

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of T.D.L., Minor.

MISTY SUHRE,

Petitioner-Appellant,

v

JASON LEE HELMS,

Respondent-Appellee.

UNPUBLISHED

September 20, 2002

No. 240283

Genesee Circuit Court

Family Division

LC No. 01-014814

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

PER CURIAM.

Petitioner appeals as of right from the denial of her petition to terminate the parental rights of the minor child's biological father under § 51(6) of the Adoption Code, MCL 710.51(6). We affirm.

We review a trial court's findings of fact regarding a petition to terminate parental rights under the clearly erroneous standard. *In re Caldwell*, 228 Mich App 116, 121; 576 NW2d 724 (1998); *In re Hill*, 221 Mich App 683, 691-692; 562 NW2d 254 (1997). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction a mistake was made. *In re Hill, supra* at 692. Because a trial court is in the unique position to see the witnesses and hear the testimony, this Court gives great deference to the trial court's findings of fact. *Harper v Harper*, 199 Mich App 409, 410; 502 NW2d 731 (1993).

The trial court found the requirements of MCL 710.51(6) had been met because respondent failed to substantially comply with a support order and had regularly and substantially failed or neglected to visit, contact or communicate with the child during the two-year period preceding the filing of the petition. Those findings are not in dispute. However, after considering the best interests of the child, as permitted by *In re Hill, supra* at 696, the trial court denied the petition. Petitioner argues that in denying the petition, the trial court placed undue emphasis on the child's relationship with respondent's parents – the paternal grandparents – in violation of *Troxel v Granville*, 530 US 57; 120 S Ct 2054; 147 L Ed 2d 49 (2000).

The Supreme Court's decision in *Troxel* is not implicated here because this case does not involve the balancing of a parent's right to make decisions concerning raising her child and the

visitation rights of third parties. Moreover, the trial court did not deny the petition solely on the basis of the child's relationship with her paternal grandparents. Instead, the trial court weighed all relevant factors involved in determining the best interests of the child, MCL 710.22(f)(i) – (xi). In weighing these factors, the court found that the child had bonded with her paternal grandparents and enjoyed an excellent relationship with them. The court concluded that the child's best interests supported continuation of that relationship and that termination of respondent's parental rights would frustrate that purpose. Further, the trial court expressed concern about the length of petitioner's relationship with her new husband and the short duration of their marriage. These factors, along with others also relevant to the child's best interest, led the court to rule against termination.¹

The court weighed all the relevant factors and concluded that petitioner had not shown by clear and convincing evidence that respondent's parental rights should be terminated. Giving deference to the trial court's findings of fact, under the circumstances, we find no error.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Richard A. Bandstra
/s/ Hilda R. Gage

¹ After filing her brief, petitioner filed supplemental authority, relying on this Court's decision in *Molloy v Molloy*, 247 Mich App 348; 637 NW2d 803 (2001), affirmed in part and vacated in part 466 Mich 852 (2002), for the proposition that the trial court abused its discretion in denying the petition by relying on an in camera interview with the child. Petitioner raises this issue for the first time in its supplemental authority. This Court rendered its decision in *Molloy* on September 4, 2001. Although the Supreme Court did not decide the appeal until April 2002, which incidentally was before petitioner filed her appellate brief in this matter, petitioner could have addressed this Court's decision in her original appellate brief. Instead, petitioner raised no issue regarding the trial court's in camera interview with the child. Because petitioner failed to raise this issue in her appellate brief, we need not address it. However, because the trial court relied on other factors beyond the court's interview with the child, we find the court did not abuse its discretion in denying the petition. Interestingly, however, we note that petitioner raised *Molloy* for the proposition that the court improperly relied on its interview with the child to determine the child's best interests. However, the court likewise used the interview to determine that the statutory requirements for termination had been met by respondent's failure to visit, contact or communicate with the child for the two-year period preceding the filing of the petition – a determination that was in petitioner's favor.