or assist in supporting the child for the full two-year period from December 12, 2023 through December 12, 2025. See MCL 710.51(6)(a); *In re ALZ*, 247 Mich App at 271-272. Petitioners thus failed to meet their burden under MCL 710.51(6)(a). See *In re NRC*, 346 Mich App at 60. And because "a petition for termination of parental rights and for stepparent adoption should only be granted if both Subsection (6)(a) and Subsection (6)(b) of MCL 710.51 are satisfied[,]" *id.* at 63, petitioners' failure to prove respondent's ability to support or assist in supporting the child means that the trial court necessarily erred by terminating respondent's parental rights.[2]

Reversed.

/s/ Matthew S. Ackerman
/s/ Stephen L. Borrello
/s/ Daniel S. Korobkin

[2] We therefore need not address respondent's additional arguments that the trial court clearly erred by finding that respondent, "having the ability to visit, contact, or communicate with the child, . . . regularly and substantially failed or neglected to do so" during the two-year period, MCL 710.51(6)(b), or that the trial court failed to make findings of fact sufficient to facilitate appellate review.