STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of MICHAEL DAVID MAY, JR., Minor.

KENNETH BARR and SHANNON MARIE BARR,

Petitioners-Appellees,

v

MICHAEL DAVID MAY, SR.,

Respondent-Appellant.

UNPUBLISHED
December 27, 2007

No. 279118
Clinton Circuit Court
Family Division
LC No. 07-019514-AY

Before: Murray, P.J., and Hoekstra and Wilder, JJ.

PER CURIAM.

Respondent appeals as of right from a circuit court order terminating his parental rights to the minor child pursuant to § 51(6) of the Adoption Code, MCL 710.51(6). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

"A petitioner in an adoption proceeding must prove by clear and convincing evidence that termination of parental rights is warranted." *In re Hill*, 221 Mich App 683, 691; 562 NW2d 254 (1997). The trial court's findings of fact are reviewed for clear error. *Id.* at 691-692. "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

The first element requires petitioner to prove that respondent, "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." MCL 710.51(6)(a).

Because a support order had been entered, respondent's ability to pay support is not directly relevant. The only issue to be determined with respect to § 51(6)(a) is substantial compliance with the support order for the two-year period, *In re Hill, supra* at 692, although the court may consider the reasons for noncompliance with the order, *In re Martyn*, 161 Mich App 474, 480; 411 NW2d 743 (1987). If the respondent offers "evidence to satisfactorily explain his

failure to comply," the court properly may decline to terminate parental rights. *In re Colon*, 144 Mich App 805, 812; 377 NW2d 321 (1985). However, the court is not obliged to accept the respondent's explanation. *In re Martyn, supra* at 480. The court's decision to accept or reject the respondent's explanation is reviewed for an abuse of discretion. *Id.* "An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

Petitioner testified that a support order had been entered against respondent and respondent admitted that he had not paid any support since May 2004, which was more than two years before the petition was filed. It was undisputed that petitioner had given respondent a letter relieving him of his obligation to pay support, but respondent knew that the friend of the court did not consider it acceptable and that he would need to get "some other papers signed." While respondent claimed to be unable to contact petitioner directly to have her sign the necessary documents, he admitted that he knew her address and had been to her house. Further, there was nothing to prevent him from obtaining an order to show cause to compel her appearance in court. Therefore, the trial court did not abuse its discretion in rejecting respondent's explanation and did not clearly err in finding that he failed to substantially comply with the support order for the requisite two-year period.

The second element requires petitioner to prove that respondent, "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." MCL 710.51(6)(b). Because the terms "visit, contact, or communicate" are phrased in the disjunctive, the petitioner is "not required to prove that respondent had the ability to perform all three acts." *In re Hill*, *supra* at 694. Rather, petitioner merely had to prove that respondent had the ability to perform any one of the acts and substantially failed or neglected to do so for two or more years preceding the filing of the petition. *Id.*

The evidence showed that respondent had not visited with, spoken to, or written to Michael for years. While there was evidence that petitioner would not let him visit without a court order for parenting time and that respondent did not have petitioner's phone number, he admittedly was able to get her address at times from the friend of the court. He admitted that he obtained petitioner's present address in 2003 or 2004. There was no evidence that anything prevented him from communicating with his son by mail and respondent admitted that he had never sent anything to Michael after obtaining that address. Therefore, the court did not clearly err in finding that respondent regularly and substantially failed or neglected to contact or communicate with his son for the requisite two-year period.

Because petitioner produced clear and convincing evidence of both elements of the statute, the trial court did not err in terminating respondent's parental rights.

Affirmed.

/s/ Christopher M. Murray
/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder