STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of KALEB MICHAEL AHLQUIST, Minor.

JANELLE MARIE OLSON and DENNIS ROBERT OLSON,

Petitioners-Appellees,

v

JOSHUA PETER AHLQUIST, a/k/a PETER AHLQUIST, a/k/a JAMES PETER AHLQUIST,

Respondent-Appellant.

UNPUBLISHED
August 30, 2007

No. 275972
Muskegon Circuit Court
Family Division
LC No. 06-007093-AY

Before: Murphy, P.J., and Zahra and Servitto, JJ.

PER CURIAM.

Respondent appeals as of right from a circuit court order terminating his parental rights to the minor child under the stepparent adoption statute, MCL 710.51(6). We affirm.

Respondent argues that the trial court erred in determining that he regularly and substantially failed to visit his son for the two-year period prior to the filing of the petition, as required by MCL 710.51(6)(b). We review the trial court's factual findings for clear error. *In re ALZ,* 247 Mich App 264, 271; 636 NW2d 284 (2001).

Although respondent asserts that his testimony and the testimony of his mother showed that he regularly and substantially visited the child between March and August 2004, their testimony conflicted with that of the child's mother, petitioner Janelle Olson, who testified that respondent saw the child approximately five times during that period. To the extent that the court believed Olson, we defer to the trial court's assessment of credibility. *In re Newman,* 189 Mich App 61, 65; 472 NW2d 38 (1991). Moreover, assuming that the testimony of respondent and his mother was accurate, the time period would only encompass about six months of the two-year period, and the remaining time period reflected irregular, sporadic, and minimal contact and communications. Respondent conceded in his written closing summary for the trial court that "the frequency of his contact with [the child] after August 2004 was very limited." In the case of *In re Martyn,* 161 Mich App 474, 482; 411 NW2d 743 (1987), this Court noted that the statutory language cannot be reduced to a specific number of visits, but the panel would be "less likely to

consider a specific number of visits late in the two-year period to be 'substantial failure.'" Here, the lack of visitation and communication was most prevalent toward the latter half of the two-year period. We cannot conclude that respondent regularly and substantially contacted and communicated with the child "for a period of 2 years or more before filing the petition." MCL 710.51(6)(b).

Respondent also argues that the trial court failed to consider that his ability to visit the child was substantially diminished by his financial circumstances. He claims that he did not have the ability to visit because he could not afford the fee charged by Safe Haven, where supervised visits took place after August 2004. Assuming that respondent truly was unable to afford the $15 fee for visits, he admittedly made no effort to have the fee reduced. Moreover, he failed to attempt to contact the child by other means, such as letters or phone calls. See *In re Caldwell*, 228 Mich App 116, 120; 576 NW2d 724 (1998). Therefore, we are not persuaded that respondent did not have the ability to visit, contact, or communicate with the child.

Respondent also argues that the trial court failed to consider "obstructive behavior" of the child's mother, who respondent maintains refused to adjust the visiting time even though it interfered with his work schedule.

However, the obstacles to visitation posed by scheduling problems were for a limited period and, in any event, did not interfere with respondent's ability to contact or communicate with the child by phone or mail. Furthermore, if respondent believed that the child's mother was improperly interfering with his visitation rights, he could have returned to the Friend of the Court for assistance. See *In re SMNE*, 264 Mich App 49, 51; 689 NW2d 235 (2004). He did not do so.

Respondent also argues that the trial court failed to properly consider "physical and geographic circumstances" that adversely affected his ability to visit the child. Again, this argument focuses on the period in February and March 2006, when respondent was working in Grand Rapids and had difficulty leaving work early in order to attend 3:00 p.m. visits. Regardless of the scheduling issues, respondent continued to have the ability to contact or communicate with the child and failed to do so.

In summary, respondents' arguments do not persuade us that the trial court's findings were clearly erroneous.

Respondent also argues that the trial court abused its discretion in terminating his parental rights, because it failed to consider his rehabilitative efforts as shown by his participation in a drug and alcohol treatment program.

There was no evidence that continuation of the parental relationship would be in the child's best interests. Respondent acknowledged that "jump[ing] in and out" of the child's life was not "fair" to the child, yet that was the pattern that respondent established. Although respondent contends that the trial court should have considered his participation in a rehabilitation program, there was no evidence that his shortcomings as a parent were principally caused by drug or alcohol use. Therefore, there was no reason to conclude that his treatment would necessarily improve his commitment to the child. Although respondent's participation in the treatment program was a positive step, the reason he became involved in it, i.e., a probation

violation for aggravated assault, does not support his argument that termination of his parental rights was not in the child's best interests.

Affirmed.

/s/ William B. Murphy
/s/ Brian K. Zahra
/s/ Deborah A. Servitto