

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of NICKELITA DOMINIQUE
REDIC, Minor.

ELIZABETH WRIGHT,

Petitioner-Appellee,

UNPUBLISHED
August 10, 2004

v

LASONJA C. WRIGHT,

Respondent-Appellant.

No. 251634
Washtenaw Circuit Court
Family Division
LC No. 03-000032-NA

Before: Bandstra, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to Nickelita Dominique Redic (d/o/b 11/1/88) under MCL 712A.19b(3)(f) and (g). We affirm.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence. MCL 712A.19b(3). *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). We review the trial court's findings of fact for clear error. MCR 3.977(J); *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). A finding is clearly erroneous if we are left with a definite and firm conviction that a mistake has been made. *Jackson, supra* at 25. Stated another way, "[t]o be clearly erroneous, a decision must strike us as more than just maybe or probably wrong." *In re Sours*, 459 Mich 624, 633-634; 593 NW2d 520 (1999), quoting *People v Cheatham*, 453 Mich 1, 30, n 23; 551 NW2d 355 (1996), quoting *Parts & Electric Motors, Inc v Sterling Electric, Inc*, 866 F2d 228, 233 (CA 7, 1988).

Once a statutory ground for termination has been met by clear and convincing evidence, the parent against whom termination proceedings have been brought has the burden of going forward with some evidence that termination is clearly not in the child's best interests. *Terry, supra* at 22. If no such showing is made and a statutory ground for termination has been established, the trial court is without discretion; it must terminate parental rights, unless the court finds from evidence on the whole record that termination is clearly not in the child's best interests. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCL 712A.19b(5).

Petitioner Elizabeth Wright is respondent Lasonja Wright's mother, and Nickelita Redic's grandmother and guardian. Respondent gave birth to Nickelita when she was seventeen years old. While pregnant, respondent decided to put the child up for adoption, but her family persuaded her to let petitioner care for the child. Nickelita was born in November 1988, and petitioner became her legal guardian in January 1989; the identity of the father has never been established. Petitioner testified that respondent did not object to the guardianship and never attempted to overturn it. Despite respondent's insistence that she did not consent to the guardianship and that she "didn't know anything about it," a report by Nickelita's guardian ad litem indicated that respondent did in fact consent to petitioner's guardianship of Nickelita. In 2001, petitioner petitioned to adopt Nickelita; however, respondent refused to consent to the adoption. As a result, in March 2003, petitioner petitioned for the termination of respondent's parental rights so that her adoption of Nickelita could go forward.

At the termination proceedings, petitioner testified that Nickelita had been in her care and custody since she was born, and that during that time, respondent had not provided any financial support for Nickelita's care, although respondent purchased clothing for her on occasion. Petitioner testified that respondent was aware of Nickelita's birthday, and that she had attended birthday celebrations for her in the past. Respondent had given Nickelita presents for her birthday, but they were often belated.

When Nickelita was first born, respondent lived with petitioner until she finished high school, and sometimes cared for Nickelita during that time. Respondent moved out of petitioner's home when Nickelita was two years old, and expressed no desire to take Nickelita with her; however, respondent did take her infant son, who had been born after Nickelita. At the time of the hearing, respondent had three other children in addition to Nickelita, all of whom have a relationship with one another. Petitioner acknowledged that there had been times when respondent babysat Nickelita during her childhood. More recently, petitioner and Nickelita lived at respondent's residence for approximately one month while petitioner was between residences. According to petitioner, in the two years before the hearing, there had been increased contact between respondent and Nickelita, because they lived in the same apartment complex. However, there had not been any regularly scheduled visitation, and the contact was incidental. For example, respondent would see Nickelita outside when she came to visit petitioner. Petitioner testified that throughout Nickelita's life, "there ha[ve] been times where there was brief contact and there has been a period of time where there was no contact." There had been phone contact between respondent and Nickelita, but it was "not too frequent," and also was incidental. For example, Nickelita would answer the phone when respondent called petitioner.

Petitioner testified that respondent had never expressed a desire to raise Nickelita or have Nickelita live with her. In petitioner's view, Nickelita did not have a mother-daughter bond with respondent, and Nickelita "look[ed] up to [petitioner] as her mom." Petitioner described respondent and Nickelita's relationship as "more like [two] sisters instead of mother and daughter." Petitioner indicated that Nickelita never expressed a desire to leave petitioner's home and live with respondent. Petitioner testified that Nickelita wanted to be adopted by her, and that the primary concerns expressed by Nickelita were that respondent would no longer be recognized as her mother, and that she was unsure of how the change would affect her relationship with her siblings. However, petitioner explained that respondent would always be

Nickelita's biological mother, and that the adoption was "just for legal matters and security." Petitioner believed it was in Nickelita's best interest to stay with her and be adopted by her.

Respondent testified that she had lived with petitioner and Nickelita "off and on" for one and a half years following Nickelita's birth. Respondent testified that she did not take Nickelita with her when she moved out because she did not think she could; however, respondent was unable to articulate a reason for feeling that way. Respondent testified that after she moved out, she tried to provide financial support to Nickelita "when [she] could." Respondent acknowledged that for the past two years, she had not provided any financial support for Nickelita, but indicated that she provided Nickelita with clothing and food, albeit not on a regular basis. Respondent testified that she had supported herself and her three other children with Family Independence Agency assistance, a few jobs, and child support from the fathers of the other children.

Respondent testified that she had "about half" contact with Nickelita over the years. Respondent indicated that she visited Nickelita "whenever [she] could," but that there were times when she was unable to visit her due to lack of adequate transportation. Respondent testified that her contact with Nickelita occurred primarily when she "pop[ped] up with . . . the other kids" at petitioner's house. Respondent admitted that she never made specific plans to spend time with Nickelita, and that their contact had "always been with all of the kids." Respondent testified that she normally did not acknowledge Nickelita's birthday, and had not always remembered her birthday, but that she gave Nickelita a gift when she was able.

Respondent admitted that she never asked Nickelita if she wanted to live with her, because she "didn't want to push her." Respondent testified that she tried to have a bond with Nickelita, but that it was "not close like it's supposed to [be]." Respondent described their relationship as "a mother and daughter trying to get close." Respondent indicated that Nickelita never asked if she could come live with her. Respondent felt that petitioner's adoption of Nickelita would hamper her attempts to have a closer relationship with Nickelita.

Nickelita testified that she wanted to continue living with petitioner and wanted to be adopted by petitioner. Concerning the adoption, she "fe[lt] like it's more of a yes than more of a no," because she had lived with petitioner all of her life and she did not know what it would be like to live with respondent. Nickelita testified that adoption meant her grandmother would be "in charge of [her] legally," and that she did not have a problem with that; however, Nickelita would feel bad about respondent not being her legal mother anymore. Nickelita described her relationship with respondent as "okay," and her relationship with petitioner as "good."

Nickelita testified that she had seen respondent "a fair amount of times" in the past two years, and that she had "been around her" almost every week. Nickelita testified that when she was at respondent's house, she watched television and played with her siblings, but "hardly [did] anything with [respondent]." Nickelita testified that over the years, respondent had given her clothing and food, but that she was unaware of any financial support. Respondent also paid Nickelita to babysit her siblings. Nickelita described her relationship with respondent as "sister-sister," and testified that she viewed petitioner more like a mother. Nickelita explained that some good things about respondent were that "she lets me be around my brothers and she takes me places with them," and that good things about petitioner were that "she lets me live with her," and "she buys me things and she takes me places." Nickelita indicated that she liked the current

situation where she lived with petitioner, but could see respondent, because she “just like[d] being with [petitioner].” Nickelita testified the ideal living arrangement would be petitioner and respondent living next door to each other, and her living with petitioner. Nickelita stated that while she was afraid that if petitioner adopted her, she would not see respondent as much, she would still choose to be adopted by petitioner.

The trial court made the following findings:

While the mother appears to have provided some support to her daughter for two years prior to the filing of the petition, by no means can this support be considered the kind of regular and substantial support required by MCL 712A.2(b)(5) and MCL 712A.19b(3)(f). Similarly, the mother’s contact with her daughter during this period appears to be casual and irregular. The mother, while having the ability to visit, contact, or communicate with her daughter has regularly and substantially failed to do so as required by MCL 712A.2(b)(5)(B) and MCL 712A.19b(3)(f).

The Court finds that the elements of MCL 712A.19b(3)(f) and MCL 712A.19b(3)(g) have been proven by clear and convincing evidence as to the mother.

Because the Court has found that at least one legal ground for termination of parental rights of both parents exists under MCL 712A.19b(3), the Court must order that the parental rights of the parents to the minor child be terminated unless the Court finds that termination of parental rights of the parents to the minor child is clearly not in the best interest of the minor child. The Court cannot make such a finding in this case. While the mother has maintained some contact with her daughter, she has been content to let the child’s grandmother support and raise her for her entire fourteen years of life. While the mother no-doubt loves her daughter she has not demonstrated that she is willing or capable of providing the sort of stable and permanent home that Nickelita deserves. While it would certainly be in the child’s best interest to maintain contact with her mother, the Court finds that it is in her best interest to benefit from the permanency that her mother has not provided for her. The Court does not find that termination of parental rights of the parents to the minor child is clearly not in the best interest of the minor child. The Court does find that termination of parental rights of the parents to the minor child clearly is in the best interest of the minor child.

On appeal, respondent argues that the trial court clearly erred in finding that the statutory grounds for termination were established by clear and convincing evidence. We disagree. MCL 712A.19b(3)(f) provides that the trial court may terminate parental rights to a child if the child has a guardian, 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 . . .

(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.

In the instant case, the evidence demonstrated that respondent, having the ability to support or assist in supporting Nickelita, failed or neglected, without good cause, to provide regular and substantial support for her for two or more years before the termination petition was filed. Indeed, respondent admitted that she did not provide any financial support to Nickelita in the past two years. While we acknowledge that respondent occasionally provided clothing, food, and birthday gifts to Nickelita, we agree with the trial court that this did not constitute “regular and substantial support” within the meaning of the statute.

The evidence also demonstrated that respondent, having the ability to visit, contact, or communicate with Nickelita, has regularly and substantially failed or neglected, without good cause, to do so for two or more years before the termination petition was filed. The record reveals that while respondent and Nickelita have had frequent contact, it was merely incidental to respondent visiting petitioner with her other children, or Nickelita going to respondent’s residence to spend time with her siblings. Respondent admittedly never made specific plans to spend time with Nickelita, and testified that their contact has “always been with all of the kids.” Moreover, Nickelita testified that she “hardly [did] anything with [respondent],” and that when she was at respondent’s house, she merely watched television, and played with her siblings. Thus, considering the statute’s language, respondent’s visits, contacts, and communications were not “with the minor.” In that sense, we agree with the trial court’s finding that respondent’s contact with Nickelita was “casual and irregular” and that this constituted “regularly and substantially fail[ing] or neglect[ing]” to interact with Nickelita within the meaning of the statute.

In support of her argument that she did not “regularly and substantially fail[] or neglect[]” to interact with Nickelita, respondent relies on *In re Colon*, 144 Mich App 805, 813-814; 377 NW2d 321 (1985) and *In re Parker*, unpublished opinion per curiam of the Court of Appeals, issued January 28, 2000 (Docket Nos. 214960, 215355).¹ In *Colon*, *supra* at 814, this Court affirmed a trial court’s finding that eight to eleven parental visits in two and a half years amounted to “fail[ing] [to] regularly and substantially [] visit, contact, or communicate with the children” under the adoption code, MCL 710.51(6)(b), which contains language similar to the language in the termination of parental rights statute at issue here, MCL 712A.19b(3)(f). In *Parker*, *supra* at *2, a panel of this Court held that as to approximately thirty visits in a three year period, “it cannot be said that [the parent] regularly and substantially failed to maintain contact with the [children].”

¹ We note that *Parker* is not precedentially binding pursuant to MCR 7.215(C)(1).

Respondent argues that because she had substantially more interaction with Nickelita than the parent in *Parker*, the trial court's determination that she "regularly and substantially failed or neglected" to visit, contact, or communicate with Nickelita was clearly erroneous. However, although the facts in *Parker* are minimal, it appears that the parent specifically visited her two children for the purpose of maintaining contact with them. In contrast, the evidence here demonstrates that virtually all contacts respondent had with Nickelita were merely incidental to her interaction with petitioner and to Nickelita's interaction with her siblings. They were in no way specifically orchestrated for the purpose of spending time together as a function of their mother-daughter relationship.

Moreover, based on the evidence adduced at the hearing, we do not believe the trial court clearly erred in finding that MCL 712A.19b(3)(f) was established by clear and convincing evidence. MCR 3.977(J); *Sours, supra* at 633. That is, the trial court's decision does not "strike us as more than just maybe or probably wrong." *Id.* Termination of respondent's parental rights was warranted where the trial court found by clear and convincing evidence that petitioner was Nickelita's guardian under the probate code, and 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 or more years before the filing of the petition, and respondent, having the ability to visit, contact, or communicate with the minor, regularly and substantially failed or neglected, without good cause, to do so for a period of two or more years before the filing of the petition.² Although this is a close case, we cannot find that the trial court clearly erred in finding that termination was warranted on this basis.

Respondent next argues that the trial court clearly erred by finding that termination of her parental rights was clearly in the best interests of the child. We disagree. The trial court found that termination was in Nickelita's best interests because although respondent maintained some contact with Nickelita, she had allowed petitioner to raise Nickelita, and had not demonstrated that she was willing or able to provide the type of stable and permanent home that Nickelita deserves. The trial court found that it was in Nickelita's best interest to benefit from the permanency that being adopted by petitioner could provide. Moreover, the evidence did not establish that termination was clearly not in the child's best interest. MCL 712A.19b(5); *Trejo, supra* at 356-357. Therefore, the trial court did not clearly err in terminating respondent's parental rights to the minor child.

We affirm.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra

² Having determined that there was clear and convincing evidence of at least one ground to terminate respondent's parental rights, it is unnecessary to address the trial court's findings with respect to MCL 712A.19b(3)(g). *In re CR*, 250 Mich App 185, 196; 646 NW2d 506 (2002).