STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ANDREW TEVON MCCLAIN and ALEX DEVON MCCLAIN, Minors.

CATHOLIC SOCIAL SERVICES OF OAKLAND COUNTY,

Petitioner-Appellee,

and

DARRICK RUSHING and LA'SHAWN RUSHING, Guardians,

Appellees,

v

JULIA P. MCCLAIN-ALLEN,

Respondent-Appellant,

and

CLARENCE R. ALLEN,

Respondent.

UNPUBLISHED
August 19, 2008

No. 283151
Wayne Circuit Court
Family Division
LC No. 06-461567-NA

Before: Davis, P.J., and Wilder and Borrello, JJ.

PER CURIAM.

Respondent Julia P. McClain-Allen appeals as of right from the circuit order terminating her parental rights to the minor children (twins, d/o/b 9/20/00) under MCL 712A.19b(3)(f).[1] We affirm.

[1] Respondent Clarence R. Allen's parental rights to the minor children were also terminated, but he has not appealed.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence. *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). Once the lower court determines that a statutory ground for termination has been established, it "shall order termination of parental rights . . . unless the court finds that termination of parental rights to the child is clearly not in the child's best interests." MCL 712A.19b(5). See also *In re Trejo*, 462 Mich 341, 352-354; 612 NW2d 407 (2000). We review a decision terminating parental rights for clear error. MCR 3.977(J); *Trejo*, *supra* at 356. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). "[R]egard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The trial court terminated respondent's parental rights under MCL 712A.19b(3)(f), which provides:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
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> * * *
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> (f) The child has a guardian under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, and both of the following have occurred:
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> (*i*) The parent, having the ability to support or assist in supporting the minor, has failed or neglected, without good cause, to provide regular and substantial support for the minor for a period of 2 years or more before the filing of the petition 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.
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> (*ii*) The parent, having the ability to visit, contact, or communicate with the minor, has regularly and substantially failed or neglected, without good cause, to do so for a period of 2 years or more before the filing of the petition.

Section 19b(3)(f) requires proof of two separate facts: first, respondent must have had the ability to support or assist in supporting the minor and have failed to do so, without good cause, for a period of 2 years before the filing of the petition, § 19b(3)(f)(*i*) and; second, respondent must have had the ability to visit, contact or communicate with the minor and have regularly and substantially failed to do so, without good cause, for a period of 2 years of more before the filing of the petition, § 19b(3)(f)(*ii*). Petitioner filed the petition to terminate respondent's parental rights on November 21, 2006. Thus, the relevant time period for determining whether respondent's conduct satisfied § 19b(3)(f) was from about November 21, 2004, until November 21, 2006. See *In re ALZ*, 247 Mich App 264, 273; 636 NW2d 284 (2001).

We find that there was clear and convincing evidence to satisfy § 19b(3)(f)(*i*). There was no order in place for respondent to pay child support. Respondent testified that she worked at

Goodwill for twenty hours each week and earned $6.95 an hour, but she acknowledged that she had not given money to Darrick and La'Shawn Rushing,[2] the guardians[3] of the minor children, for more than two years.[4] Furthermore, Darrick Rushing testified that respondent did not provide any money for the children from November 2004 to November 2006. Section 19b(3)(f)(*i*) does not specify a minimum amount that a parent must contribute to demonstrate financial support for a child. The fact that respondent earned even a small income, yet gave none of it to the guardians of the minor children, is evidence that she failed to assist in supporting the minor children when she had the ability to do so. Furthermore, there was no evidence that respondent had good cause to fail or neglect to support the children.

There was also clear and convincing evidence to satisfy § 19b(3)(f)(*ii*). The hearing to terminate respondent's parental rights was held on June 12, 2007. Respondent testified that the last time she had seen the minor children was in the summer of 2006. There was some evidence that, at least for part of the guardianship period, respondent was not able to visit the children, either because she was incarcerated or because the court has suspended or denied her visitation. There was also conflicting evidence regarding whether respondent had the ability to visit with the children because the guardians sometimes denied her access to the children. Darrick Rushing acknowledged that he and La'Shawn denied respondent access to the children on two or three occasions because of respondent's criminal behavior. Respondent, on the other hand, contended that the guardians denied her access to the children twenty times out of the thirty or forty times she sought access to the children. Although there was clearly some dispute regarding the extent to which the minor children's guardians denied respondent access to the children, such a credibility dispute is for the trial court to decide. MCR 2.613(C); *Miller*, *supra* at 337.

Moreover, even if respondent was unable to physically visit with the minor children on some occasions for various reasons, visitation is not the only means that a parent can maintain a parent-child relationship under § 19b(3)(f)(*ii*). Under § 19b(3)(f)(*ii*), there are three ways in which a parent can maintain a parent-child relationship: visitation, contact, or communication. Respondent asserted that she "tried" to contact the minor children on holidays and on their birthday. However, respondent did not testify that she tried to contact them any other times, and, based on her assertion that she "tried" to contact the children at those times, it does not appear that she was successful in establishing contact. In any event, such limited contact would not be the type of regular or substantial visitation, contact, or communication contemplated in § 19b(3)(f)(*ii*). Furthermore, Darrick Rushing testified that respondent never sent cards, letters, or gifts for the minor children's birthday or Christmas and that respondent had not contacted the children by telephone from November 2004 through November 2006. There was no evidence

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[2] La'Shawn Rushing is respondent's sister.

[3] The Rushings became the children's limited guardians in June 2001, when the minor children were approximately nine months old. In 2003, respondent married respondent father, and respondents requested custody of the minor children. The minor children lived with respondent and respondent father for approximately seven or eight months. In July 2003, the minor children were returned to the Rushings, and separate letters of guardianship were entered for each minor. The Rushings had continuous custody of the minor children since 2003.

[4] It is not clear from the record for how long respondent had worked for Goodwill.

that respondent had good cause for failing to contact or communicate with the children if she was unable to physically visit with them. We conclude that there was clear and convincing evidence that respondent failed to "regularly and substantially" contact or communicate with the children when she had the ability to do so for the two years preceding the filing of the termination petition.

If the lower court finds that a statutory ground for termination has been established, it must terminate parental rights unless termination was clearly not in the children's best interests. MCL 712A.19b(5); *Trejo*, *supra* at 352-354. "Subsection 19b(5) attempts to strike the difficult balance between the policy favoring the preservation of the family unit and that of protecting a child's right and need for security and permanency." *Trejo*, *supra* at 354. When asked at the termination hearing if she wanted the minor children back, respondent stated: "I do want them back, but now I don't have myself all together. I would just like to have visitation. I would like them to stay with my sister [La'Shawn Rushing], she's done a good job. I just want visitation so I can see my children until I get myself together." At the time of the trial, the minor children would have been about six years and nine months old. With the exception of the first nine months of their lives and a period of seven to eight months in 2003, the minor children had been in the custody of the guardians for their entire lives. Respondent acknowledged that she was not prepared to parent the children at trial. The minor children needed the security and stability of a permanent home. Requiring them to wait longer for respondent to get into a position to parent the children would not have been in the children's best interests. The trial court did not clearly err in concluding that termination of respondent's parental rights was in the best interests of the minor children.

Affirmed.

/s/ Alton T. Davis
/s/ Kurtis T. Wilder
/s/ Stephen L. Borrello