STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of DONALD TROY JUDD LEE WATKINS, Minor.

DAVID SAXMAN and TERESA SAXMAN,

Petitioners-Appellees,

v

TIMOTHY LEE WATKINS,

Respondent-Appellant.

UNPUBLISHED
October 20, 2009

No. 292330
Eaton Circuit Court
Family Division
LC No. 08-017172-NA

Before: Fort Hood, P.J., and Sawyer and Donofrio, JJ.

PER CURIAM.

Respondent appeals as of right from a circuit court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(f). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The family division of the circuit court may order termination at the initial dispositional hearing if the preponderance of the evidence adduced at trial establishes grounds for the assumption of jurisdiction under MCL 712A.2(b) and the court finds on the basis of clear and convincing legally admissible evidence introduced at the trial or dispositional hearing that one or more facts alleged in the petition are true and establish grounds for termination under MCL 712A.19b(3). MCR 3.977(E); *In re Utrera*, 281 Mich App 1, 16-17; 761 NW2d 253 (2008). Once the court finds a ground for termination, it shall order termination if doing so is in the child's best interests. MCL 712A.19b(5). On appeal, the court's finding that at least one statutory ground for termination has been proven by clear and convincing evidence and the court's decision regarding the child's best interests are both reviewed for clear error. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). "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).

The circuit court terminated respondent's parental rights under § 19b(3)(f). That statute permits the court to order termination under the following circumstances:

> 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:
>
> (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.
>
> (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.

The petitioners must prove both subsections (i) and (ii) by clear and convincing evidence before termination can be ordered. *In re ALZ*, 247 Mich App 264, 272; 636 NW2d 284 (2001).

The circuit court did not clearly err in finding that § 19b(3)(f)(i) had been proven by clear and convincing evidence. Respondent was unemployed and received monthly disability benefits of $1,029. While respondent did not always have any money left over each month after meeting his own needs and wants, he conceded that he had sufficient funds to pay something toward the child's support every month. He had voluntarily paid petitioners $300 between 1998 and 2004 and had paid nothing thereafter. Such evidence clearly and convincingly showed that respondent had the ability to assist in supporting the child and had not provided regular and substantial support during the relevant two-year period.

The court also did not clearly err in finding that respondent did not have good cause for his failure to provide support. Good cause under § 19b(3)(f) means "a legally sufficient or substantial reason." *Utrera, supra* at 22. The fact that petitioners did not seek support is not good cause because the obligation is on the parent to support his unemancipated minor child. MCL 722.3(1); *Borowsky v Borowsky*, 273 Mich App 666, 672-673; 733 NW2d 71 (2007). Further, the fact that respondent was unable to get the court to "take charge of sending money" also does not establish good cause. Because there was no evidence that a support order had been entered against respondent, there was nothing for the court to enforce, see the Support and Parenting Time Enforcement Act, MCL 552.601 *et seq.*, and no basis for court involvement.

Finally, respondent asserts as good cause the fact that he asked the Social Security Administration (SSA) to withhold a portion of his disability benefits and send it to the child, but petitioners refused to accept it. The court struck as hearsay respondent's testimony that he was told by the SSA that petitioners would not accept his money and considered only the testimony that respondent had been unable to get the SSA to assist him in paying support. The court did not clearly err in finding that this did not establish good cause. The only reason respondent attempted to arrange for some sort of income withholding rather than send money directly to petitioners was because he did not trust petitioners to spend the money for the boy's support, yet he was unable to say why he did not trust petitioners or to explain how using the SSA as an intermediary would protect the child's right to the benefit of the funds. Therefore, the circuit

court did not clearly err in finding that § 19b(3)(f)(i) had been proven by clear and convincing evidence.

The circuit court did not clearly err in finding that § 19b(3)(f)(ii) had been proven by clear and convincing evidence. Respondent had last visited his son in 2003. Although respondent was allegedly unable to visit in person because of health reasons, he did not maintain any other means of contact or communication with his son, with the last call being placed in April 2006, and the child no longer recognized respondent. Respondent attributed his failure to maintain contact during the past two years to having his earlier attempts at contact thwarted by petitioners. However, because respondent had a legally enforceable right to maintain a relationship with his son by virtue of an order granting visitation and could have sought relief from the court if he believed that petitioners were interfering with that right, petitioners' alleged interference did not prevent respondent from having regular and substantial contact or communication with the child. *In re SMNE,* 264 Mich App 49, 51; 689 NW2d 235 (2004). Therefore, the circuit court did not clearly err in finding that respondent had the ability to contact or communicate with the child and had regularly and substantially failed or neglected to do so without good cause for the relevant two-year period.

Finally, the circuit court did not clearly err in finding that termination was in the child's best interests, given that the child had no memory of respondent and stated that he had no interest in having any sort of relationship with him. While we do not agree with the circuit court's decision to try to resolve this issue by reference to each of the best interests factors set forth in the Child Custody Act, MCL 722.23, see *In re JS & SM,* 231 Mich App 92, 101-102 n 2; 585 NW2d 326 (1998), overruled in part on other grounds *Trejo, supra* at 353, we cannot find that the court clearly erred in finding that petitioners had the greater disposition to meet the child's emotional and material needs given respondent's lack of significant involvement in the child's life. Further, because the court "need not give equal weight to all the factors, but may consider the relative weight of the factors as appropriate to the circumstances," *Sinicropi v Mazurek,* 273 Mich App 149, 184; 729 NW2d 256 (2006), the court did not err in giving greater weight to the child's reasonable preference to remain with petitioners.

Affirmed.

/s/ Karen M. Fort Hood
/s/ David H. Sawyer
/s/ Pat M. Donofrio