

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

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*In re* BMGZ, Minor.

FOR PUBLICATION  
September 16, 2021  
9:10 a.m.

No. 355922  
Kent Circuit Court  
Probate Division  
LC No. 20-027588-AY

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Before: MURRAY, C.J., and M. J. KELLY and O’BRIEN, JJ.

PER CURIAM.

In this step-parent adoption case, petitioners appeal as of right the trial court order denying their motion for special findings of fact to enable juvenile BMGZ to apply for special immigrant juvenile (SIJ) status pursuant to 8 USC 1101(a)(27)(J).<sup>1</sup> Because there are no errors warranting reversal, we affirm.

I. BASIC FACTS

BMGZ was born in Honduras. Her mother and father were unmarried, and her father was not listed on her birth certificate. BMGZ was seven or eight years old when she and her mother came to this country. While in the United States, BMGZ’s mother married. In February 2020, BMGZ’s mother and stepfather filed a petition for a step-parent adoption. As part of the petition, they alleged that BMGZ’s biological father had “failed to provide support or comply with a support order and failed to visit or contact the adoptee for a period of 2 years or more.” In connection with the petition for step-parent adoption, they also submitted a petition requesting a hearing to identify

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<sup>1</sup> “Following the issuance of special, or predicate, findings by a juvenile court, a juvenile may file a petition with the [United States Citizenship and Immigration Services (USCIS), a division of the United States Department of Homeland Security (USDHS)] for SIJ classification.” *In re LFOC*, 319 Mich App 476, 482; 901 NW2d 906 (2017), citing 8 CFR 204.11(b) (2009). “If the application is granted, the juvenile may become a lawful permanent resident, who, after five years, is eligible to become a United States citizen. Denial of SIJ status renders the applicant subject to deportation.” *In re LFOC*, 319 Mich App at 485 (quotation marks and citation omitted).

BMGZ's father and to terminate his parental rights. Finally, and relevant to the issue raised on appeal, petitioners filed a motion requesting that the trial court make special findings to enable BMGZ to apply for SIJ status.

The trial court held a hearing on the motion for special findings on the issue of SIJ status. The court found that BMGZ was under 21 years of age and was unmarried, but did not find that she was dependent on a juvenile court located in the United States. In addition, the court noted that it was unable to find that it was not in BMGZ's best interests to return to Honduras to her biological father because he was a putative, not legal father. Finally, the court explained that it could not find that reunification with one or both parents was not viable due to abuse, abandonment, or neglect, because BMGZ only had one legal parent (her mother) and there were no allegations that BMGZ's mother had abused, neglected, or abandoned her. As a result, the trial court denied the motion. This appeal follows.

## II. SPECIAL FINDINGS RELATED TO SIJ STATUS

### A. STANDARD OF REVIEW

Petitioners argue that the trial court erred by denying their motion for special findings related to the SIJ status. This Court reviews for clear error a trial court's factual findings in connection with a motion for special findings related to SIJ status. *In re LFOC*, 319 Mich App 476, 480; 901 NW2d 906 (2017). "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake was made." *Id.* (quotation marks and citation omitted). Questions of law and statutory interpretation, including interpretation of federal statutes and regulations, are reviewed de novo. *Id.*

### B. ANALYSIS

"The Immigration and Nationality Act of 1990 (Act) first established SIJ status as a path for resident immigrant children to achieve permanent residency in the United States." *Id.* at 481. "SIJ status provides a means for abused, neglected, and abandoned immigrant youth to obtain lawful permanent residency and a path to United States citizenship under federal law." *In re Guardianship of Guaman*, 879 NW2d 668, 671 (Minn App, 2016).<sup>2</sup> Such juvenile immigrants may seek SIJ status to avoid "being deported along with abusive or neglectful parents, or deported to parents who had abandoned them once in the United States." *Yeboah v United States Dep't of Justice*, 345 F3d 216, 221 (CA 3, 2003). *In the matter of Hei Ting C*, 109 App Div 3d 100, 102-103; 969 NYS2d 150 (2013), the New York Supreme Court succinctly set forth the history of SIJ status, explaining:

As originally enacted, this legislation defined an eligible immigrant as being one who "has been declared dependent on a juvenile court located in the United States and has been deemed eligible by that court for long-term foster care" (Immigration

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<sup>2</sup> This Court may look to decisions from other jurisdictions for guidance if there is a lack of Michigan case law addressing or interpreting the federal statute at issue. *In re LFOC*, 319 Mich App at 481 n 1.

Act of 1990, Pub L 101–649, 104 Stat 4978, 5005). It also required a determination by the court that it would not be in the immigrant's best interests to return to his or her native country (see Immigration Act of 1990, Pub L 101–649, 104 Stat 4978, 5005–5006). In 1997, Congress added the further requirement that the juvenile court find the child dependent upon the court “due to abuse, neglect, or abandonment,” which limited the beneficiaries of the provision “to those juveniles for whom it was created” (143 Cong Rec H10807 at 10815, 10844 [Nov 13, 1997]).

In 2008, Congress again amended the SIJS provision. In the “William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008,” Congress expanded the definition of who qualified as a “special immigrant juvenile,” enabling more children to qualify for the status (Pub L 110–457, 122 Stat 5044 [Dec 23, 2008] ). The amendments removed the requirement that the immigrant child had to be deemed eligible for long-term foster care due to abuse, neglect, or abandonment, and replaced it with a requirement that the juvenile court find that “reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, abandonment or a similar basis found under State law” (Pub L 110–457, 122 Stat 5079 [Dec.23, 2008] ). The amendments also expanded eligibility to include, in addition to children declared dependent on a juvenile court, those who had been placed in the custody of “an individual or entity appointed by a State or juvenile court” (*id.*).

Under the 2008 amendments, a prerequisite for applying SIJ status is a state juvenile court order finding: (1) that the juvenile immigrant “has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States;” (2) that the juvenile immigrant’s reunification with “1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;” and (3) that it would not be in the juvenile immigrant’s best interests to return to his or her country of origin. 8 USC § 1101(a)(27)(J)(i)-(ii); see also 8 CFR § 204.11 (2009).<sup>3</sup> Additionally, the juvenile must be under 21 years of age when petitioning for SIJ status and must be unmarried. 8 CFR 204.11(c) (2009).

Here, with regard to the second and the third factual findings under 8 USC 1101(a)(27)(J)(i)-(ii), the trial court found that it could not make the required factual findings because BMGZ only had a putative father. However, simultaneously with the petition for step-parent adoption and the motion for special findings to enable BMGZ to apply for SIJ status, petitioners filed a petition seeking to identify BMGZ’s putative father as BMGZ’s legal father and to terminate his parental rights. Given that the matter was pending before the trial court, we conclude that its decision as to the second and third special findings was premature.

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<sup>3</sup> Although the 2008 amendment removed the requirement that the child be “eligible for long-term foster care,” see *In re LFOC*, 319 Mich App at 484, the CFR has not been amended to reflect that change, see 8 CFR 204.11 (2009).

Reversal, however, is not required. The trial court did not clearly err by finding that BMGZ was not “dependent upon the juvenile court while [she] was in the United States and under the jurisdiction of the Court” because a “step-parent adoption does not make any minor child dependent upon the Court.”<sup>4</sup> Although the trial court was a juvenile court located in the United States,<sup>5</sup> an order entered as a result of a step-parent adoption would not make BMGZ dependent upon the court “in accordance with state law governing such declarations of dependency . . . .” See 8 CFR 204.11(c) (2009). Instead, as relevant here, under MCL 710.51(1), the trial court may enter an order terminating the parental rights of one or both parents and approving the placement of the child with the petitioner if the judge is satisfied that the requirements in MCL 710.51(a) and (b) are met. Nothing in MCL 710.51(1) addresses whether the court’s order terminating a single parent’s parental rights and approving a step-parent’s petition for adoption makes the child “dependent” on the juvenile court. However, MCL 710.51(3) provides:

(3) Upon entry of an order terminating rights of parents or persons in loco parentis, a child is a ward of the court and a consent to adoption executed under section 43 of this chapter shall not be withdrawn after the order is entered. Entry of the order terminates the jurisdiction of the same court or another court over the child in a divorce or separate maintenance action. *If the petitioner for adoption is married to the parent having legal custody of the child, the child shall not be made a ward of the court after termination of the rights of the other parent.* [Emphasis added.]

Here, because BGMZ’s mother has legal custody of her and is married to the petitioner for adoption, the court cannot make BMGZ “a ward of the court” after terminating the parental rights of her biological father. Therefore, even if the step-parent adoption is approved, BMGZ cannot be made dependent on the court because under such circumstances the trial court is expressly prohibited from making her a ward of the court.

Petitioners reliance on MCL 710.39 is misplaced. That statute sets forth the procedure by which the trial court may terminate the parental rights of a putative father. See MCL 710.39. Petitioners suggest that by terminating the parental rights of a putative father and approving the adoption of the child by a step-parent, the court’s actions make the child dependent upon the court. However, given that MCL 710.51(3) expressly states that such an action cannot make the child a ward of the court, we find the argument without merit. Dependency on the court means something more than being affected by a decision of the court. If that were not the case, then there would be

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<sup>4</sup> Petitioners suggest that this finding indicates that the trial court found it did not have jurisdiction to issue special findings that would allow BMGZ to apply for SIJ status. We disagree. Petitioners correctly point out that a juvenile court, such as a probate court in a step-parent adoption case, “has authority to issue factual findings pertinent to a juvenile’s SIJ status.” *In re LFOC*, 319 Mich App at 485. However, unlike the court in *LFOC*, the court in this case did make findings pertinent to BMGZ’s SIJ status. Thus, petitioners argument that the trial court erroneously determined that it lacked jurisdiction to make findings pertinent to BMGZ’s SIJ status is without merit.

<sup>5</sup> “Juvenile court means a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.” 8 CFR. 204.11(a) (2009).

no need for there to be three separate methods of satisfying the first special finding. Again, under 8 USC 1101(a)(27)(J)(i), a “special immigrant” is one who “has been declared dependent on a juvenile court located in the United States *or* whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, *or* an individual or entity appointed by a State or juvenile court located in the United States . . .” (Emphasis added). If any order by a juvenile court affecting an immigrant juvenile were sufficient to establish dependency, then the alternate ways of meeting the definition would be rendered meaningless. See *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146, 644 NW2d 715 (2002) (“Courts must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory.”).

Finally, although *In re LFOC* was a step-parent adoption case, the opinion only addressed whether the probate court in such a case had *jurisdiction* to make findings pertinent to a juvenile’s SIJ status. *In re LFOC*, 319 Mich App at 485. As to the actual, special findings, which include a finding that the child is dependent upon a juvenile court located in the United States, the *LFOC* court expressly declined to make any such findings and instead remanded to the trial court to make the findings in the first instance. *Id.* at 488-489.

In sum, although the trial court prematurely made findings related to the second and third requirements set forth in 8 USC 1101(a)(27)(J)(i)-(ii), its findings that the first requirement was not satisfied was not clearly erroneous. Consequently, reversal is not warranted.

Affirmed.

/s/ Christopher M. Murray  
/s/ Michael J. Kelly  
/s/ Colleen A. O’Brien