



OKLAHOMA STATE COURTS NETWORK

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In the Matter of the Adoption of C.J.B and S.A.B., Minor Children, Clay Alan Butler v. Joseph Berney Vasquez

2026 OK 75

Case Number: 122511

Decided: 10/19/2026

THE SUPREME COURT OF THE STATE OF OKLAHOMA

Cite as: 2026 OK 75, __ P.3d __

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REVISION OR WITHDRAWAL.

In the Matter of the Adoption of C.J.B and S.A.B., Minor Children Clay Alan Butler,
Respondent/Appellant/Respondent,

v.

Joseph Berney Vasquez and Jennifer Lynn Vasquez, Petitioners/Appellees/Petitioners.

ON CERTIORARI TO THE COURT OF CIVIL APPEALS, DIVISION IV

¶ 0 Joseph Berney Vasquez (Step-Father) and Jennifer Lynn Vasquez (Mother), Petitioners/Appellees/Petitioners, filed a petition for adoption and application to determine minor children eligible for adoption without consent of the natural father. Clay Alan Butler (Father), Respondent/Appellant/Respondent, objected. The district court found natural father's consent unnecessary and granted the application to determine minor children eligible for adoption without consent of the natural father. Father appealed and COCA reversed the district court. Mother, Step-Father, and Minor Children petitioned for certiorari review which was previously granted.

COURT OF CIVIL APPEALS VACATED;

ORDER OF THE DISTRICT COURT IS AFFIRMED.

Keenan P. Haught, Palmer Law, PLC, Hinton, Oklahoma for Clay Alan Butler, Respondent/Appellant/Respondent.

Ashton A. Handley, Alex G. Handley, and Fletcher D. Handley, Jr., The Handley Law Center, El Reno, Oklahoma, for Joseph Berney Vasquez and Jennifer Lynn Vasquez, Petitioners/Appellees/Petitioners.

Stephanie Robinson, Buzbee, Upchurch, Squires & Eastwood, Anadarko, Oklahoma, for C.J.B. and S.A.B., Minor Children.

OPINION

DARBY, J.,

¶ 1 The dispositive issue before us is whether the district court abused its discretion in determining Father failed to maintain a substantial and positive relationship with the minor children for a period of twelve consecutive months out of the last fourteen months, pursuant to title 10, section 7505-4.2(H). We hold that the district court did not abuse its discretion regarding the failure to maintain a substantial and positive relationship. Because a single statutory exception is sufficient to dispense with consent, we need not address the other grounds the district court considered.

I. BACKGROUND AND PROCEDURAL HISTORY

¶ 2 On May 31, 2023, Joseph Berney Vasquez (Step-Father) and Jennifer Lynn Vasquez (Mother), together Petitioners, filed a petition for Step-Father to adopt Mother's children without the consent of Clay Alan Butler (Father). Petitioners asserted that Father's consent was unnecessary because Father had willfully failed, refused, or neglected to contribute to the support of the children in substantial compliance with a court order and had willfully failed to maintain a substantial and positive relationship with the children for twelve consecutive months of the last fourteen months immediately preceding the filing of the petition. Father filed a motion for enforcement of non-custodial visitation on August 21, 2023, nearly three months after the petition for adoption was filed.

¶ 3 On September 13, 2023, Petitioners filed an amended petition for adoption of minor children by Step-Father without consent of the natural father. On October 26, 2023, Father filed his response to the amended petition, objecting to the adoption without consent, denying that he had willfully failed to support the children for twelve consecutive months out of the fourteen months preceding the petition, denying that he had failed to maintain a substantial and positive relationship with them for twelve consecutive months of the fourteen months preceding the petition, and asserting that it was in the best interest of the minor children to deny the application. On July 24, 2024, Father filed his answer to the amended petition, admitting some allegations and denying others.

¶ 4 On July 24, 2024, and August 1, 2024, the district court held a two-day hearing on the application to determine the children eligible for adoption without Father's consent, holding all other matters in abeyance. Petitioners introduced an Oklahoma Human Services Child Support Services Record of Payments concerning Grady County case number FD 2013 108, reflecting a court-ordered obligation of \$278.16 per month during the relevant time period. Pet'rs' Ex. 1. That record showed that Father made no support payment within the fourteen-month period prior to filing until March 2023; Father made payments of \$349.06 in March 2023, \$349.06 in April 2023, and \$171.58 in May 2023. *Id.*

¶ 5 Regarding contact between Father and the minor children during the relevant period, Mother testified that Father saw the children minimally, called her once, and called Son once. Tr. vol. I, 15:20--17:10 & 23:12--13. Petitioners introduced telephone records, which they represented captured all voice calls on Mother's and the children's lines. Pet'rs' Ex. 5. Those phone records, however, span March 1, 2022 through April 30, 2023, and thus do not cover May 2023, the final month preceding Petitioners' filing for adoption without consent. Pet'rs' Ex. 5. Mother also did not identify all of Father's telephone numbers specifically, and the record reflects that Father changed his number at least once during the relevant period, which limits the record's value as to Father's attempts to call. See Def.'s Ex. 9, at 9.

¶ 6 Father testified that his number was blocked so he would contact the children through other people. Tr. vol. I, 68:1--8 & 71:20--72:11. Two family members testified that they occasionally relayed messages and pictures from Father to children. See Tr. vol. II, 109:15--111:15, 114:1--115:15, 120:8--121:4, 122:11--13, 123:3--7. One of the family members also testified that she forwarded small amounts of money from Father on occasion. See Tr. vol. II, 118:5--119:6. Father also testified that he "conversed with both [children] through Snapchat." Tr. vol. I, 70:17--71:3. Father did not submit any physical evidence regarding Snapchat communications. There was also no visible evidence submitted of any text or phone communications between Father and Daughter. Father called Son only one time, in October 2022, for one minute.

¶ 7 In September 2022, Father appeared briefly at Daughter's game. On October 8, 2022, Father appeared at Son's game. In November 2022, Father spent approximately four hours with the children at paternal grandmother's house on Thanksgiving; the record showed that Father had said he was unable to take off work to attend Thanksgiving but had a last moment change of plans due to a funeral in town. Father testified that in April 2023, he was present for Easter with the children, but Mother said he was not. *Compare* Tr. vol. I, 81:6--9; *with* Tr. vol. I, 15:18--17:10 & Pet'rs' Ex. 3.

¶ 8 Father introduced visible evidence of text messages between himself and Son that included some affectionate and lengthy exchanges during the relevant period, including messages telling Son he loved and missed him, a birthday message, and conversations about items Father said he was gathering for both children. See Def.'s Ex. 9

& Pet'rs' Ex. 2. There are also repeated messages from Son to Father that appear to be in response to messages from Father that were sent outside the text conversation. See Def.'s Ex. 9. The Father/Son text messages occurred in May 2022, August 2022 (six days), September 2022(2 days), October 2022, and January 2023. See Def.'s Ex. 9 & Pet'rs' Ex. 2. There were approximately 67 total messages back and forth between Father and Son over the eleven days they messaged during the fourteen-month period. See *ibid*.

¶ 9 On August 15, 2024, the district court found Father's consent was not necessary and that minor children were eligible for adoption without consent on both grounds. Father appealed. COCA reversed the district court, holding that the court erred on both grounds in finding the children were eligible for adoption without consent. *In re Adoption of C.J.B.*, No. 122,511, slip op. at 11 (COCA Div. IV Jul. 16, 2025)(unpublished), *cert. granted* (Okla. Sup. Ct. Nov. 10, 2025). COCA found that there was no evidence that Father was willful in his failure to pay support. *In re Adoption of C.J.B.*, slip op. at 6--7. COCA also found that although "Father could have made more of an effort to be a presence in the children's lives, there [was] evidence that Father attempted to see or communicate with the children and was thwarted by Mother." *In re Adoption of C.J.B.*, slip op. at 9.

II. STANDARD OF REVIEW

¶ 10 Because adoption without consent of the natural parent terminates a fundamental, constitutionally protected parental right, the adoption statutes are strictly construed in favor of the natural parent, and the party seeking to dispense with consent bears the burden of proving a statutory ground by clear and convincing evidence. *In re Adoption of M.A.S.*, 2018 OK 1, ¶ 11, 419 P.3d 204, 208; see also *In re Adoption of L.D.S.*, 2006 OK 80, ¶ 11, 155 P.3d 1, 4; *In re Adoption of C.D.M.*, 2001 OK 103, ¶ 13, 39 P.3d 802, 807. Clear and convincing evidence is that measure of proof that produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegation sought to be established. *In re Adoption of N.J.B.*, 2025 OK 8, ¶ 14, 564 P.3d 75, 81. "So, unless the trial court's determination rests on clear and convincing evidence, that determination will be reversed." *In re Adoption of M.A.S.*, 2018 OK 1, ¶ 12, 419 P.3d, at 209; see also *In re Adoption of C.D.M.*, 2001 OK 103, ¶ 13, 39 P.3d, at 807. We review questions of law *de novo*. *In re Adoption of G.D.J.*, 2011 OK 77, ¶ 17, 261 P.3d 1159, 1163--64.

III. ANALYSIS

¶ 11 The petition for adoption in this case was filed on May 31, 2023. The statute before us requires behavior, or lack thereof, for twelve consecutive months out of the fourteen months "immediately preceding the filing" in order to allow adoption without consent of the natural parent. See 10 O.S.2011, § 7505-4.2(B)(1) & (H). COCA found the relevant time period to be "March 31, 2022 through May 31, 2023, the latter date being the date Petitioners filed the petition for adoption." *In re Adoption of C.J.B.*, slip op. at 5. We agree that the relevant time period for application of title 10, section 7505-4.2(B) and (H) begins March 31, 2022, and runs through May 31, 2023. See *In re Adoption of N.J.B.*, 2025 OK 8, ¶ 3, 564 P.3d, at 77; see also *In re Adoption of G.D.J.*, 2011 OK 77, ¶ 18, 261 P.3d, at 1164. ¹

¶ 12 Title 10, section 7505-4.2(H) provides that consent for adoption is not required from a parent who fails to establish and/or maintain a substantial and positive relationship with the child for twelve consecutive months out of the fourteen months immediately preceding the filing. ² For purposes of this subsection, "fails to establish and/or maintain a substantial and positive relationship" means the parent has not "maintained frequent and regular contact with the minor through frequent and regular visitation or frequent and regular communication to or with the minor, or has not exercised parental rights and responsibilities." 10 O.S.2011, § 7505-4.2(H)(3); see *In re Adoption of M.A.S.*, 2018 OK 1, ¶ 23, 419 P.3d, at 213.

¶ 13 This exception contains no willfulness element. Previously, subsection (H) excused consent only where a parent "willfully" failed to maintain a significant relationship with the child; but the Legislature deleted that qualifier in June 2001, so the provision now turns on the fact of the relationship rather than on the parent's intent. The relationship the statute protects is not limited to visitation; visitation and communication are distinct, and a parent denied visitation may still maintain a relationship through other forms of communication. See *In re L.B.L.*, 2023 OK 48, ¶ 23, 529 P.3d, at 182.

¶ 14 Father had at-most four in-person visits with the children in the fourteen months prior to Petitioners' filing for adoption, two of them brief appearances at sporting events, with one of the other visits disputed. *Compare* Pet'rs' Ex. 3, with Tr. vol. I, 81:6--9. There was no evidence of *any* phone or electronic communication with Daughter. Father called Son on one occasion for one minute. Over the entire fourteen months, Father communicated with Son via text messages during five different months, on a total of eleven days, with approximately 67 total messages sent back and forth. Father alleged that he communicated with both children via SnapChat as well.

¶ 15 Because the two children's circumstances differ in this case, we consider each separately. As to Daughter, the record reflects almost no contact of any kind during the relevant period. The finding that Father failed to establish or maintain a substantial and positive relationship with her rests on clear and convincing evidence. As to Son, Father's text messages reflected genuine affection and periodic engagement, and Son at times either initiated contact or responded to messages sent via another medium. Def.'s Ex. 9. But those messages, though warm, were episodic and minimal. See *id.* Father had the most communication with Son in August 2022, when he and Son exchanged approximately 55 messages over six days, with 43 of those brief texts sent on one day. Unfortunately, one month of texting in the middle of months of no-contact does not qualify as establishing or maintaining a substantial and positive relationship without more. Father contended that the district court improperly confined the evidence to the fourteen-month statutory period, but the statute's terms limit consideration to that window of time and the court did not err in so confining its inquiry. 10 O.S.2011, § 7505 4.2(H). The finding that Father failed to establish or maintain a substantial and positive relationship with Son also rests on clear and convincing evidence.

¶ 16 Father also contended that Mother obstructed his relationship with the children and the record supports that contention. Father's individual text messages with Mother, and group text messages (including his mother and aunt as well), reflect repeated requests by Father to see the children and for their activity schedules, to which Mother frequently did not respond or responded that plans were already made. Father also testified that his number was blocked causing him to contact the children through other means or change his number in order to communicate with them. But the fact that Mother made contact extremely difficult at times does not itself resolve the question before us.

¶ 17 When a parent claims he was denied the opportunity to establish or maintain a substantial and positive relationship by the child's custodian, title 10, section 7505-4.2(H)(2), requires that parent "shall prove to the satisfaction of the court that he or she has taken sufficient legal action to establish and/or maintain a substantial and positive relationship with the minor prior to the receipt of" notice of the adoption hearing. 10 O.S.2011, § 7505-4.2(H)(2). The burden of establishing the defense of opportunity rests on the parent asserting it. See *In re Adoption of M.A.S.*, 2018 OK 1, ¶ 26, 419 P.3d, at 213. Father did not carry that burden.

¶ 18 Father testified that in the months before he received notice of the adoption, he consulted a person he described as a paralegal who attempted to contact Mother's counsel, and that he spoke with an attorney shortly before he received notice. Neither effort was sufficient legal action to establish or enforce his relationship with the children. The only legal action Father took was filing a motion to enforce visitation in August 2023, nearly three months after the petition for adoption was filed. This effort came months after the time to take legal action had passed. See 10 O.S.2011, § 7505-4.2(H)(2).

¶ 19 Section 7505-4.2(H)(2) does not excuse a parent's failure to maintain a relationship merely because a custodian made contact difficult, or even impossible; the statutory defense requires the parent to prove that he took sufficient legal action to overcome the denial *before* receiving notice. See *In re Adoption of G.D.J.*, 2011 OK 77, ¶ 27, 261 P.3d, at 1166--67. What qualifies as sufficient is measured against the strict construction owed a parent's rights. See *In re Adoption of L.B.L.*, 2023 OK 48, ¶ 11, 529 P.3d, at 180; see also *In re Adoption of M.A.S.*, 2018 OK 1, ¶¶ 11, 29, 419 P.3d, at 208, 214. In *In the Matter of the Adoption of M.A.S.*, we found a timely motion to modify custody and a motion to enforce visitation, both filed well before the adoption petition, were sufficient legal action. 2018 OK 1, ¶¶ 27--28, 419 P.3d, at 213--14. Father took no comparable action during the relevant period. This case is unlike those in which the defense prevailed because the custodian concealed the child's existence or whereabouts. See *Steltzlen v. Fritz*, 2006 OK 20, ¶ 15, 134 P.3d 141, 145 (Father offered to take DNA

test and Mother declined); see also *In re Adoption of A.J.B.*, 2023 OK 122, ¶¶ 17--18, 540 P.3d 473, 479--80 (district court did not err in holding evidence insufficient to support adoption without consent, when mother moved and would not provide her address and she blocked father on her phone and social media so father could not contact her, even though there was no finding regarding sufficiency of father's legal efforts). This case is instead governed by the rule that, where a parent takes no legal action to remedy a denial of opportunity during the relevant period, the defense fails. See *In re Adoption of G.D.J.*, 2011 OK 77, ¶¶ 8, 27--28, 261 P.3d, at 1162, 1166--67.

¶ 20 The district court found both that Father failed to maintain a substantial and positive relationship with the children and that he did not take sufficient legal action to establish or maintain such relationship before receiving notice of the adoption proceedings. Those findings rest on clear and convincing evidence and are not against the clear weight of the evidence. The district court did not abuse its discretion in determining that Father's consent to adoption was unnecessary under section 7505-4.2(H) as to both children. Petitioners also alleged an exception from consent under title 10, section 7505-4.2(B)(1), but because Oklahoma statutes provide that consent to adoption is not required if only one of the exceptions in section 7505-4.2 is met, the Court need not reach the question of whether consent is also not required under that second sub-section. ³

IV. CONCLUSION

¶ 21 We hold that the district court did not err in determining that Father's consent was unnecessary under section 7505-4.2(H), because clear and convincing evidence supports its findings that Father failed to establish or maintain a substantial and positive relationship with both children and that he took no sufficient legal action before receiving notice of the adoption hearing. The opinion of the Court of Civil Appeals is vacated. The order of the district court which determines that children are eligible for adoption without consent is affirmed. The matter is remanded for further adoption proceedings.

COURT OF CIVIL APPEALS VACATED;

ORDER OF THE DISTRICT COURT IS AFFIRMED.

ALL JUSTICES CONCUR.

FOOTNOTES

DARBY, J.,

¹ The children are enrolled citizens of the Chickasaw Nation, and both the federal and Oklahoma Indian Child Welfare Acts were invoked in the proceedings below. Although the district court's order referred at points to the Choctaw Nation, the record establishes, and the parties do not dispute, that the children are citizens of the Chickasaw Nation. The Nation received notice, declined to intervene, and reserved its rights. Pet'rs' Ex. 4. No party raised any issue under either Act on appeal. We therefore address only state-law questions regarding whether Father's consent to the adoption is necessary.

² H. 1. Consent to adoption is not required from a parent who fails to establish and/or maintain a substantial and positive relationship with a minor for a period of twelve (12) consecutive months out of the last fourteen (14) months immediately preceding the filing of a petition for adoption of the child.

2. In any case where a parent of a minor claims that prior to the receipt of notice of the hearing provided for in Sections 7505-2.1 and 7505-4.1 of this title, such parent had been denied the opportunity to establish and/or maintain a substantial and positive relationship with the minor by the custodian of the minor, such parent shall prove to the satisfaction of the court that he or she has taken sufficient legal action to establish and/or maintain a substantial and positive relationship with the minor prior to the receipt of such notice.

3. For purposes of this subsection, "fails to establish and/or maintain a substantial and positive relationship" means the parent:

- a. has not maintained frequent and regular contact with the minor through frequent and regular visitation or frequent and regular communication to or with the minor, or
- b. has not exercised parental rights and responsibilities.

10 O.S.2011, § 7505-4.2(H)

³ Title 10, section 7505-4.2(B)(1) provides that consent for adoption is not required from a parent who, for twelve consecutive months out of the fourteen months immediately preceding the filing, has willfully failed, refused, or neglected to contribute to the support of the minor in substantial compliance with a court order adjudicating support. The district court found that Father failed to contribute support for twelve consecutive months of the relevant period. The Court of Civil Appeals agreed but found there was not clear and convincing evidence that the lack of support by Father was willful. We note that Father made payments during the final three months of the fourteen-month period preceding Petitioners' filing for adoption. See Pet'rs' Ex. 1, at 2. In March 2023, Father made a \$349.06 child support payment. *Id.* In April 2023, Father made a \$349.06 child support payment. *Id.* And in May 2023, Father made a partial child support payment of \$171.58. *Id.* The record shows only eleven *consecutive* months, not twelve, of the fourteen months immediately preceding the filing in which Father failed, refused, or neglected to support the minor children. Regardless, because a single statutory ground suffices to dispense with consent, we need not determine whether Father was willful in his lack of support.

Citationizer® Summary of Documents Citing This Document

Cite Name Level

None Found.

Citationizer: Table of Authority

Cite Name	Level	
Oklahoma Supreme Court Cases		
Cite	Name	Level
<u>2001 OK 103, 39 P.3d 802, 72 OBJ 3648,</u>	<u>IN RE ADOPTION OF C.D.M.</u>	Discussed at Length
<u>2006 OK 20, 134 P.3d 141,</u>	<u>STELTZLEN v. FRITZ</u>	Discussed
<u>2006 OK 80, 155 P.3d 1,</u>	<u>IN THE MATTER OF THE ADOPTION OF L.D.S.</u>	Discussed
<u>2011 OK 77, 261 P.3d 1159,</u>	<u>IN THE MATTER OF THE ADOPTION OF G.D.J.</u>	Discussed at Length
<u>2018 OK 1, 419 P.3d 204,</u>	<u>IN THE MATTER OF THE ADOPTION OF M.A.S.</u>	Discussed at Length
<u>2023 OK 48, 529 P.3d 175,</u>	<u>IN THE MATTER OF THE ADOPTION OF L.B.L.</u>	Discussed
<u>2023 OK 122, 540 P.3d 473,</u>	<u>IN THE MATTER OF THE ADOPTION OF A.J.B.</u>	Discussed
<u>2025 OK 8, 564 P.3d 75,</u>	<u>IN THE MATTER OF THE ADOPTION OF N.J.B.</u>	Discussed at Length
Title 10. Children		
Cite	Name	Level
<u>10 O.S. 7505-4.2,</u>	<u>Parental Consent Exception</u>	Discussed at Length