

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JOSHUA DOUGLAS GULICK,
Minor.

LINLEY HALL and KIMBERLY HALL,

Petitioners-Appellees,

and

LAURA GULICK,

Appellee,

v

RODNEY LINHART,

Respondent-Appellant.

UNPUBLISHED

July 17, 2008

No. 281724

Oakland Circuit Court

Family Division

LC No. 2006-728663-AD

Before: Fitzgerald, P.J., and Talbot and Donofrio, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights pursuant to MCL 710.39(1). We affirm.

Laura Gulick worked for respondent performing light household chores from 2004 through February or March 2006. Respondent is disabled and is eligible to receive reimbursement from the Veteran's Administration for 24-hour care. During this time, respondent and Gulick had a sexual relationship. Gulick testified that respondent paid her for sex, but respondent denied that. Gulick was also involved in a relationship with Anthony Hutchison. Gulick discovered that she was pregnant in May 2006. Gulick testified that when she told respondent that she was pregnant in June of 2006, respondent denied that he was the father because he had had a vasectomy. Gulick believed respondent because she had been having unprotected sex with him since 2004 and had never gotten pregnant. Hutchison had also had a vasectomy but thought that he could be the father because he never followed up with a checkup after his surgery.

Respondent testified that he accepted that he was the father of the child and wanted to marry Gulick. However, Gulick wanted nothing more to do with respondent. She moved away and threatened to charge respondent with stalking if he tried to contact her.

The child was born on December 18, 2006, and was immediately placed with the adoptive parents, Linley and Kimberly Hall. Gulick consented to the release of her parental rights and named Hutchison as the putative father. Hutchison stated that he was the father of the child and denied any interest in custody. An order was entered terminating Gulick's and Hutchison's parental rights on January 2, 2007. On January 5, 2007, respondent filed a notice of intent to claim paternity.

Following hearings, the trial court found that respondent had not established a custodial relationship with the child or provided substantial and regular support for the mother or the child pursuant to MCL 710.39(2). The trial court terminated respondent's parental rights pursuant to MCL 710.39(1) after determining that the best interests factors weighed against granting respondent custody of the child.

Respondent first argues that the trial court erred in finding Gulick to be a credible witness. Credibility issues are for the trier of fact and this Court gives due regard to the special opportunity and ability of the trial judge to determine witnesses' credibility. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *In re Hardin*, 184 Mich App 107, 109; 457 NW2d 347 (1990), abrogated on other grounds in *In re Alton*, 203 Mich App 405; 513 NW2d 162 (1994). Trial courts not only hear testimony and observe witnesses but also may elicit testimony, interview children, and invoke other judicial resources to assure a thorough and careful evaluation of the child's best interests. *Fletcher v Fletcher*, 229 Mich App 19, 28; 581 NW2d 11 (1998).

Based on Gulick's testimony that she had sex for money, the trial court found Gulick to be very credible. The trial court noted that it must have been very difficult for Gulick to admit on the stand that she was basically a prostitute. The trial court did not believe that Gulick would have said that respondent was paying her for sex if it were not true. On the other hand, the trial court did not find respondent to be a very credible witness. The trial court noted that throughout respondent's testimony, respondent failed to remember or know any dates, times, or amounts. The trial court did not believe that respondent did not remember any of these details considering that he had to submit receipts for reimbursement for his caregivers to the Veteran's Administration. Because respondent's only argument was credibility, and we cannot conclude with a definite and firm conviction that a mistake has been made, this Court will not overturn the trial court's decision. *People v Crump*, 216 Mich App 210, 215-216; 549 NW2d 36 (1996).

Respondent next argues that the trial court erred in applying MCL 710.39(1), rather than MCL 710.39(2), of the Adoption Code. This issue presents a question of law, which this Court reviews de novo. *In re Lang*, 236 Mich App 129, 135-136; 600 NW2d 646 (1999). MCL 710.39 provides:

- (1) If the putative father does not come within the provisions of subsection
- (2), and if the putative father appears at the hearing and requests custody of the child, the court shall inquire into his fitness and his ability to properly care for the child and shall determine whether the best interests of the child will be served by

granting custody to him. If the court finds that it would not be in the best interests of the child to grant custody to the putative father, the court shall terminate his rights to the child.

(2) If the putative father has established a custodial relationship with the child or has provided substantial and regular support or care in accordance with the putative father's ability to provide such support or care for the mother during pregnancy or for either mother or child after the child's birth during the 90 days before notice of the hearing was served upon him, the rights of the putative father shall not be terminated except by proceedings in accordance with section 51(6) of this chapter or section 2 of chapter XIIA.

Respondent does not dispute that he had not established a custodial relationship with the child, nor does he contend that the \$500 he gave to Gulick when she told him that she was pregnant constituted "substantial and regular support or care." Rather, respondent argues that, because he was deceived when Gulick threatened him with criminal prosecution, named another man as the father, and never informed him of the adoption, he should have been considered a "do-something" father, who came within the provisions of subsection 39(2).

However, in *In re RFF*, 242 Mich App 188, 200; 617 NW2d 745 (2000), this Court rejected the father's argument that MCL 710.39(2) provided for fathers who had been deceived about a pregnancy because of the phrase "in accordance with the putative father's ability to provide such support or care." Moreover, the evidence does not support respondent's claim that he was deceived about the pregnancy. Respondent knew at least by September 2006 that Gulick was pregnant, and could have known as early as June 2006. Gulick never tried to hide the pregnancy from respondent. According to respondent's testimony, Gulick asked for money in October 2006 and he refused because he did not want to support Gulick and her boyfriend. Respondent testified that he had the means to support Gulick during her pregnancy and the child after he was born, but that he did not give them any money from October 2006 through March 2007.

Based on both respondent and Gulick's testimony, the trial court properly concluded that respondent failed to provide substantial and regular support in accordance with his ability to do so. Even if there were a deceived father exception to MCL 710.39(2), which this Court rejected in *In re RFF*, *supra*, respondent would not have qualified for it. Based on the evidence, he was not deceived about the pregnancy. Accordingly, the trial court properly considered respondent's parental rights pursuant to MCL 710.39(1).

Finally, respondent argues that the trial court erred in concluding that the best interests factors weighed against granting respondent custody of the child. The trial court's findings of fact regarding the best-interests factors are reviewed by this Court for clear error. *In re BKD*, 246 Mich App 212, 215; 631 NW2d 353 (2001). A finding is clearly erroneous if this Court is left with a definite and firm conviction that the trial court made a mistake. *Id.*

The trial court considered the factors set forth in MCL 710.22(g). The trial court properly weighed factor i against respondent because he and the child had never met. The trial court found factor ii regarding respondent's capacity to give the child love, affection and guidance to be neutral. Although there was evidence regarding respondent's kindness and

generosity in his community, respondent did not help Gulick when she was pregnant or support the child after he was born. The trial court found that respondent was able to provide the child with his material needs as required by factor iii. Factor iv weighed against respondent because the child had been living with the adoptive family since December 28, 2006.

With respect to factor v, the trial court found that respondent did not have a permanent family unit because he lived alone and relied on numerous caregivers who were in and out of his home on different days at different times. The trial court did not believe that respondent was morally fit pursuant to factor vi because he was engaged in a sex for money relationship while teaching religious education to young people.

With regard to his physical health, the trial court found that factor vii weighed heavily against respondent because he suffered from Berger's disease, had lung cancer five years earlier, suffered from degenerative disc disease that caused constant pain, and both of his legs had been amputated because of the Berger's. The trial court found that factors viii, ix, x and xi were neutral.

Given the totality of the evidence, we cannot conclude that the trial court clearly erred in determining that placement of the child with respondent was against the child's best interests. Although several witnesses testified that respondent was regarded as a kind and generous person in the community, the evidence did not support that characterization with regard to Gulick and the child. Moreover, respondent was a 57-year-old man with many serious chronic illnesses. In addition, respondent lived alone without an extended family who could help him raise a child. We affirm the trial court's order terminating respondent's parental rights.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Michael J. Talbot

/s/ Pat M. Donofrio