STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of KARRI LYNN BEEBE, Minor.

KRISTINE MARIE HAMILTON,

Petitioner-Appellee,

v

SHAWN R. BEEBE,

Respondent-Appellant.

UNPUBLISHED
July 17, 2007

No. 274336
Osceola Circuit Court
Family Division
LC No. 06-000054-AY

Before: Kelly, P.J., and Markey and Smolenski, JJ.

PER CURIAM.

Respondent appeals by right from the trial court's order terminating his parental rights to the minor child pursuant to MCL 710.51(6). We affirm.

The petitioner in a stepparent adoption proceeding has the burden of proving by clear and convincing evidence that termination of the noncustodial parent's rights is warranted. *In re Hill,* 221 Mich App 683, 691; 562 NW2d 254 (1997). In order to terminate parental rights under MCL 710.51(6), the trial court must determine that the requirements contained in both subsections of the statute are satisfied. *Id.* at 692. This Court reviews the trial court's factual findings for clear error. *In re Caldwell,* 228 Mich App 116, 121; 576 NW2d 724 (1998).

MCL 710.51(6)(a) requires that the noncustodial parent failed to provide regular and substantial support for the child or failed to substantially comply with a support order for two years or more before the filing of the petition. This Court has stated that when proceeding under this subsection, the petitioner need not prove that the respondent had the ability to support the child where the court has previously entered a support order. *In re Caldwell, supra* at 122. Rather, the petitioner need only prove that the respondent failed to comply substantially with the support order for the statutory period. *Id.*; *In re Hill, supra* at 692.

Because the trial court in the present case found that a support order was not entered until September 2005, the court found that respondent had the ability to support the child from March 2004 to September 2005, but failed to do so. Respondent argues that because he was incarcerated from May 2004 until November 2005, he did not have the ability to support his child. However, respondent testified that he worked while in prison. Thus, the trial court did not clearly err in finding that respondent had the ability to provide some support for his child.

The trial court found that a support order was entered in September 2005 and that respondent failed to substantially comply with that order. But that order reserved payment of support during respondent's incarceration and did not set forth the amount that respondent was required to pay for child support. Therefore, we find that no support order was in place in September 2005, *In re SMNE,* 264 Mich App 49, 55; 689 NW2d 235 (2004), and that the trial court should have analyzed respondent's ability to provide support.

Respondent testified that upon his release from prison on November 22, 2005, he obtained employment at Trees, Incorporated. It appears that respondent contacted the Friend of the Court, as he was required to do by the September 2005 order and submitted paperwork so that the child support would be taken out of his check. However, no child support payments were made. This evidence demonstrates that respondent had the ability to provide support for his daughter but failed to so. Thus, the trial court did not clearly err in finding that the requirements in MCL 710.51(6)(a) were satisfied.[1] Respondent's argument that he could not have provided such support because the conditions of his parole prevented contact with petitioner is without merit. Respondent should have sent support payments to the Friend of the Court, not directly to petitioner.

Respondent acknowledges that, on April 5, 2006, an order was entered that required him to pay $312 a month in child support. Respondent testified that in June 2006 he was "show caused" for nonpayment of such support. At the September 22, 2006 hearing, respondent acknowledged that he made just two payments: one on June 7, 2006 for $350 and a second on June 24, 2006 for $150. Such evidence supports the trial court's finding that respondent failed to substantially comply with the support order. So, the trial court did not clearly err in finding that the requirements of MCL 710.51(6)(a) were established by clear and convincing evidence.

Respondent contends that the trial court clearly erred by finding that the requirements of MCL 710.51(6)(b) were established because he would have violated a condition of his parole if he had attempted to contact his child. This subsection of the statute requires that the noncustodial parent, "having the ability to visit, contact, or communicate with the child, has regularly or substantially failed and neglected to do so for a period of 2 or more years before the filing of the petition." We find evidentiary support for the trial court's finding; consequently, we cannot conclude clear error occurred.

Respondent testified that during the relevant time frame he maintained contact with the child by telephone and correspondence. Petitioner in her testimony disputed this. We defer to the trial court's superior ability to determine credibility. MCR 2.613(C). Further, petitioner testified that before being incarcerated in May 2004 he only visited the child a few times. In addition, petitioner testified that his mother or girlfriend brought the child to visit him in prison only four or five times, the last visit being in September or November of 2004.

[1] This Court may uphold a trial court's ruling on appeal where the court reached the right result for the wrong reason. *Hess v Cannon Township,* 265 Mich App 582, 596; 696 NW2d 742 (2005).

Respondent argues that a condition of his November 2005 parole, that he have no verbal, written, electronic, or physical contact with any child 16 years old or younger, or attempt to do so, either directly or through another person, precluded respondent from having the ability to contact or communicate with the child. We disagree. Respondent's parole agent testified that it was possible for the Department of Corrections to allow contact with the person's child with an adult present and the supervising agent's permission. Also, respondent admitted that before going to prison he had sought and obtained relief from the circuit court regarding a similar no contact condition of probation regarding petitioner. Yet, respondent admitted he never petitioned the circuit court for assistance in obtaining parenting time. Likewise, the record supports the inference defendant never sought relief from the parole condition. Thus, the record supports a finding that respondent was aware that relief could be obtained from the "no contact" parole condition, but he never initiated any action to do so. In sum, respondent had the ability to comply with the contact requirements of the statute. Consequently, we conclude the trial court did not clearly err in finding that the requirements of MCL 710.51(6)(b) were established by clear and convincing evidence and in terminating respondent's parental rights.

We affirm.

/s/ Kirsten Frank Kelly
/s/ Jane E. Markey
/s/ Michael R. Smolenski