

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of LARRY ALAN GERALD, III,
Minor.

MARIANNE DUROCHER,

Petitioner-Appellee,

UNPUBLISHED
August 26, 2003

v

LARRY A. GERALD, JR.,

Respondent-Appellant.

No. 245839
Bay Circuit Court
Family Division
LC No. 02-004670-AY

Before: Markey, P.J., and Cavanagh and Saad, JJ.

MEMORANDUM.

Respondent appeals as of right from an order terminating his parental rights to the minor child pursuant to MCL 710.51(6). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

We review a trial court's decision to terminate parental rights under the clearly erroneous standard. MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). Contrary to respondent's argument, the trial court did not err in finding that respondent did not have regular and substantial contact with the child for the two years prior to the adoption petition and that respondent failed to substantially comply with his support order for the two years prior to the petition. At the time of trial, respondent's child support arrearages exceeded \$9,000. Although respondent contends that he did not have an ability to pay support because of a disability, his ability to pay was not at issue at trial. Rather, "ability to pay is already factored into a child support order, and it would be redundant to require a petitioner under the Adoption Code to prove the natural parent's ability to pay as well as that parent's noncompliance with a support order." *In re Colon*, 144 Mich App 805, 812; 377 NW2d 321 (1985). Further, during his time of disability and unemployment, respondent failed to take any action to modify the support order.

With regard to visitation, respondent accepts the trial court's factual findings, but claims that the application of the law to the facts was erroneous. We disagree. In the years preceding the adoption petition, respondent saw the child only a handful of times. He did not initiate the visits or assume responsibility for the child at those times because the child was in the care of

respondent's mother. Although respondent argues that petitioner stood in the way of visitation, respondent did nothing to enforce his visitation rights.

Affirmed.

/s/ Jane E. Markey

/s/ Mark J. Cavanagh

/s/ Henry William Saad