

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

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In the Matter of MICHAEL JAMES WRIGHT III,  
Minor.

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SCOTT APKARIAN and RENEE APKARIAN,

Petitioners-Appellees,

v

MICHAEL JAMES WRIGHT, JR.,

Respondent-Appellant.

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UNPUBLISHED

March 13, 2007

No. 272574

Oakland Circuit Court

Family Division

LC No. 2005-711402-AY

Before: Servitto, P.J., and Talbot and Schuette, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating his parental rights pursuant to the Michigan Adoption Code, MCL 710.51(6) and pursuant to the Indian Child Welfare Act (ICWA), 25 USC 1912. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent argues that the trial court erred in concluding that the requirements of ICWA were met. Under the Indian Child Welfare Act, 25 USC 1912(f), the trial court must apply the “beyond a reasonable doubt” standard of proof to the proceedings. The proceedings also must include the testimony of a qualified expert witness that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. *Id.*

Here, Sharon Skjolass, a witness qualified as an expert witness, testified that any reunification between respondent and the child, which would occur at an uncertain time in the future because of respondent’s incarceration, would be emotionally damaging for the child. Skjolass recommended termination. The trial court thus properly concluded that the requirements of 25 USC 1912(f) were followed.

Respondent next argues that the trial court erred in finding beyond a reasonable doubt that respondent had the ability to support the child and failed to do so, or that a support order had been entered and respondent failed to comply with it. We disagree.

In order to terminate respondent's rights under MCL 710.51(6)(a), petitioners were not required to prove that respondent had the ability to support the child because the court had previously entered a support order. See *In re Caldwell*, 228 Mich App 116; 576 NW2d 724, 727 (1998). Petitioners only needed to prove that respondent failed to comply substantially with the support order for the statutory period. *Id.* A support order was entered in March 2001 and respondent admitted that he had never complied with the order. Accordingly, the trial court correctly found that petitioners had proven beyond a reasonable doubt that respondent failed to comply with the support order.

With regard to MCL 710.51(6)(b), respondent argues that he was unable to visit, contact or communicate with the child because the Oakland Circuit Court suspended respondent's parenting time in the custody order and because of a no contact order that was instituted by the prison administration system. Petitioners admitted that there was a suspension of visitation in the custody order and a no contact order instituted by the prison system. However, respondent failed to request that the prison board discontinue the no contact order with regard to his son. In addition, respondent failed to file a motion or institute a custody proceeding in order to obtain relief for the suspension of visitation and nothing in the record indicates that he was precluded from accessing the court system. In fact, there was evidence that respondent knew he had access to the courts because he threatened to sue petitioner-mother in civil court.

Moreover, while petitioner-mother admitted that respondent called and wrote letters before the no contact order, the contact did not concern his son's support and well being but rather respondent's requests for money and help from petitioner-mother. Right before the no contact order went into effect, respondent wrote to petitioner-mother telling her not to contact him again unless she sent him money. Respondent, who sent one gift of beads in four years, substantially failed to visit, contact or communicate with the child. *In re Simon*, 171 Mich App 443, 449; 431 NWd 71 (1988). Accordingly, the trial court did not err in concluding that petitioners had proven beyond a reasonable doubt that respondent, having the ability to visit, contact or communicate with the child, had regularly and substantially failed or neglected to do so for a period of two or more years before the filing of the petition. The trial court therefore properly terminated respondent's parental rights.

Affirmed.

/s/ Deborah A. Servitto  
/s/ Michael J. Talbot  
/s/ Bill Schuette