

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KHRISTIAN D'HAWKE STEWART,
Minor.

MARGORIA LETTS and WILLIAM LETTS,

Petitioners-Appellants,

UNPUBLISHED
December 28, 2001

v

JEREMY RAY HAYES,

Respondent-Appellee.

No. 234175
Midland Circuit Court
Family Division
LC No. 00-007681-AD

Before: Bandstra, C.J., and Fitzgerald and Gage, JJ.

PER CURIAM.

Petitioners Margoria Letts, biological mother of the minor child, and William Letts, the mother's husband, appeal as of right from the trial court's order denying their petition to terminate the parental rights of respondent, the minor's biological father, pursuant to subsection 51(6) of the Michigan Adoption Code, MCL 710.51(6). We affirm.

On August 3, 1997, petitioner mother and respondent married. They separated in September 1997 and petitioner mother filed a complaint for divorce in October 1997. On December 14, 1997, petitioner mother gave birth to the minor child. Respondent was convicted during the pendency of the divorce and has been incarcerated continuously since 1998. On June 19, 1998, a judgment of divorce was entered providing that respondent's support obligation "shall be held in abeyance during his period of incarceration." On August 27, 2000, petitioners married. Petitioners subsequently filed a petition for a stepparent adoption that sought to terminate respondent's parental rights to the child pursuant to MCL 710.51(6). Following a hearing, the trial court denied the petition on the basis that termination of respondent's parental rights was not authorized under subsection 51(6) because respondent was not in violation of the child support obligations contained within the divorce judgment.

Petitioners challenge the propriety of the trial court's order. This Court reviews the trial court's factual findings in a proceeding to terminate parental rights for clear error. MCR 5.974(I); *In re RFF*, 242 Mich App 188, 201; 617 NW2d 745 (2000). A finding is clearly erroneous if, although there is evidence to support it, the Court is left with a definite and firm conviction that the trial court made a mistake. *In re RFF*, *supra* at 203.

This case involves our review of the trial court's application of subsection 51(6). The interpretation of a statute constitutes a question of law that this Court reviews de novo. *In re Schnell*,

214 Mich App 304, 310; 543 NW2d 11 (1995). The primary goal of judicial interpretation of statutes is to ascertain the intent of the Legislature. *Id.* at 309. The first step in determining intent is to review the specific language of the statute. *In re Newton*, 238 Mich App 486, 489; 606 NW2d 34 (1999). If the statutory language is clear, it must be enforced as written. *Id.* Because the Michigan Adoption Code is in derogation of the common law, it must be strictly construed. *In re Schnell, supra* at 310.

Subsection 51(6) of the Michigan Adoption Code provides for termination of a natural parent's rights to a child under the following circumstances:

If the parents of a child are divorced . . . and if the parent having legal custody of the child 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.

(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. [MCL 710.51(6).]

An order governing respondent's child support obligations was included in the parties' June 1998 judgment of divorce. The order provided that "the Father's child support obligation shall be held in abeyance during his period of incarceration." Respondent was incarcerated at all pertinent times and currently remains incarcerated. Thus, respondent's failure to provide support for the child during the relevant statutory period did not constitute noncompliance with the existing support order. We are constrained to agree with the trial court that nonpayment of support cannot now be used as a basis on which to terminate respondent's parental rights under subsection 51(6).

Petitioners next argue that the trial court erred by failing to determine whether termination of respondent's parental rights served the child's best interests. Petitioners correctly note that because subsection 51(6) is permissive rather than mandatory, a court may consider the child's best interests in deciding whether to grant a petition to terminate the noncustodial parent's rights to the child under that statute. *In re Hill*, 221 Mich App 683, 696; 562 NW2d 254 (1997). Contrary to petitioners' assertion, however, the permissive nature of the statute does not allow for termination based solely on a consideration of the child's best interests. Rather, it allows the court in its discretion to find that termination would be inconsistent with the best interests of the child even if the statutory bases are satisfied. *In re Newton, supra* at 494. Because petitioners failed to first establish the necessary circumstances for termination under subsection 51(6), the best interests of the child were not at issue. *In re Newton, supra*.

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Hilda R. Gage