

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TYRIEK KORDELL
DENTMOND, Minor.

THOMAS WESTON BUGBEE and LISA
MICHELLE BUGBEE,

UNPUBLISHED
July 10, 2008

Petitioners-Appellees,

v

CLAUZELL DENTMOND, JR.,

Respondent-Appellant.

No. 283598
Jackson Circuit Court
Family Division
LC No. 07-006855-AY

Before: Murphy, P.J., and Bandstra and Beckering, JJ.

PER CURIAM.

Respondent appeals as of right from a circuit court order terminating his parental rights to the minor child pursuant to § 51(6) of the Michigan adoption code, MCL 710.51(6). We affirm.

“A petitioner in an adoption proceeding must prove by clear and convincing evidence that termination of parental rights is warranted.” *In re Hill*, 221 Mich App 683, 691; 562 NW2d 254 (1997). The trial court’s findings of fact are reviewed for clear error. *Id.* at 691-692. “A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court’s special opportunity to observe the witnesses.” *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

MCL 710.51(6) provides:

If the parents of a child are . . . unmarried but the father has acknowledged paternity . . . 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:

(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.

(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.

With respect to financial support, because a support order was in place, petitioner was only required to prove a substantial failure to comply with the order for two years or more before the filing of the petition.¹ *In re Hill, supra* at 692. Published opinions from this Court have only defined “substantial compliance” by illustrating what it is not: complete failure to pay, *In re Caldwell*, 228 Mich App 116, 122; 576 NW2d 724 (1998), and *In re Hill, supra* at 693-694; payment of \$100 a year against an obligation of \$300 a month, *In re Meredith*, 162 Mich App 19, 21, 24; 412 NW2d 229 (1987); and payment of approximately eight percent of the total support due over four years, with most payments made during the first half of the two-year period and only three made during the second half, *In re Colon*, 144 Mich App 805, 807-808, 812; 377 NW2d 321 (1985). Substantial compliance has been defined in other states as “compliance which substantially, essentially, in the main, for the most part, satisfies the means of accomplishing the objectives sought to be effected by the decree and at the same time does complete equity,” *Pittman v Pittman*, 419 So 2d 1376, 1379 (Ala, 1982), and as “a regular, bona fide pattern of payment” over the requisite period, *In re CDO*, 39 P3d 828, 831 (Okla App, 2001).

The evidence showed that respondent was required to pay child support of approximately \$75 a week, or \$308.68 a month, as of January 2005. During the 24 months preceding the filing of the petition, respondent was obligated to pay \$7,408 in support. He made sporadic payments of no more than \$40, paid nothing in seven of the 24 months, and submitted a total of \$555, less than eight percent of what was owed. In light of this evidence, the trial court did not clearly err in finding that respondent did not substantially comply with the support order, i.e., he did not demonstrate a regular pattern of payments showing a good-faith effort to meet his support obligations.

In addition to proving substantial failure to comply with a support order, petitioners were required to prove that respondent had the ability to visit, contact, or communicate with the child and regularly and substantially failed or neglected to do so for at least two years preceding the filing of the petition. Because the terms “visit, contact, or communicate” are phrased in the disjunctive, the petitioner is “not required to prove that respondent had the ability to perform all three acts. Rather, petitioner merely ha[s] to prove that respondent had the ability to perform any one of the acts and substantially failed or neglected to do so for two or more years preceding the filing of the petition.” *In re Hill, supra* at 694.

The evidence showed that a custody, support, and visitation order was entered in 1998 that granted respondent supervised visitation only. Respondent did not visit. The parties disputed whether the lack of visitation was due to improper interference by Lisa Bugbee or lack of interest by respondent. Nevertheless, in 2000 or 2001, respondent filed a motion for

¹ Petitioner was not required to prove respondent’s ability to pay because his ability to pay was already factored into the support order. *In re Hill, supra* at 692.

visitation. Rather than grant the motion, the court ordered him to attend an eight-week program at the child and parent center. Respondent completed the program and then returned to court. The court ordered respondent to repeat the program. Respondent refused to comply with the court's order and did not otherwise exercise his right to supervised visitation because he did not believe his visitation should be supervised. Thereafter, respondent saw his son once, in the summer of 2004. He sent him one letter in 2004 and spoke to him at least once by telephone approximately three years earlier. While respondent contends that Lisa Bugbee denied him visitation, she did not have authority to permit visitation in violation of the court order allowing only supervised visitation. Furthermore, complaints that the custodial parent wrongfully withheld visitation are unavailing here, where respondent had a legal right to visit under the terms of a court order. If respondent believed that his legal rights were being violated, he could have sought assistance from the Friend of the Court or the court. *In re SMNE*, 264 Mich App 49, 51; 689 NW2d 235 (2004). Under the circumstances, the trial court did not clearly err in finding that respondent had the ability to visit and regularly and substantially failed to do so for the two-year period preceding the filing of the petition.

Affirmed.

/s/ William B. Murphy
/s/ Richard A. Bandstra
/s/ Jane M. Beckering