

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of J.S.C., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ERIC EBERHARDT,

Respondent-Appellant,

and

VICTORIA CUNNINGHAM,

Respondent.

UNPUBLISHED

April 19, 2002

No. 234285

Monroe Circuit Court

Family Division

LC No. 00-015069-NA

Before: K.F. Kelly, P.J., and Doctoroff and Cavanagh, JJ.

MEMORANDUM.

Respondent appeals the trial court's order terminating his parental rights to his son pursuant to MCL 712A.19b(3)(a)(ii).¹ We affirm.

We review a trial court's decision to terminate parental rights for clear error. MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). If the trial court determines that the petitioner has proven by clear and convincing evidence the existence of one or more statutory grounds for termination, the court must terminate parental rights unless it finds from evidence on the whole record that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). We review the trial court's decision regarding the child's best interests for clear error. *Id.*, 356-357.

We hold that the trial court did not clearly err in finding that petitioner established a statutory ground for termination of respondent's parental rights. The undisputed evidence

¹ Respondent Victoria Cunningham voluntarily relinquished her parental rights to the child.

showed that respondent had no contact, in person or otherwise, with the child after the child was removed from his custody. The trial court rejected respondent's testimony that his attempts to visit the child were thwarted by petitioner and the child's foster mother. The trial court accepted as credible the foster mother's testimony that respondent made no attempt to visit his son in person, failed to send cards or presents, and provided no financial support for the child. The trial court's findings of fact are not clearly erroneous. *Sours, supra*.

The failure to communicate with or to provide support for a child for ninety-one days or more is presumptive evidence of intent to abandon the child. *In re Sterling*, 162 Mich App 328, 336; 412 NW2d 284 (1987). Evidence that respondent sent a token support payment to the child's mother did not render clearly erroneous the trial court's finding that termination of respondent's parental rights was warranted under MCL 712A.19b(3)(a)(ii). See *In re TM (After Remand)*, 245 Mich App 181, 194; 628 NW2d 570 (2001). The evidence did not show that termination of respondent's parental rights was clearly not in the child's best interests. MCR 5.974(I); *Trejo, supra*.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh