STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of AMBER MAE PAGE, Minor.

CHARLES LEWIS PAGE, III., and LISA ANN PAGE,

Petitioners-Appellees,

v

BUFFY MAE TWADELL, a/k/a BUFFY MAE WILLIS,

Respondent-Appellant.

UNPUBLISHED
August 15, 2000

No. 218980
Oakland Circuit Court
Family Division
LC No. 97-027625-AD

Before: Murphy, P.J., and Kelly and Talbot, JJ.

PER CURIAM.

Respondent appeals as of right from the order terminating her parental rights to her daughter Amber in a stepparent adoption proceeding pursuant to MCL 710.51(6); MSA 27.3178(555.51)(6). We affirm.

Respondent and petitioner Charles Lewis Page, III., Amber's natural parents, divorced, and respondent was awarded custody of Amber. Subsequently, Page gained custody of Amber, and respondent was ordered to pay child support.

The first order terminating respondent's parental rights was reversed on the ground that respondent was not afforded proper notice of the termination hearing. *In re Page*, unpublished opinion per curiam of the Court of Appeals, issued August 21, 1998 (Docket No. 208454). Petitioners filed a second petition to terminate respondent's parental rights. Respondent was incarcerated at the time the hearing took place; by agreement of the parties, her testimony was taken telephonically, transcribed, and made part of the record. Respondent indicated that she had paid some support for Amber in the two years preceding the filing of the petition, but that she had been thwarted in her efforts to contact Amber. Page testified that he had received no support payments from respondent during that period,

and that he had done nothing to prevent respondent from contacting Amber. The court found that clear and convincing evidence existed to terminate respondent's parental rights under MCL 710.51(6); MSA 27.3178(555.51)(6).

The petitioner in an adoption proceeding must prove by clear and convincing evidence that termination of the parental rights of the other parent is warranted. We review the findings of the family court under the clearly erroneous standard. A finding is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a firm and definite conviction that a mistake was made. *In re Hill*, 221 Mich App 683, 691-692; 562 NW2d 254 (1997).

Respondent's parental rights were terminated under MCL 710.51(6); MSA 27.3178(555.51)(6). That statute reads:

> (6) If the parents of a child are divorced, or if the parents are unmarried but the father has acknowledged paternity or is a putative father who meets the conditions in section 39(2) of this chapter, and if the parent having legal custody of the child subsequently marries and that parent's spouse petitions to adopt the child, the court upon notice and hearing may issue an order terminating the rights of the other parent if both of the following occur:
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> (a) The other parent, having the ability to support, or assist in supporting, the child, has failed or neglected to provide regular and substantial support for the child or if a support order has been entered, has failed to substantially comply with the order, for a period of 2 years or more before the filing of the petition.
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> (b) The other parent, having the ability to visit, contact, or communicate with the child, has regularly and substantially failed or neglected to do so for a period of 2 years or more before the filing of the petition.

The statute is permissive; the family court may consider the best interests of the child when determining whether to terminate the other parent's parental rights. The decision cannot be based solely on the best interests of the child. *In re Newton*, 238 Mich App 486, 493-494; 606 NW2d 34 (1999).

The family court did not err in finding that termination of respondent's parental rights was warranted under MCL 710.51(6); MSA 27.3178(555.51)(6). Petitioners were required to prove only that respondent failed to substantially comply with the support order. They were not required to prove that respondent had the ability to pay support. *In re Caldwell*, 228 Mich App 116, 122; 576 NW2d 724 (1998); *In re Colon*, 144 Mich App 805, 808-812; 377 NW2d 321 (1985). Respondent admitted that she paid only $150 to $200 in support for Amber in the two years preceding the filing of the petition to terminate her rights, notwithstanding the fact that she earned at least $6,000 during that period. The family court's finding that respondent failed to substantially comply with the support order was not clearly erroneous. MCR 5.974(I); *Hill*, *supra*. Similarly, the family court's finding that respondent substantially failed or neglected to maintain contact with Amber during the two-year period prior to the filing of the petition was not clearly erroneous. By finding as it did, the family court implicitly

rejected respondent's assertion that petitioners prevented her from contacting Amber. We defer to the special ability of the family

court to judge the credibility of witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Affirmed.

/s/ William B. Murphy
/s/ Michael J. Kelly
/s/ Michael J. Talbot