STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of COURTNEY NICOLE PYLANT, Minor.

MICHELLE RENEE ACKLEY, f/k/a MICHELLE RENEE HODGES, and BRIAN KEITH ACKLEY,

Petitioners-Appellees,

v

JEFFREY WADE PYLANT,

Respondent-Appellant.

UNPUBLISHED
July 11, 2000

No. 223419
Jackson Circuit Court
Family Division
LC No. 99-093327

Before: Jansen, P.J., and Hood and Saad, JJ.

PER CURIAM.

Respondent appeals as of right from the family court order terminating his parental rights to the minor child under §51(6) of the Adoption Code, MCL 710.51(6); MSA 27.3178(555.51)(6).[1] We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Respondent claims that the evidence was insufficient to terminate his parental rights. A petitioner in an adoption proceeding must prove by clear and convincing evidence that termination of parental rights is warranted. *In re Hill*, 221 Mich App 683, 691; 562 NW2d 254 (1997). This Court reviews the family court's findings of fact under the clearly erroneous standard. *Id.* at 691-692. A finding is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake was made. *Id.* at 692.

Respondent does not argue that the family court clearly erred in finding that he had the ability to comply with the support requirement of the statute, but failed to do so. The failure to brief the merits of an allegation of error is deemed an abandonment of an issue. *In re JS & SM*, 231 Mich App 92, 98; 585 NW2d 326 (1998). Nevertheless, the evidence established that a child support order was entered in March 1996, that there was an arrearage of over $27,000 and that only one payment of $56 was

made by respondent. Respondent admitted that he failed to make regular and substantial payments in accordance with the support order because of his incarceration.

Respondent argues that the family court clearly erred in finding that he had the ability to comply with the contact requirement of the statute, but failed to do so. With respect to the issue of respondent's incarceration, this Court has held that there is no incarcerated parent exception under the statute and that an incarcerated parent may still retain the ability to comply with the support and contact requirements of § 51(6). *In re Caldwell*, 228 Mich App 116, 121; 576 NW2d 724 (1998).

The record supports the family court's finding regarding the contact requirement. As the family court found, even if respondent could not visit the child because of his incarceration, he had the ability to communicate with the child by mail through the Friend of the Court, petitioners' attorney, or forwarding cards. *See In re Caldwell*, *supra*. Although respondent claimed that he sent approximately a hundred letters to the child in 1997, petitioner Michelle Ackley denied that the child received any letters from respondent in 1997, and claimed that respondent did not make any attempt to contact or visit the child in 1997, 1998, or 1999. The family court resolved this factual dispute against respondent. See MCR 2.613(C). Although respondent claimed that he had not made any attempt to contact Michelle Ackley or the child since he was incarcerated in 1998, because he did not know their whereabouts and was worried about violating a personal protection order, the family court found that contact could have been made through the Friend of the Court or petitioners' attorney, and that the protection order expired in September 1998, a year before the termination hearing. The family court's findings, which are not clearly erroneous, establish that the requirements of § 51(6)(b) were satisfied.

Respondent also argues that the family court abused its discretion by finding that termination of his parental rights was in the child's best interests. Section 51(6) states that the family court *may* issue an order terminating the rights of the parent if the requirements of subsections (a) and (b) are met. Thus, the statute is permissive, not mandatory, and the family court may consider the best interests of the child in deciding whether to grant a petition to terminate the parental rights of a noncustodial parent. *In re Hill*, *supra* at 696.

Respondent acknowledged at the termination hearing that drugs had been a large part of his life, that he had been using drugs when the child was born, that he had been in various drug treatment programs, and that he last saw the child in January 1997, when he was arrested with the child. Petitioners Michelle and Brian Ackley had been married for two years and had another child together. According to Michelle, Brian had taken on the role of the child's father, was the assistant coach of her soccer team, had attended meetings with her teachers, had helped her learn to read and had taken her to ice-skating lessons, softball games and church. Further, the child thought of Brian as her father and loved him. Under the circumstances, the family court properly found that termination of respondent's parental rights was in the best interests of the child.

Affirmed.

/s/ Kathleen Jansen
/s/ Harold Hood
/s/ Henry William Saad

[1] MCL 710.51(6); MSA 27.3178(555.51)(6) provides:

> (6) If the parents of a child are divorced, or if the parents are unmarried but the father has acknowledged paternity or is a putative father who meets the conditions in [MCL 710.39(2); MSA 27.3178(555.39)(2)], and if the parent having legal custody of the child subsequently marries and that parent's spouse petitions to adopt the child, the court upon notice and hearing may issue an order terminating the rights of the other parent if both of the following occur:
>
> (a) The other parent, having the ability to support, or assist in supporting, the child, has failed or neglected to provide regular and substantial support for the child or if a support order has been entered, has failed to substantially comply with the order, for a period of 2 years or more before the filing of the petition.
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> (b) The other parent, having the ability to visit, contact, or communicate with the child, has regularly and substantially failed or neglected to do so for a period of 2 years or more before the filing of the petition.