

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of In the Matter of MARTELL
LAMAR PATTERSON, JARAY DUVAUGHN
PATTERSON, and ASIA KILANDRIA
PATTERSON, Minors.

ABBIE SHUMAN,

Petitioner,

and

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

FELICIA PATTERSON,

Respondent-Appellant,

and

TRACEY BROWN,

Respondent.

UNPUBLISHED
April 14, 2005

No. 257961
Oakland Circuit Court
Family Division
LC No. 04-692252

Before: Donofrio, P.J., and Murphy and Borrello, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(a)(ii) and (f). Because the statutory basis for termination was established by clear and convincing evidence, and because the trial court did not clearly err in its best interests determination, we affirm.

Respondent first argues that the trial court erred when it terminated her parental rights to the minor children because the statutory basis for termination was not established by clear and convincing evidence. We disagree. Termination of parental rights is mandatory if the trial court finds that the petitioner established a statutory ground for termination, unless the court finds that termination is clearly not in the child's best interest. *In re Trejo*, 462 Mich 341, 344; 612 NW2d

407 (2000). This Court reviews decisions terminating parental rights for clear error. Clear error has been defined as a decision that strikes this Court as more than just maybe or probably wrong. *Id.* at 357. Additionally, the trial court's findings of fact may not be set aside unless they are clearly erroneous, and this Court shall give regard to the trial court's special opportunity to judge the credibility of witnesses who appeared before it. MCR 2.613(B).

Respondent's parental rights were terminated under MCL 712A.19b(3)(a)(ii) and (f), which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

(a) The child has been deserted under any of the following circumstances:

* * *

(ii) The child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period.

* * *

(f) The child has a guardian under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, and both of the following have occurred:

(i) The parent, having the ability to support or assist in supporting the minor, has failed, or neglected, without good cause, to provide regular and substantial support for the minor for a period of 2 years or more before the filing of the petition or, if a support order has been entered, has failed to comply with the order for a period of 2 years or more before the filing of the petition.

(ii) The parent, having the ability to visit, contact, or communicate with the minor, has regularly and substantially failed or neglected, without good cause, to do so for a period of 2 years or more before the filing of the petition.

Section (a)(ii) requires a ninety-one-day or more period in which the parent has deserted the child and not sought custody of the child. The section (f) requirements also amount to desertion but apply in guardianship situations. Specifically, section (f) requires a two-year period in a non-limited guardianship situation in which the parent has failed to support the child and failed to visit, contact, or communicate with the child. Sections (a)(ii) and (f) apparently contradict each other regarding the time period requirement where there is a non-limited guardianship situation and the facts support a finding of desertion. This is because section (a)(ii) does not specifically state that it is inapplicable in non-limited guardianship situations. However, we need not decide whether the Legislature intended *only* section (f) to be applied to non-limited guardianship situations because the more stringent section (f) is established here, and only one basis for termination need be established. *Trejo, supra*, 462 Mich 344.

Section (f) requires the establishment of both sections (f)(i) and (f)(ii). We will address each of the two prongs in turn. First, we conclude that section (f)(i) was established by clear and convincing evidence. Respondent admitted that a 1999 probate court order required her to provide support for the children. Section (f)(i) states that the two-year period begins when the petition was filed or when a support order was issued. Here, the two-year period began in 1999. Respondent admitted that she never provided the guardians with any money, food, or clothing for the children even when she was employed. Respondent's argument that she made arrangements for governmental assistance for the children is not persuasive where section (f)(i) provides that the parent provide support and not the government. Because the record reflects that respondent failed to provide regular and substantial support for the children without good cause for a period of two years, section (f)(i) was established.

Section (f)(ii) requires that the parent has the ability to visit or communicate with the child and fails to do so. The two-year period dates from the date the petition was filed. Here, the petition was filed April 13, 2004. Myrline Collins, one of the children's guardians, testified that respondent had not visited the children since April 2002. Respondent testified that she visited the children weekly from April to August 2002. This conflicting testimony is a question of credibility for the trial court. Plainly, the trial court found the testimony provided by Mrs. Collins more credible since it found that (f)(ii) had been established. Affording due regard to the trial court's special opportunity to judge the credibility of witnesses who appeared before it, we find no clear error and decline to disturb the trial court's findings. MCR 2.613(B). As such, we conclude that the trial court did not clearly err in finding that petitioner established a statutory basis for termination.

Next, respondent argues that the trial court clearly erred in its best interests determination because she was positive, motivated, had adequate housing, and expressed the desire to have the children returned. We disagree. After reviewing the record, and according deference to the trial court's special opportunity to judge the credibility of witnesses who appeared before it, we conclude that the trial court did not clearly err in its best interests determination. MCR 2.613(B); *Trejo, supra*, 462 Mich 344.

The record reflects respondent left two of the three children, Martell and Jaray, with guardians Walker and Myrline Collins for ten years. At age sixteen, Martell had very little memory of living with respondent and considered the Collinses his parents. Martell testified that his relationship with respondent hurt him, caused him sadness, and made him contemplate suicide. Jaray did not testify, but the record illustrates he had lived with the Collinses for ten of his twelve years. Respondent's third child, Asia, aged ten at the time of trial, lived with another guardian for two years and then lived with the Collinses for three years. Although respondent visited the children, the visits were irregular and there was no evidence that any of the children were bonded to respondent or that she felt strongly about them. After the Collinses requested she arrange visitation through the guardian ad litem, she cut off all contact and did not call the guardian ad litem. Respondent's total lack of effort in her relationship with her children supports the trial court's best interests determination. We therefore conclude that, in the absence of clear

evidence that termination was not in the children's best interests, the trial court properly terminated respondent's parental rights.

Affirmed.

/s/ Pat M. Donofrio
/s/ William B. Murphy
/s/ Stephen L. Borrello