

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of SABRINA RACHEL VERA  
REMINGA, a/k/a SABRINA RACHEL DRAKE,  
Minor.

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CAROLYN VERA DRAKE and KEVIN  
WILSON DRAKE,

UNPUBLISHED  
April 7, 2005

Petitioners-Appellants,

v

THOMAS REMINGA,

No. 258011  
Kent Circuit Court  
Family Division  
LC No. 03-020399-AY

Respondent-Appellee.

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Before: Kelly, P.J., and Sawyer and Wilder, JJ.

MEMORANDUM.

Petitioners appeal as of right from the trial court's order denying their petition for termination of respondent's parental rights under MCL 710.51(6). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Carolyn Drake and respondent divorced, and Carolyn Drake was awarded legal and physical custody of their child (DOB 3-3-97). Carolyn Drake married Kevin Drake, and they filed a petition seeking to terminate respondent's parental rights to the child and to allow Kevin Drake to adopt the child. The trial court denied the petition, finding that petitioners had not established by clear and convincing evidence that termination of respondent's parental rights was warranted. The trial court found that the evidence showed that within the period of two years before the petition was filed, respondent attempted to maintain contact with the child by attending visitation, sending letters to the child and to his mother for the child, and by working with the court to establish his right to have contact with the child. The trial court did not make a definitive finding as to whether respondent had the ability to provide regular and substantial support for the child but failed to do so.

If the parents of a child are divorced and 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 parental rights of the other parent if: (1) 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 two or more years before the filing of the petition; and (2) 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 two years or more before the filing of the petition. MCL 710.51(6). To terminate parental rights, the court must find both a failure to provide support and a failure of contact with the child. *In re ALZ*, 247 Mich App 264, 272; 636 NW2d 284 (2001).

In a termination of parental rights proceeding under MCL 710.51(6), the petitioner has the burden of proving by clear and convincing evidence that termination of the noncustodial parent's rights is warranted. We review the lower court's findings of fact under the clearly erroneous standard. Upon a showing of the requisite proofs, termination of parental rights under MCL 710.51(6) is permissive rather than mandatory. The court need not grant termination if it finds that doing so would not be in the child's best interest. *Id.* at 271-273.

While the issue is close, we hold that the trial court did not clearly err in concluding that petitioners did not establish by clear and convincing evidence that termination of respondent's parental rights was not warranted under MCL 710.51(6). The trial court made no definitive finding as to whether respondent had the ability but failed to provide regular and substantial support for the child; nevertheless, the trial court's decision may be affirmed on the ground that the trial court did not clearly err in concluding that petitioners failed to show by clear and convincing evidence that respondent regularly and substantially failed to maintain contact with the child. Evidence that respondent visited the child regularly for only a few months in the two years prior to the filing of the petition, standing alone, could have supported a finding that respondent did not maintain regular and substantial contact with the child. See, e.g., *In re Colon*, 144 Mich App 805, 814; 377 NW2d 321 (1985). However, the evidence also showed that respondent sent an undetermined number of letters and cards both directly to the child and to his mother to give to the child. Carolyn Drake acknowledged that she did not give respondent's letters to the child. Thus, the totality of the evidence permitted the trial court to conclude that respondent made regular and substantial efforts to contact the child. *ALZ*, *supra* at 274.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ David H. Sawyer  
/s/ Kurtis T. Wilder