

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ANDREW MICHAEL
TERRIAN, Minor.

AMY MARIE DICE,

Plaintiff-Appellee,

v

VICTOR P. GARZA,

Defendant-Appellant.

UNPUBLISHED

April 25, 1997

No. 197830

Midland Probate Court

LC No. 96-007315-AD

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

PER CURIAM.

Defendant appeals as of right from an order terminating his parental rights to his minor son pursuant to MCL 710.51(6); MSA 27.3178(555.51)(6). Plaintiff brought this petition to terminate defendant's parental rights so that the minor child could be adopted by his stepfather. We affirm.

Defendant first argues that the probate court erred in terminating his parental rights because he was incarcerated during the two-year period preceding the filing of the petition for stepparent adoption. We disagree. The probate court properly terminated defendant's parental rights because it found that defendant had the ability "to support, or assist in supporting the child," had the ability "to visit, contact, or communicate with the child," and failed or neglected to do so for a period of two or more years prior to the request for termination. MCL 710.51(6); MSA 27.3178(555.51)(6). Parental rights should not be terminated where the defendant is deprived of an ability to provide support to or to visit the minor child during a period of incarceration. *In re Halbert*, 217 Mich App 607, 615-616; 552 NW2d 528 (1996). However, the probate court found that defendant had not sought to exercise even his limited ability to communicate with or to support his son. The probate court cited his failure to send holiday cards or to provide any token support and held that these small gestures were within his ability despite his incarceration. These findings of fact were not clearly erroneous. MCR 5.974(I); *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996).

Defendant next argues that the probate court abused its discretion by denying his request for court-appointed counsel. We disagree. The probate court did not abuse its discretion as, after a review of the record, we are not convinced that we would have reached a different result. *In re Sanchez*, 422 Mich 758, 760-761, 770-771; 375 NW2d 353 (1985); *Wilkins v Wilkins*, 149 Mich App 779, 792; 386 NW2d 677 (1986). The record reveals that defendant had the opportunity to present his position, there were no complicated legal issues, and defendant represented himself in a competent manner. Cf. *In re Fernandez*, 155 Mich App 108, 111-112, 115; 399 NW2d 459 (1986) (the noncustodial parent was in an out-of-state prison and was unable to obtain a writ of habeas corpus to allow his attendance at the hearing and the case involved complicated legal issues of personal and subject matter jurisdiction). In addition, the probate court allowed defendant significant leeway in his cross-examination of plaintiff and also actively asked questions of both witnesses.

Affirmed.

/s/ Henry W. Saad
/s/ Janet T. Neff
/s/ Kathleen Jansen