STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of KELLY LYNN MURRAY and MELISSA KAY MURRAY, Minors

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RICHARD LEE BEJIN and JAUNITA R. BEJIN,

Petitioners-Appellees,

v

TIMOTHY SCOTT MURRAY,

Respondent-Appellant.

UNPUBLISHED
December 5, 1997

No. 201788
Shiawassee Juvenile Court
LC Nos. 95-002700;
95-002701

Before: McDonald, P.J., and Wahls and J. R. Weber*, JJ.

PER CURIAM.

Respondent appeals as of right from the juvenile court order terminating his parental rights to the minor children under § 51(6) of the Adoption Code, MCL 710.51(6); MSA 27.3178(555.51)(6). We affirm.

Respondent argues that the juvenile court erred in finding that the requirements of both § 51(6)(a) and (b) were proven by clear and convincing evidence. We review the juvenile court's findings of fact under the clearly erroneous standard. *In re Hill*, 221 Mich App 683, 691-692; __ NW2d __ (1997).

Under § 51(6)(a), because respondent was not required to pay child support pursuant to a support order, petitioners were required to prove that he failed or neglected to provide regular and substantial support for a period of two years or more before the filing of the petition when able to do so. *In re Hill, supra* at 690. We reject respondent's claim that the evidence failed to show an ability to pay support.

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* Circuit judge, sitting on the Court of Appeals by assignment.

The petition was filed on January 3, 1997. Although respondent claims that he had little income during the first five months of the applicable two-year period, the evidence also established that he had little, if any, living expenses during that period. Respondent admitted that he was living with his parents, who paid for his food and did not charge him rent. Moreover, after obtaining a full-time job in May 1995, respondent was advised by the Friend of the Court that it was necessary to petition the court for establishment of a support order in order to have child support processed through the Friend of the Court. Even if respondent could not afford an attorney, as he claims, he could have petitioned the court himself, yet made no effort to do so. The juvenile court correctly found that this excuse was insufficient to show that respondent was unable to pay support. See *In re Meredith*, 162 Mich App 19, 26; 412 NW2d 229 (1987). Finally, while respondent claims that petitioners would not have accepted any child support had he sent it directly to them, there is no evidence in the record that he ever attempted to do so. Accordingly, we conclude that the juvenile court did not clearly err in finding that respondent failed or neglected to provide regular and substantial support when able to do so.

We also reject respondent's claim that he was denied visitation by petitioners and, therefore, lacked the ability to visit, contact, or communicate with his children, thus precluding satisfaction of § 51(6)(b). While there was evidence that petitioners did not allow respondent's mother and sister to take the children to see respondent, there was no evidence that respondent ever contacted petitioners personally for the purpose of requesting visitation. More importantly, the divorce judgment provided that respondent could petition the court for visitation upon his release from prison. Although he was released from prison in June 1994, he never petitioned the court for visitation privileges until December 1996, several weeks before the adoption petition was filed. Indeed, respondent had previously contacted the Friend of the Court to inquire about child support, but never complained about being denied visitation. Respondent also argues that a restraining order prohibited him from contacting petitioners and the children. However, the restraining order was in effect for only a limited period and expired by its own terms in April 1995. In any event, the juvenile court found that the restraining order did not preclude respondent from "proceeding with the necessary recourse" to pursue his visitation rights had he desired to do so. Under these circumstances, we conclude that the juvenile court did not clearly err in finding that respondent failed or neglected to visit or communicate with his children for a period of two years or more when able to do so. Cf. *In re Simon*, 171 Mich App 443; 431 NW2d 71 (1988); *In re Colon*, 144 Mich App 805, 814; 377 NW2d 321 (1985).

Affirmed.

/s/ Gary R. McDonald
/s/ Myron H. Wahls
/s/ John R. Weber