STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ZCF, Minor.

SUSAN KAYE MESERAULL, f/k/a SUSAN KAYE FREEMAN, and JON CHRISTIAN MESERAULL,

Petitioners-Appellants,

v

RICHARD P. O'CONNER,

Respondent-Appellee.

UNPUBLISHED
February 22, 2002

No. 234288
Berrien Circuit Court
Family Division
LC No. 00-000585-AD

Before: Griffin, P.J., and Holbrook, Jr., and Hoekstra, JJ.

PER CURIAM.

Petitioners appeal as of right a circuit court order denying their petition to terminate respondent's parental rights pursuant to a stepparent adoption proceeding under subsection 51(6) of the Adoption Code, MCL 710.51(6). We affirm.

Petitioners argue that the trial court clearly erred in finding that respondent substantially complied with an order that reserved the issue of child support while he was incarcerated. According to petitioners, respondent violated the order because he failed to inform the Friend of the Court of changes in his employment while he was incarcerated. This argument is not preserved for appellate review because it was not raised before the trial court. *Adam v Sylvan Glynn Golf Course,* 197 Mich App 95, 98; 494 NW2d 791 (1992). Moreover, petitioner did not present evidence at the hearing to support the assertion that respondent failed to inform the Friend of the Court of any changes.

Petitioners also argue that the trial court should have examined respondent's ability to pay, despite the order reserving the issue of child support. We agree with the trial court, however, that such an inquiry is improper. Petitioners acknowledge that the order reserving the issue of child support was a judicial determination that respondent could not provide support while he was incarcerated. Examining respondent's ability to pay under these circumstances would essentially allow a collateral attack on the order. *In re Newton,* 238 Mich App 486, 491-492; 606 NW2d 34 (1999).

Petitioners argue that respondent was not a "member of the class" intended to be protected by MCL 710.51(6) and should not be "afforded the opportunity to use the statute to shield off termination." We disagree with petitioners' interpretation of the statute. MCL 710.51(6) does not act as a shield. It sets forth the requirements that must be established in order to sever the parental rights of a natural parent. It protects respondent only insofar that the statutory requirements are not established. Petitioners' argument provides no basis for this Court to ignore the plain meaning of the statute or to overturn the trial court's findings.

Petitioners also argue that the trial court erred in failing to find that they proved that respondent had regularly and substantially failed to visit, contact, or communicate with the child. A review of the record demonstrates that the trial court actually found that respondent did not have the ability to visit, contact, or communicate with the child. In the face of conflicting testimony, the trial court found that respondent had sent cards and letters and would have called from prison but for his belief, based on past interactions, that the mother would not accept the phone calls. The trial court's decision in this regard was based on its assessment of the credibility of the witnesses. We defer to the trial court's determination of credibility. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991). Petitioners have not established that the trial court's findings were clearly erroneous. *In re Hill*, 221 Mich App 683, 691-692; 562 NW2d 254 (1997).

Affirmed.

/s/ Richard Allen Griffin
/s/ Donald E. Holbrook, Jr.
/s/ Joel P. Hoekstra