

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JESSICA PAIGE COOK-
TEEPLES, Minor.

DEPARTMENT OF HUMAN SERVICES,
JAMES COOK, and LUCY LAVON COOK,

UNPUBLISHED
February 8, 2007

Petitioners-Appellees,

v

JAMES FREDERICK TEEPLES,

Respondent-Appellant.

No. 272133
Oakland Circuit Court
Family Division
LC No. 05-712856-NA

Before: Sawyer, P.J., and Fitzgerald and Donofrio, JJ.

PER CURIAM.

Respondent appeals of right from the trial court order terminating his parental rights to her minor child pursuant to MCL 712A.19b(3)(f) and (g). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Petitioners James and Lucy Lavon Cook are the minor child's maternal grandparents and guardians. The minor child's parents are divorced, and her mother voluntarily consented to termination of her parental rights to facilitate adoption by petitioners. Petitioners alleged that, subsequent to the divorce, respondent's support obligations and parenting time were suspended, he had paid nothing for support since his obligation was suspended, and he had not exercised parenting time on a regular basis. At the trial, respondent admitted that he had not paid support for the minor child in a long time and that he had not paid her medical bills or assisted petitioners who had paid them. He acknowledged signing a document in 1998 giving up his parenting time and knew that he could move to set it aside but had not done so. The last time respondent saw the minor child was on her fourth birthday, he had not seen her in seven years, and he did not know where she lived. He had not bought her Christmas presents in five years. He had decided to wait until the minor child was old enough to determine herself whether she wanted to see respondent. Respondent testified that he did not object to the maternal grandparents having custody and did not wish custody of the child, but he did not want to lose his parenting time.

Respondent argues that the evidence was not clear and convincing to terminate his parental rights pursuant to MCL 712A.19b(3)(f) and (g). He maintains that, because there was a support order in effect that suspended his support obligations and he was not in violation of that

order, MCL 712A.19b(3)(f)(i) was not satisfied. Respondent also contends that he did not visit, contact, or communicate with the child because her mother and grandparents made it clear that they did not welcome him having any type of contact with the minor child, and therefore they could not use that lack as contact in support of a petition for termination.

Respondent relies on *In re ALZ*, 247 Mich App 264; 636 NW2d 284 (2001) in support of his position. In that case, the respondent father wrote letters to the child's mother requesting visitation and filed a complaint seeking an order of filiation within the two-year period before the petition was filed. This Court found that the respondent's actions "constituted ongoing requests for contact with ALZ, but that petitioner mother's resistance to those requests resulted in respondent's inability to contact the child." *Id.* at 274. In the instant case, respondent agreed to suspend visitation and support until a motion was filed to reinstate either. Respondent did not file a motion to reinstate visitation, did not request visits or communicate with the minor child, and did not send gifts to the minor child. Although the record was clear that the minor child's mother and petitioners did not want respondent to have contact with the minor child, respondent did have avenues that he could pursue if he wanted to maintain a relationship with the minor child and he did not pursue any of these. Accordingly, the trial court did not err when it found that respondent, having the ability to visit, contact, or communicate with the minor child, regularly and substantially failed or neglected, without good cause, to do so for a period of two years or more before the filing of the petition.

With regard to the issue of support, the facts in this case are substantially similar to the facts in *In re SMNE*, 264 Mich App 49; 689 NW2d 235 (2004). In that case, a judgment of divorce had reserved the issue of support and respondent took the position that he did not pay any support because there was an order in place that did not require him to pay support. This Court found that because the "court did not set forth some sum of money that respondent was required to pay for child support, there is no support order in place." The petitioners were, therefore, required to prove that the "respondent had the ability to pay regular and substantial support but had neglected to do so for two or more years." *Id.* at 56. In the instant case, respondent and the minor child's mother had entered into an agreement suspending support and visitation until such time as a party motioned the court for a change. The suspension of support in effect reserved the support issue until a later date like the court did in *In re SMNE*, *supra*. Accordingly the trial court did not err when it found that respondent, having the ability to support or assist in supporting the minor, failed or neglected, without good cause, to provide regular and substantial support for the minor for a period of two years or more before the filing of the petition.

Furthermore, the trial court did not err when it found the evidence clear and convincing to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(g). Respondent had not cared for the minor child in many years and had made no efforts to care for her. At the trial, respondent testified that he did not object to petitioners' guardianship of the minor child and did not object to them adopting the minor child. His only objection was that he did not want to lose his rights to visit with the minor child. Based on respondent's actions and history with the minor child, the trial court did not err when it found that there was no reasonable likelihood that respondent would be able to provide proper care and custody within a reasonable time considering the age of the minor child.

Respondent further argues that the trial court erred when it found that the minor child came within the jurisdiction of the court under MCL 712A.2(b)(5). Testimony was presented at trial with regard to these statutory subsections, and the trial court took jurisdiction over the minor child and entered an order to this effect. The requirements set forth in MCL 712A.19b(3)(f) for termination of parental rights are substantially similar to the requirements set forth in MCL 712A.2(b)(5) for purposes of assuming jurisdiction of a minor child. The burden of proof required in MCL 712A.19b(3)(f) is clear and convincing evidence, which is a much higher standard than the preponderance of the evidence standard required by the jurisdictional requirements. It is clear from the record that the trial court relied on MCL 712A.2(b)(5) when it assumed jurisdiction over the minor child and that there was sufficient evidence to meet the preponderance of evidence standard. Neither the statute nor the court rules require the trial court to separately set forth the statutory subsection on which it relied.

Finally, respondent argues that the trial court erred in its best interests determination. We disagree. The evidence showed that the minor child was fragile, needed help with her self esteem, and needed a lot of love. The evidence was also clear and convincing that the minor child needed stability, security, and permanency in her life to help her with her emotional issues. Reunion with her father, who had not been part of her life for many years, was not in her best interests.

Affirmed.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Pat M. Donofrio