

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BRIAN ALAN BOWDISH, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

REBECCA JEAN BORDEN

Respondent-Appellant,

and

BYRON BOWDISH,

Respondent.

In the Matter of BRIAN ALAN BOWDISH, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

REBECCA JEAN BORDON,

Respondent,

and

BYRON BOWDISH,

Respondent-Appellant.

UNPUBLISHED
December 26, 2000

No. 222898
Wayne Circuit Court
Family Division
LC No. 99-379773

No. 222910
Wayne Circuit Court
Family Division
LC No. 99-379773

Before: Collins, P.J., and Jansen and Whitbeck, JJ.

PER CURIAM.

In these consolidated appeals, respondents Rebecca Jean Borden (Borden) and Byron Bowdish (Bowdish) appeal as of right from the order terminating their parental rights to the minor child under MCL 712A.19b(3)(f); MSA 27.3178(598.19b)(3)(f). We affirm.

In Docket No. 222898, Borden argues that her due process right were violated because she did not receive appointed counsel for the prior guardianship proceedings. However, the instant action involves a separate, independent legal proceeding from the prior probate court guardianship and circuit court custody proceedings, and any orders from those proceedings would have had to have been appealed separately.¹ Respondent does not argue that she was denied an opportunity for counsel in connection with the instant proceeding. Because issues arising from the prior proceedings are not properly before us, respondent is not entitled to relief on the basis of this issue.

Next, Borden has not established any entitlement to relief due to ineffective assistance of counsel. *People v Ullah*, 216 Mich App 669, 684-685; 550 NW2d 568 (1996); *In re Simon*, 171 Mich App 443, 447; 431 NW2d 71 (1988).

Both respondents argue that the court lacked clear and convincing evidence to terminate their parental rights under subsection 19b(3)(f). After thoroughly reviewing the record, we are satisfied that the circuit court did not clearly err in finding that statutory grounds for termination were established by clear and convincing evidence. *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). This Court reviews the lower court's findings of fact for clear error. MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding is clearly erroneous when the reviewing court is left with the firm and definite conviction that a mistake has been made. *Jackson, supra* at 25. In our review, we defer to the trial court's assessment of credibility. *Mahrle v Danke*, 216 Mich App 343, 352; 549 NW2d 56 (1996). Once a statutory ground for termination has been met by clear and convincing evidence, termination of parental rights is mandatory unless the court finds, based on the entire record, that termination clearly is not in the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000).

Section 19b provides, in pertinent part, as follows:

(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:

¹ This Court has jurisdiction over appeals of right from final judgments and orders, and appeals by leave granted from other judgments or orders appealable to this Court by law or rule. MCR 7.203(A) & (B). There is no record of filing of any appeals from the probate court guardianship or circuit court custody proceedings.

* * *

(f) The child has a guardian under the revised probate code, 1978 PA 642, MCL 700.1 to 700.993, 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 substantially 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. [MCL 712A.19b(3)(f); MSA 27.3178(598.19b)(3)(f).]

Here, Bowdish acknowledged that he had been ordered to pay support and that he had not been in compliance with that order since prior to his incarceration in August 1997.² The minor child's guardians testified that they never received any support from Bowdish. Bowdish further admitted that he had not attempted to call the minor child from prison. Although he maintained that such contact would require a collect call, and he did not know if the child's guardians would accept the charges, he acknowledged that he never asked. Both of the minor child's guardians testified that the only contact Bowdish had with the child during the previous two years was a birthday card sent in July 1999.

Borden moved to Arkansas approximately four years before the termination proceedings in this case. Borden testified that she attempted to send money to the minor child through her mother, but she did not know if he ever received it. She further testified that she called and left messages, but never received a call back. However, both guardians testified that Borden had not called or left a message for the child, nor had they received any gifts or cards for the child from Borden or her family in the past two years. They further testified that they never refused to accept a gift, card, or phone call from Borden.

Although the record shows that visitation for both respondents had been terminated, both could have complied with the statute by contacting or communicating with the minor child. See *In re Caldwell*, 228 Mich App 116, 122; 576 NW2d 724 (1998). Accordingly, we do not believe that the circuit court clearly erred in finding that respondents regularly and substantially failed to visit, contact, or communicate with the child for the two years preceding the filing of the petition in this case. We further find that the court did not clearly err in concluding that respondents failed to support or assist in supporting the minor child during the statutory time period. Although conflicting testimony was presented, credibility determinations are for the trier of fact. *Marhle, supra*. Therefore, we are satisfied that the circuit court did not clearly err in finding that

² The petition to terminate respondents' parental rights was filed in June 1999.

statutory grounds for termination were established by clear and convincing evidence. *Jackson, supra*. Further, the evidence did not establish that termination of respondents' parental rights was clearly not in the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *Trejo, supra*

Affirmed.

/s/ Jeffrey G. Collins

/s/ Kathleen Jansen

/s/ William C. Whitbeck