

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SKYLAR LYNN TRELOAR,
Minor.

AMY LYNN TRELOAR and JAMES
CREIGHTON HINES,

UNPUBLISHED
August 9, 2005

Petitioners-Appellees,

v

JATINKUMAR HARJIVAN MEHTA,

No. 258950
Ingham Circuit Court
Family Division
LC No. 04-000106

Respondent-Appellant.

Before: Cooper, P.J., and Fort Hood and R.S. Gribbs*, JJ.

PER CURIAM.

Respondent appeals as of right from the order of the trial court terminating his parental rights to his minor child pursuant to the Michigan Adoption Code, MCL 710.51(6). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In a termination case under section 51(6), the petitioner has the burden of proving by clear and convincing evidence that termination is warranted. *In re ALZ*, 247 Mich App 264, 272; 636 NW2d 284 (2001); *In re Hill*, 221 Mich App 683, 691; 562 NW2d 254 (1997). To terminate parental rights under this section, the trial court must find by clear and convincing evidence that the requirements of both subsections (a) and (b) of section 51 have been met. *In re ALZ*, *supra* at 272. Subsection (a) requires a finding that the non-custodial parent had the ability to support or assist in supporting the child but failed or neglected to provide regular and substantial support of the child or has failed to substantially comply with an order of support for two years of more before the filing of the petition. Subsection (b) requires a finding that the non-custodial parent, having the ability to visit, contact, or communicate with the child, has regularly and substantially failed or neglected to do so for two years or more before the filing of the petition. MCL 710.51(6); *In re ALZ*, *supra* at 272-273.

In this case, it was undisputed that an order of support had been entered and that respondent had substantially failed to comply with the order. During the two years preceding the filing of the petition, respondent had paid only a fraction of the ordered amount and owed

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

arrearrages in excess of \$22,000 at the time of the filing of the petition. Though the parties disagreed regarding the extent of respondent's visitation, even accepting respondent's account of the visits, it was established that respondent's contact with the child was minimal and sporadic. Based upon the whole record, we cannot conclude that the trial court clearly erred in finding that respondent substantially failed to comply with the order of support and in finding that respondent regularly and substantially failed or neglected to visit, contact, or communicate with the child while having the ability to do so. We reject respondent's suggestion that petitioners precluded him from visiting the child as a precursor to filing the adoption petition. There was no evidence to suggest this, and indeed, the record suggests just the opposite, that petitioner Treloar attempted to accommodate respondent's sporadic requests to visit the child.

Respondent also contends that the trial court abused its discretion in denying his request for adjournment and in failing to appoint counsel to represent him. We disagree. At the beginning of the hearing on the petition to terminate, respondent requested a two-month adjournment to address his financial situation. Respondent suggested that the adjournment would provide him time to pay his delinquent child support and to possibly obtain an attorney. Respondent acknowledged that he had received notice of the hearing more than two months earlier and had not contacted the court or petitioner's counsel for an extension of time. The trial court denied respondent's request for an adjournment.

In denying respondent's request for adjournment, the trial court noted that respondent had been given ample notice of the hearing, but had not acted earlier to obtain an adjournment. The trial court also correctly noted that whether respondent subsequently paid his child support arrearrages was not relevant to the termination question. The trial court also reasoned that the delay caused by adjournment would be detrimental to the child. Given the directive of MCL 710.25 that the proceedings are advanced for early disposition and that an adjournment was warranted only upon a showing of good cause, the trial court did not abuse its discretion in denying the request for adjournment.

Respondent also contends, however, that the trial court abused its discretion by failing to appoint counsel to represent him. In an action seeking to terminate a respondent's parental rights, a respondent is entitled to appointed counsel if the respondent is financially unable to retain an attorney. (See *In re Sanchez*, 422 Mich 758, 767-771; 375 NW2d 353 (1985), holding that the former court rule entitling a respondent to appointed counsel in neglect cases was also applicable to termination cases under the Adoption Code.) The current court rule addressing appointed counsel in a neglect termination case, MCR 3.915(B)(1), provides for appointment of counsel where the respondent requests appointment of an attorney and where it appears that the respondent is financially unable to retain an attorney. MCR 3.915(B)(1)(b).

In this case, respondent did not request an attorney and never informed the trial court that he could not afford one. Though respondent advised the trial court that he had experienced financial problems, he presented no information about his finances that would have permitted the trial court to ascertain whether he warranted appointed counsel. On the contrary, respondent implied that a two-month adjournment would be sufficient for him to address his financial problems, pay his child support, and perhaps hire an attorney. Later in the termination hearing, respondent testified that he had a master's degree in electrical engineering, was in the process of obtaining a second master's degree, was employed working with computers, and shortly before the termination hearing had paid a substantial amount toward his child support arrearrages.

Unlike the incarcerated respondent in *In re Fernandez*, 155 Mich App 108; 399 NW2d 459 (1986), respondent in this case was not obviously indigent, and the trial court did not abuse its discretion by failing to sua sponte appoint counsel.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Roman S. Gribbs