

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY**

IN THE MATTER OF:

ADOPTION OF I.R.S.

CASE NO. 2026-P-0046

Civil Appeal from the
Court of Common Pleas,
Probate Division

Trial Court No. 2025 AD 00046

OPINION AND JUDGMENT ENTRY

Decided: September 14, 2026
Judgment: Affirmed

Patricia Francis Lowery, 651 Yacavona Street, Kent, OH 44240 (For Appellant, Dustin D. Szarell).

Callie Ray, P.O. Box 762, Wadsworth, OH 44282 (For Appellee, James Perry Smith).

Michael A. Noble, 228 West Main Street, P.O. Box 248, Ravenna, OH 44266 (For Mother, Danielle N. Szarell).

EUGENE A. LUCCI, J.

{¶1} Respondent-appellant, Dustin D. Szarell (“Father”), appeals the judgment of the Portage County Court of Common Pleas, Probate Division, overruling his objections to a magistrate’s decision and finding that his consent is not required for the adoption of his son, I.R.S. by petitioner-appellee, James P. Smith, the child’s maternal grandfather and legal custodian (“Grandfather”). Two questions are presented: whether the probate court discharged its duty of independent review under Civ.R. 53(D)(4)(d) when it supplied a justifiable-cause finding the magistrate had omitted, and whether the record supports

the court's determination, by clear and convincing evidence, that Father failed without justifiable cause to have more than de minimis contact with I.R.S. during the year immediately preceding the filing of the adoption petition. We answer both questions in the affirmative and affirm.

I. Facts and Procedural History

{¶2} On September 29, 2020, the Summit County Court of Common Pleas, Juvenile Division, granted Grandfather legal custody of I.R.S., born January 21, 2019. The parties agreed to that disposition, and no appeal was taken. On November 22, 2023, the juvenile court modified Father's visitation. Under that entry, Father could exercise weekly supervised visits with a private supervisor, Scott Stutler, at Father's expense, and, "[i]n the event he is unable to retain the services of Mr. Stutler, he shall schedule weekly visits with the Place of Peace." Father neither objected to nor appealed that entry.

{¶3} Nearly five years after the custody award, on September 16, 2025, Grandfather petitioned to adopt I.R.S. The petition alleged that the consent of neither biological parent was required under R.C. 3107.07(A), because each had failed without justifiable cause to have more than de minimis contact with the child and to provide meaningful and regular maintenance and support for the year immediately preceding the filing of the petition. Father filed a timely objection to the petition.

{¶4} The probate court referred the consent question to its magistrate, who heard the matter on January 27, 2026.

{¶5} On the morning of the hearing, Father moved to dismiss. He attached a child-support payment history for the twelve months preceding the petition and argued that his regular payments defeated the allegation of nonsupport. The motion did not

meaningfully address the separate allegation of de minimis contact. Father instead treated his support payments as answering both allegations, and he cited no authority for that proposition.

{¶6} At the outset of the hearing, Grandfather withdrew the maintenance-and-support allegation as to both parents and elected to proceed solely on the allegation of de minimis contact. Because R.C. 3107.07(A) is written in the disjunctive, that withdrawal narrowed the case to a single question: whether Father had failed, without justifiable cause, to have more than de minimis contact with I.R.S. between September 16, 2024, and September 16, 2025. The magistrate overruled the motion to dismiss and heard testimony from Grandfather, Father, and the child’s mother, Danielle N. Smith (“Mother”), who appeared by videoconference.

{¶7} Grandfather testified that Summit County Children Services became involved because of Mother’s mental illness, and that Father was incarcerated for six months on a domestic-violence conviction early in the child’s life. Supervised visitation initially took place at Grandfather’s home and went well for about a year. It then, in Grandfather’s words, “fell apart,” and “we needed to have an outside supervisory position come in, and outside rather than my house.” Grandfather testified that Father had “threatened to kill himself and he threatened to kill me . . . in front of [I.R.S.]”

{¶8} Grandfather testified that Father used supervisory visits via Mr. Scott Stutler three times in 2024—in March, in April, and last in August 2024—and that Father exercised no visitation at all during the relevant one-year period. Grandfather had lived at the same address since 2018 and had kept the same telephone number since 2005 or 2006, and Father knew both. Grandfather never blocked Father, never sought a no-

contact or restraining order, and never threatened to involve the police if Father reached out. During the relevant year, Father sent I.R.S. no cards, letters, or gifts; Grandfather testified that he would have delivered any such items to the child.

{¶9} I.R.S. was in first grade at the time of the hearing. Grandfather testified that Father had not participated in the child’s schooling or school activities and had not provided school supplies or clothing.

{¶10} Grandfather further testified that the juvenile court’s orders neither restricted the parents’ ability to telephone I.R.S. or to send him cards, letters, or gifts, nor obligated Grandfather to keep the parents involved in the child’s life.

{¶11} Father, a disabled veteran living on VA compensation and Social Security disability income, testified that he wanted to see his son but could not afford supervised visitation at \$75 per hour, payable in cash, after meeting his support obligation and paying for extensive repairs to his home. In July 2025, he contacted the Place of Peace, a nonprofit, charging \$20 per hour that told him it would cover the cost if he could not pay. He texted Grandfather, who agreed to the arrangement and completed the agency’s orientation within a week; Father completed his own orientation in August. Father testified that Grandfather then filed the adoption petition—a “bombshell thrown at [him].” Because the Place of Peace gives priority to Portage County orders, Father remained on a waiting list, and no visit had occurred by the date of the hearing.

{¶12} Father acknowledged that his last in-person contact with I.R.S. was in August 2024. When asked whether he had any contact with the child between that visit and his July 2025 call to the Place of Peace, he answered, “No. Because I have been trying to fix up the house.” He acknowledged that no court order barred him from sending

cards, letters, or gifts to Grandfather's address, and that he sent none. He explained that he "ha[d]n't been able to" do so because of the strained relationship arising from the incident that preceded the 2023 modification, adding that he had "worked on [his] mental health since then."

{¶13} Father testified that he telephoned I.R.S. on the child's birthday "every once in a while." Asked to confine himself to September 2024 through September 2025, he testified that he called "[o]nce there, and I think on Father's [D]ay to my recollection," and he agreed that "at most" there had been those two calls. He explained that a traumatic brain injury sustained in Iraq left him with "some memory issues." The birthday call lasted 43 minutes.

{¶14} Father knew Grandfather's address and had been to the home. When asked whether he had Grandfather's telephone number, he recited it from memory. He testified that Grandfather had never blocked him and responded when he reached out.

{¶15} Mother, whose consent the magistrate also found unnecessary and who has not appealed, testified that during the relevant year she moved among four shelters and three states, went without a telephone for periods, and tried to call I.R.S. every two or three weeks. Her circumstances are not before us.

{¶16} The magistrate issued her decision on February 17, 2026. She found, among other things, that Father paid monthly child support from September 3, 2024, through September 3, 2025; that he had not visited I.R.S. in person since August 2024; that he called his son on the child's birthday and on Father's Day; and that Grandfather had not interfered with either parent's ability to call or visit. She concluded that Grandfather had proven by clear and convincing evidence that Father had not had more

than de minimis contact with I.R.S. from September 16, 2024, through September 16, 2025, and that neither parent's consent was required. The decision did not expressly address whether Father's failure was without justifiable cause. The probate court adopted the decision the same day.

{¶17} Father filed timely objections on March 2, 2026, and supplemented them on April 10, 2026, after the transcript was filed. Grandfather responded on April 20, 2026, and Father replied on April 23, 2026. Mother filed no objections.

{¶18} On June 2, 2026, the probate court overruled the objections. The court recited the testimony at length, quoting the transcript directly. It found that Father had income from military service and paid child support during the relevant period, and that the dispositive question was therefore contact rather than support. It found that Father's last visit was in August 2024; that his only contact during the relevant year consisted of a telephone call on I.R.S.'s birthday and a call on Father's Day; that he sent no cards, letters, or gifts; that he knew where I.R.S. lived and had Grandfather's telephone number; that no restraining order or no-contact order existed; that he never asked Grandfather to help pay for supervised visitation or to return the visits to Grandfather's home; and that he never sought to modify the juvenile court's visitation order.

{¶19} The court found that Father's stated reasons for the absence of contact were his work on his house and his monetary constraints, and it concluded that those reasons did not justify the failure.

{¶20} The court accordingly found, by clear and convincing evidence, that Father "failed to have more than de minimis contact with his son without justifiable cause," and

it held that “[t]herefore consent is not required.” Father filed his notice of appeal on June 8, 2026, and the probate court stayed the adoption proceedings on June 12, 2026.

II. Assignment of Error

{¶21} Father assigns the following as error:

The probate court committed a reversible error of law and abused its discretion in overruling appellant-father’s written objections and adopting the magistrate’s decision . . . under R.C. 3107.07(A). The probate judge failed to conduct the mandatory independent review required by Civ.R. 53(D)(4)(d), injected almost three pages of materially incorrect facts unsupported by the hearing transcript, and retroactively manufactured a ‘justifiable cause’ finding to cure a defective magistrate’s decision . . . , violating appellant-father’s fundamental rights to substantive due process and due course of law under the Fourteenth Amendment to the United States Constitution and Article I, Section 16 of the Ohio Constitution.

{¶22} Father’s single assignment of error advances three arguments: that the probate court failed to conduct the independent review Civ.R. 53(D)(4)(d) requires and instead “retroactively manufactured” the justifiable-cause finding the magistrate omitted; that the court’s recitation of the facts is materially inaccurate; and that the record establishes justifiable cause, because the child-support withholding left him unable to fund the supervised visitation the juvenile court required and because he was actively pursuing a low-cost alternative when Grandfather filed the petition. We take the arguments in that order, after first confirming our jurisdiction.

III. Final Appealable Order

{¶23} Although no party questions our jurisdiction, we confirm it sua sponte. This matter embraces only the issue of whether consent was required to proceed with the adoption proceeding. Where, as here, the probate court determines that parental consent

is not required under R.C. 3107.07(A), it must then determine whether the adoption is in the child's best interest prior to granting the petition. See *In re Adoption of J.H.J.*, 2025-Ohio-848, ¶ 10 (10th Dist.), citing *In re A.K.*, 2022-Ohio-350, ¶ 12 (lead opinion). Because adoption proceedings require this additional legal determination, finality of the judgment should be addressed.

{¶24} An appellate court only has jurisdiction to review final appealable orders. See, e.g., *Calabrese v. Rainsberger*, 2024-Ohio-5998, ¶ 4 (11th Dist.) ("This court can only immediately review a trial court's judgment if it constitutes a 'final order' under Section 3(B)(2), Article IV of the Ohio Constitution.") A final order includes "[a]n order that affects a substantial right made in a special proceeding" R.C. 2505.02(B)(2). Adoption is a special statutory proceeding with no counterpart at common law, and the right to bar an adoption by withholding consent is substantial, "dealing as it does with the continuation or termination of the parent-child relationship, a bond which constitutes one of the most fundamental relationships upon which our society is based." *In re Adoption of Greer*, 1994-Ohio-69, ¶ 15. The Supreme Court of Ohio accordingly held that "[a] trial court's finding pursuant to R.C. 3107.07 that the consent to an adoption of a party described in R.C. 3107.06 is not required is a final appealable order." *Id.* at paragraph one of the syllabus.

{¶25} The June 2, 2026 judgment entry is therefore final and appealable even though the best-interest phase remains pending. See App.R. 4(B)(5). Father filed his notice of appeal on June 8, 2026, within the thirty days allowed by App.R. 4(A)(1). See *Greer* at ¶ 16, fn. 1. We have jurisdiction.

IV. Governing Law and Standard of Review

{¶26} “The right of a natural parent to the care and custody of his children is one of the most precious and fundamental in law.” *In re Adoption of Lasky*, 2005-Ohio-1565, ¶ 17 (11th Dist.), quoting *In re Adoption of Masa*, 23 Ohio St.3d 163, 165 (1986). Because adoption terminates that right, “any exception to the requirement of parental consent [to adoption] must be strictly construed so as to protect the rights of natural parents to raise and nurture their children.” *Lasky* at ¶ 17, quoting *Masa* at 165.

{¶27} An adoption proceeding has two phases, consent and best interest. R.C. 3107.06 requires written parental consent before a court may grant a petition to adopt a minor, and R.C. 3107.07 supplies the exceptions. Section 3107.07(A) “operates only to determine whether an adoption may proceed without a parent’s consent”; its operation “does not result directly in the adoption to which it relates.” *A.K.*, 2022-Ohio-350, at ¶ 12 (lead opinion), citing *In re Adoption of Jorgensen*, 33 Ohio App.3d 207, 209 (3d Dist. 1986). A court that finds consent unnecessary must still determine that the adoption is in the child’s best interest before entering a final decree. *A.K.* at ¶ 12; R.C. 3107.14(C).

{¶28} Grandfather filed his petition on September 16, 2025. R.C. 3107.07(A) was amended effective March 21, 2025, and the amended version governs. As amended, it provides that consent to adoption is not required of:

A parent of a minor, when it is alleged in the adoption petition and the court, after proper service of notice and hearing, finds by clear and convincing evidence that the parent has failed without justifiable cause to have more than de minimis contact with the minor or to provide meaningful and regular maintenance and support of the minor as required by law or judicial decree for a period of one year immediately preceding the filing of the adoption petition.

{¶29} The amendment bears on the framing of the analysis. The prior version, which most of the reported case law construes, asked whether a parent had failed “to provide more than de minimis contact” during “a period of at least one year immediately preceding either the filing of the adoption petition or the placement of the minor in the home of the petitioner.” Former R.C. 3107.07(A) (eff. Mar. 23, 2015). The current version measures the one-year period solely from the filing of the petition. The probate court used a lookback period running from September 16, 2024, to September 16, 2025—the year immediately preceding the filing—and thus applied the correct measuring period. The substitution of “have” for “provide” does not disturb the settled construction of “more than de minimis contact,” and we apply the existing case law accordingly.

{¶30} The statute is disjunctive: a failure as to either contact or support, if without justifiable cause, suffices. Because Grandfather withdrew the support allegation, only the contact prong is before us. Clear and convincing evidence is that measure of proof “which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.” *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus.

{¶31} The burden rests on the petitioner throughout. He must establish both that the parent failed to have more than de minimis contact and that the failure was without justifiable cause. *In re Adoption of Bovett*, 33 Ohio St.3d 102 (1987), paragraph one of the syllabus, (following *Masa*, 23 Ohio St.3d 163, at paragraph one of the syllabus). That is “ordinarily . . . not . . . an easy showing to make.” *In re Adoption of A.C.B.*, 2020-Ohio-629, ¶ 17 (plurality opinion).

{¶32} Application of the contact prong proceeds in two steps. The court first decides whether the parent failed to have more than de minimis contact. Contact is not confined to physical visitation; it includes “gifts, cards, letters, telephone calls, and text messages.” (Citation omitted.) *In re Adoption of M.K.B.B.*, 2026-Ohio-2001, ¶ 11 (2d Dist.); accord *In re Adoption of N.I.B.*, 2019-Ohio-4412, ¶ 25-26 (11th Dist.). “More than de minimis contact” means contact—“either attempted or successful”—beyond a single occurrence; it demands ““more quality and quantity”” and ““more effort from the parent to have contact and communication with the child”” than a one-time contact. *M.K.B.B.* at ¶ 11, quoting *In re Adoption of T.U.*, 2020-Ohio-841, ¶ 25 (6th Dist.), quoting *In re Adoption of K.A.H.*, 2015-Ohio-1971, ¶ 10 (10th Dist.). We review that determination for an abuse of discretion. *In re Adoption of M.B.*, 2012-Ohio-236, ¶ 21-23.

{¶33} If the parent’s contact was no more than de minimis, the court decides whether justifiable cause for the failure has been proven. Relevant considerations include the parent’s willingness and ability to contact the child and his efforts to enforce his parental rights. Significant interference by the child’s custodian with communication between the parent and the child, or significant discouragement of such communication, is required to establish justifiable cause. *In re Adoption of Holcomb*, 18 Ohio St.3d 361, 367-368 (1985). The court’s justifiable-cause ruling will not be disturbed unless it is against the manifest weight of the evidence. *Masa* at paragraph two of the syllabus; *In re J.P.E.*, 2017-Ohio-1108, ¶ 14-15 (11th Dist.).

{¶34} Finally, in reviewing a trial court’s action on objections, we presume the court performed the independent analysis Civ.R. 53(D)(4)(d) requires, and “the party asserting error bears the burden of affirmatively demonstrating the trial court’s failure to

perform its . . . duty of independent analysis.” *In re M.E.M.*, 2010-Ohio-4430, ¶ 25 (11th Dist.).

{¶35} In weighing the evidence, a reviewing court “weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the finder of fact clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered.” (Cleaned up.) *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 20. We remain “mindful of the presumption in favor of the finder of fact.” *J.P.E.* at ¶ 15, quoting *Eastley* at ¶ 21.

V. Analysis

A. Father’s Challenges to the Probate Court’s Findings of Fact

{¶36} Father assigns error to a series of findings in the June 2, 2026 judgment entry. He does not present them as separate assignments of error; he lists them under the heading “Mistakes of Fact in the Final J.E. by Paragraph.” We address them individually, but under one rubric, together because their cumulative force is the premise of his argument that the court did not independently review the record.

{¶37} First, Father challenges the finding that he “was incarcerated for a conviction of Domestic Violence when Petitioner received legal custody.” He argues that no evidence supports it.

{¶38} Evidence does support it. Grandfather testified that Father “was actually convicted of domestic violence that got him into prison for, I believe it was six months,” early in the child’s life. Father did not object to that testimony, did not cross-examine on it, and offered nothing to contradict it.

{¶39} Father counters that the entry granting legal custody lists him among those present at the 2020 hearing, which would be difficult to square with the statement that he was incarcerated “when Petitioner received legal custody.” We need not resolve the tension. It appears in the entry’s recitation of how Grandfather came to have custody in 2020—a determination of the Summit County Juvenile Court that Father did not appeal and that is not before us. Nothing in the probate court’s analysis of contact during the 2024-2025 lookback period rests on the conviction, and any error in the finding is harmless. See Civ.R. 61.

{¶40} Second, Father challenges the finding that he has income from military service and paid child support during the relevant period, arguing that it obscures his inability to fund supervised visitation.

{¶41} The finding is accurate—Father testified to it, and Grandfather confirmed the payments—and the court drew from it a conclusion favorable to Father: that the support prong was not in issue. The court then turned to the only question that remained. There is no inconsistency between crediting Father’s payments and finding that he failed to have more than de minimis contact.

{¶42} Third, Father challenges the finding that he knew Grandfather’s address and telephone number, arguing that such knowledge does not make him responsible for the absence of visitation.

{¶43} The factual finding is undisputed; Father recited the number from memory. And the court did not treat the finding as bearing on visitation. It treated the finding as bearing on the forms of contact that required neither money nor a supervisor—a letter, a card, a text message, a telephone call. Read as a whole, the entry does not question

Father's testimony about his finances. It asks why those finances prevented him from engaging in alternative forms of contact.

{¶44} Fourth, Father challenges the findings that he never asked Grandfather to move the visits back to Grandfather's home, never asked for help with the cost, and never arranged a visit during the relevant year. Grandfather so testified, and Father did not contradict him. A court may weigh a parent's failure to seek modification of a visitation order, or to ask the custodian for accommodation, in assessing whether an absence of contact was justified. *See Holcomb*, 18 Ohio St.3d at 367-368. The magistrate as well as the probate court, if not expressly, implicitly did so.

{¶45} Fifth, Father does not dispute that he sent no cards, letters, or gifts during the relevant year; he acknowledged as much. Those are the ordinary and inexpensive means by which a parent separated from a child maintains a relationship, and their complete absence is significant. The record supports the findings, and it additionally provides a sound foundation for the "de-minimis"-contact prong of the statutory test.

{¶46} Sixth, Father challenges the finding that Grandfather would have permitted visits at his home had Father's own father or a paid supervisor been present. Grandfather so testified, and the finding is consistent with the juvenile court's order and with Grandfather's testimony that visitation had to be externally supervised after 2023. Father characterizes the testimony as self-serving. That is an argument about weight and credibility, and the magistrate, who saw the witnesses, and the probate court, which had the transcript, were entitled to resolve it against Father.

{¶47} Seventh, Father takes issue with the trial court's factual statement that his last visit with I.R.S. was "August 2024 More than a year later, in July 2025, [Father]

initiated contact with Place of Peace. . . .” Father is correct that the court misstated an interval. The interval was less than a year. Grandfather concedes the error.

{¶48} While we agree that the trial court misstated the length of time (it was not “[m]ore than a year later”), the finding is non-prejudicial as it has no impact on the trial court’s “de-minimis”/“without-justifiable-cause” discussion or determination.

{¶49} The court’s justifiable-cause analysis rests on Father’s own explanation for the absence of contact—the house and the money—and on the availability of alternatives that cost nothing, not on whether the gap was eleven months or thirteen. Correcting the misstatement leaves the analysis undisturbed. See Civ.R. 61.

{¶50} Eighth, Father argues that the court gave no credit to his service-connected mental-health treatment. The entry does not discuss that testimony, but a court need not catalogue every item of evidence, and the omission does not establish that the evidence was ignored. See *In re M.E.M.*, 2010-Ohio-4430, at ¶ 25 (11th Dist.). Further, that evidence does not carry the weight Father assigns it. Father began his program during the lookback period and completed it in December 2025, after the petition was filed. He testified that he had been working on his mental health throughout, but he did not testify that his condition prevented him from telephoning, texting, or writing to his son. He telephoned twice.

{¶51} In sum, one finding is imprecise and immaterial. The rest are supported by the testimony and exhibits. The court’s findings of fact were not against the weight of the evidence.

B. The Absence of More Than De Minimis Contact Without Justifiable Cause

1. The probate court complied with Civ.R. 53(D)(4)(d).

{¶52} Father's principal argument is that the magistrate's decision was facially defective because it omitted the justifiable-cause finding, and that the probate court could only sustain his objections or return the matter to the magistrate—it could not supply the missing finding itself. The argument misconceives the relationship between a magistrate and the court that appointed her.

{¶53} Civ.R. 53(D)(4)(d) provides:

If one or more objections to a magistrate's decision are timely filed, the court shall rule on those objections. In ruling on objections, the court shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law. Before so ruling, the court may hear additional evidence but may refuse to do so unless the objecting party demonstrates that the party could not, with reasonable diligence, have produced that evidence for consideration by the magistrate.

{¶54} The probate court took no additional evidence, and Father did not ask it to. The court reviewed the transcript of the January 27, 2026 hearing—a fact evident from the entry itself, which quotes that transcript directly and at length.

{¶55} A magistrate is a subordinate judicial officer whose authority derives from the referring judge. A magistrate's findings and rulings are “advisory only and subject to the independent review and approval of the court,” and a magistrate's “oversight of an issue or issues, even an entire trial, is not a substitute for the judicial functions but only an aid to them.” *Hartt v. Munobe*, 1993-Ohio-177, ¶ 9, 19; see *Lewis v. Dellick*, 2025-Ohio-5454, ¶ 21 (7th Dist.).

{¶56} The magistrate addressed the de-minimis-contact element and did not address justifiable cause. Far from abandoning its role, the probate court discharged it: on objection, it reviewed the record independently and supplied the analysis the magistrate had omitted. Such action is what Civ.R. 53(D)(4)(d) contemplates.

{¶57} A magistrate's decision is a recommendation. "Whether or not objections are timely filed, a court may adopt or reject a magistrate's decision in whole or in part, with or without modification." Civ.R. 53(D)(4)(b). Until the court acts, the decision has no effect. Civ.R. 53(D)(4)(a).

{¶58} The probate court adopted the magistrate's decision in part and modified it by adding the missing element. Civ.R. 53 authorizes precisely that. Father's characterization of the court's findings as "retroactive" assumes that the magistrate's decision carried an independent legal force it never had.

{¶59} Civ.R. 53 does not dictate the form of a ruling on objections. "The rules do not require any particular format for rulings on objections, nor do they mandate that the court address each specific argument raised." *Lewis*, 2025-Ohio-5454, at ¶ 23 (7th Dist.), citing *Georgin v. Georgin*, 2022-Ohio-1548, ¶ 10-11 (12th Dist.). We presume a trial judge properly performed her duties unless the record affirmatively demonstrates otherwise, *In re M.E.M.*, 2010-Ohio-4430, at ¶ 25 (11th Dist.), and this record demonstrates the opposite of a rubber stamp: nearly six weeks elapsed between the close of briefing and the entry; the entry quotes the transcript directly; and it reaches a legal conclusion the magistrate had not reached. Father has not carried his burden of demonstrating a failure of independent review. His argument lacks merit.

2. The record supports the probate court's conclusions.

{¶60} Father next argues that his child-support payments are themselves contact, because they underwrite his son's daily expenses, and that his financial circumstances furnish justifiable cause for the absence of any other contact.

{¶61} Support is not contact. R.C. 3107.07(A) treats contact and support as distinct, disjunctive grounds, and reading one into the other would collapse a distinction the General Assembly drew deliberately. See *A.K.*, 2022-Ohio-350, at ¶ 17 (lead opinion). The de minimis standard demands "more effort from the parent to have contact and communication with the child" than a single occurrence. *K.A.H.*, 2015-Ohio-1971, at ¶ 10 (10th Dist.). Father's payments, faithful as they were, are not communication with his son.

{¶62} Father's stronger argument is that his lack of contact was compelled by a court order. The November 22, 2023 juvenile court entry conditioned his access to I.R.S. on retaining a private supervisor at \$75 dollars per hour, payable in cash, or on scheduling visits through the Place of Peace. Father says he could not afford the first, that the second had a waiting list, and that a parent should not forfeit his right to consent for complying with a valid order he lacked the means to satisfy. He invokes *In re Adoption of A.K.*, in which the Supreme Court of Ohio affirmed that a father's consent was not extinguished where he had no contact with his children because he was complying with a juvenile court order directing that he "have no contact with the minor children." *A.K.*, at ¶ 2, 21 (lead opinion).

{¶63} Father's argument is unpersuasive for two reasons. First, *A.K.* announced no majority rule. The lead opinion drew a single concurrence; two justices concurred in judgment only on reasoning that expressly rejects the lead opinion's analysis; and three

justices dissented. See *id.* at ¶ 23-51 (DeWine, J., concurring in judgment only); *id.* at ¶ 52 (O'Connor, C.J., dissenting); *id.* at ¶ 53-74 (Kennedy, J., dissenting). Second, and dispositively, the order in this case is not the order in *A.K.* The father in *A.K.* was forbidden to have contact of any kind. Father here was not. The November 22, 2023 entry regulates supervised, in-person visitation and nothing else. It says nothing of telephone calls, text messages, video calls, letters, cards, or gifts. See *M.K.B.B.*, 2026-Ohio-2001, at ¶ 11 (2d Dist.) (“Contact includes not only physical contact, but also other forms of contact, such as gifts, cards, letters, telephone calls, and text messages. . . .”); see also *In re Adoption of T.U.*, 2020-Ohio-841, ¶ 25 (6th Dist.) (Contact “demands ‘more quality and quantity’ and requires more effort from the parent to have contact and communication with the child’” Quoting *K.A.H.* at ¶ 10.).

{¶64} Grandfather testified without contradiction that no order restricted those forms of contact, that he never blocked Father, and that he would have delivered anything Father sent; Father agreed. A parent may not invoke an order limiting one avenue of contact to justify abandoning every other. Compare *A.K.*, 2022-Ohio-350 at ¶ 42-48 (DeWine, J., concurring in judgment only) (the scope of the order and its actual relationship to the lack of contact remain open to proof).

{¶65} Further, Father’s financial condition does not supply justifiable cause for the failure to use those avenues. We accept that a support withholding and a fixed disability income left Father unable to pay \$150 a week for supervised visits, and we do not fault him for prioritizing his support obligation or the habitability of his home. But a letter costs the price of a stamp, and Father’s telephone plainly worked: he used it to text Grandfather, and he used it to place a 43-minute call to his son. The question is not whether Father

could afford supervised visitation. It is whether anything prevented him from doing what cost nothing. Nothing in this record indicates any such impediment.

{¶66} Father's remaining argument is that Grandfather filed the petition to essentially "freeze the clock" while Father was working toward visitation through the Place of Peace, and that his July 2025 effort should count in his favor.

{¶67} Justifiable cause ordinarily requires significant interference by the custodian with communication between parent and child, or significant discouragement of such communication. *Holcomb*, 18 Ohio St.3d at 367-368. The record shows neither.

{¶68} Grandfather agreed to the Place of Peace arrangement and completed the agency's orientation within a week of Father's request. Whatever Grandfather's motives in filing when he did, filing was his right, and the statute fixes the lookback period by reference to the filing date. R.C. 3107.07(A). Father's July 2025 effort came eleven months into that period and produced no contact with the child.

{¶69} Father's reliance on *In re Adoption of P.A.C.*, 2010-Ohio-3351, is misplaced. *P.A.C.* holds that a probate court must refrain from proceeding with an adoption while an issue concerning the parenting of the child is pending in the juvenile court and must give effect to the juvenile court's determination. *Id.* at ¶ 1. No parenting issue was pending in the Summit County Juvenile Court; Father filed nothing there after November 2023. *P.A.C.* describes a path that was open to Father and that he did not take.

{¶70} We do not doubt Father's desire to be part of his son's life. He said so, and nothing suggests he was insincere. But R.C. 3107.07(A) measures contact, not desire. Two telephone calls in a year are, on this record, de minimis. The probate court did not

abuse its discretion in so finding, and its conclusion that the failure was without justifiable cause is not against the manifest weight of the evidence.

3. The constitutional claims.

{¶71} Father's assignment of error also asserts that the probate court's ruling violated his rights to substantive due process under the Fourteenth Amendment to the United States Constitution and to due course of law under Article I, Section 16 of the Ohio Constitution. His brief develops no separate constitutional argument. It cites *Santosky v. Kramer*, 455 U.S. 745 (1982), and *In re Adoption of G.V.*, 2010-Ohio-3349, for the propositions that parental rights are fundamental and that exceptions to the consent requirement are strictly construed—propositions we have applied above. An appellant must support each contention with argument and authority, App.R. 16(A)(7), and we may disregard a contention he does not support, App.R. 12(A)(2).

{¶72} In any event, Father received notice of the petition, a hearing at which he was represented by counsel and testified, the opportunity to object with the benefit of a transcript, leave to supplement those objections, and a reply. The probate court applied the clear-and-convincing-evidence standard the Constitution requires before parental rights may be terminated. See *Santosky* at 769. Father received the process he was due.

VI. Conclusion

{¶73} The probate court complied with Civ.R. 53(D)(4)(d). Its findings of fact are supported by competent, credible evidence, and its single misstatement about an interval of time was harmless. Grandfather proved by clear and convincing evidence that Father failed to have more than de minimis contact with I.R.S. between September 16, 2024, and September 16, 2025, and the court's finding that the failure was without justifiable

cause is not against the manifest weight of the evidence. Father's consent to the adoption is therefore not required, and the matter returns to the probate court for the best-interest determination R.C. 3107.14(C) requires.

{¶74} Father's sole assignment of error is without merit.

{¶75} The judgment of the Portage County Court of Common Pleas, Probate Division, is affirmed.

JOHN J. EKLUND, J.,

SCOTT LYNCH, J.,

concur.

JUDGMENT ENTRY

For the reasons stated in the opinion of this court, appellant's sole assignment of error is without merit. It is the judgment and order of this court that the judgment of the Portage County Court of Common Pleas, Probate Division, is affirmed.

Costs to be taxed against appellant, Dustin D. Szarell.

It is further ordered that the clerk of courts shall serve mother's attorney, Michael A. Noble, 228 West Main Street, P.O. Box 248, Ravenna, Ohio 44266, with a time-stamped copy of the opinion and judgment entry.

JUDGE EUGENE A. LUCCI

JUDGE JOHN J. EKLUND,
concur

JUDGE SCOTT LYNCH,
concur

THIS DOCUMENT CONSTITUTES A FINAL JUDGMENT ENTRY
--

A certified copy of this opinion and judgment entry shall constitute the mandate pursuant to Rule 27 of the Ohio Rules of Appellate Procedure.
