STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JAMES NIKALE WALKER JR., NIKIA RENEE LASHAWN WALKER, and JERVONE NIKLE WALKER, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JAMES N. WALKER,

Respondent-Appellant.

UNPUBLISHED
December 15, 2000

No. 225118
Wayne Circuit Court
Family Division
LC No. 92-302888

Before: Bandstra, C.J., and Wilder and Collins, JJ.

PER CURIAM.

Respondent-appellant James Walker appeals by leave granted from the family court order terminating his parental rights to the minor child under MCL 712A.19b(3)(a)(ii), (b)(i), (c)(i), (g), (h) and (j); MSA 27.3178(598.19b)(3)(a)(ii), (b)(i), (c)(i), (g), (h) and (j). We affirm.

Upon review of the record, we find that the family court did not clearly err in finding that statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I); *In re Trejo Minors*, 462 Mich 341, 350; 612 NW2d 407 (2000); *In re Sours;* 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). This Court reviews a trial court's factual findings in an order terminating parental rights for clear error. MCR 5.974(I); *In re Miller*, *supra* at 337; *In re Vasquez*, 199 Mich App 44, 51; 501 NW2d 231 (1993). A finding of fact is clearly erroneous if, although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake has been made. *In re Miller*, *supra*. Deference must be accorded to the trial court's assessment of the credibility of the witnesses before it. MCR 2.613(C); *In re Newman*, 189 Mich 61, 65; 472 NW2d 38 (1991). Once the trial court finds a statutory ground for termination by clear and convincing evidence, the court must terminate parental rights unless it finds, based on the whole record, that termination is clearly not in the best interests of the child. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Trejo*, *supra* at 350; *In re Maynard*, 233 Mich App 438, 450-451; 592 NW2d 751 (1999).

Termination of parental rights is proper where the child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period. MCL 712A.19b(3)(a)(ii); MSA 27.3178(598.19b)(3)(a)(ii). A parent's failure to make any substantial effort to visit or communicate with the child or seek custody of the child for a period in excess of the statutory period establishes desertion. See *In re Mayfield*, 198 Mich App 226; 497 NW2d 578 (1993); *In re Hall*, 188 Mich App 217; 469 NW2d 56 (1991).

The record in this case clearly establishes that respondent deserted the children for 91 or more days and did not seek custody of the children during that period. The most compelling evidence in support of termination under subsection 19b(3)(a)(ii) comes from the respondent himself who testified that he has not seen or had any contact with his children since 1993. He further testified that he never provided financial support for the children, never visited the children and only once inquired of friends and family about their whereabouts and welfare since 1993. Respondent's testimony additionally revealed that he made no plans for his children during his incarceration or for reunification after his release.

The record is also clear that respondent never sought custody of the children during this time of desertion. Respondent testified that he sent one letter to the court inquiring about his children, but it was returned because of a "no contact" order issued by the court prohibiting respondent from having any contact with his children. However, respondent's one attempt at contacting his children over a seven-year period does not constitute "seeking custody" of the children. Further, respondent did not send this letter until 1998, almost five years after his last contact with the children in 1993. On this record, we agree with the family court that there was clear and convincing evidence that respondent had deserted his children for more than 91 days and had not sought custody of the children during this time. Accordingly, termination of his parental rights under subsection 19b(3)(a)(ii) was proper.[1]

Further, the family court's assessment of the best interests of the children was not clearly erroneous. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Trejo Minors*, *supra*. The record reveals that respondent had not established any parental relationship or emotional bond with his children. Indeed, having not seen them since they were toddlers over seven years ago, he is a virtual stranger to the children. Further, in light of appellant's incarceration with an uncertain release date, his failure to provide any financial or emotional support to the children over the years, and his failure to provide a plan for the children during his incarceration or for reunification upon his release, the family court did not clearly err in finding that termination of

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[1] Because the family court properly terminated appellant's parental rights under subsection 19b(3)(a)(ii) and only one statutory ground for termination must be established in order to terminate parental rights, we need not decide whether termination was also proper under the other subsections. *In re Trejo Minors*, 462 Mich 341, 350; 612 NW2d 407 (2000).

appellant's parental rights was in the children's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5).

Affirmed.

/s/ Richard A. Bandstra
/s/ Kurtis T. Wilder
/s/ Jeffrey G. Collins