STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of K.L.S, a/k/a K.L.M, Minor.

STACEY L. MOSE and GARY RAYMON MOSE,

Petitioners-Appellees,

v

EDGAR BERNARD,

Respondent-Appellant.

UNPUBLISHED
June 21, 2002

No. 237710
St. Clair Circuit Court
Family Division
LC No. 00-006630

Before: Owens, P.J., and Sawyer and Cooper, JJ.

PER CURIAM.

Respondent appeals as of right from a trial court order terminating his parental rights to the minor child under § 51(6) of the adoption code, MCL 710.51(6). We affirm.

Respondent contends that the trial court's decision to terminate his parental rights to the minor child was clearly erroneous. "A petitioner in an adoption proceeding must prove by clear and convincing evidence that termination of parental rights is warranted." *In re Hill*, 221 Mich App 683, 691; 562 NW2d 254 (1997). We review the trial court's findings of fact under the clearly erroneous standard. *Id.* at 691-692. A finding of fact is clearly erroneous if, although there is evidence to support it, "the reviewing court is left with a definite and firm conviction that a mistake was made." *Id*. at 692.

MCL 710.51(6) provides in pertinent part:

> If the parents of a child are . . . unmarried but the father has acknowledged paternity . . . and if the parent having legal custody of the child subsequently marries and that parent's spouse petitions to adopt the child, the court upon notice and hearing may issue an order terminating the rights of the other parent if both of the following occur:
>
> (a) The other parent, having the ability to support, or assist in supporting, the child, has failed or neglected to provide regular and substantial support for the

> child 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.
>
> (b) The other parent, having the ability to visit, contact, or communicate with the child, has regularly and substantially failed or neglected to do so for a period of 2 years or more before the filing of the petition.

Respondent contends that the trial court clearly erred by finding that petitioners met their burden in establishing, by clear and convincing evidence, that the requirements of §§ (a) and (b) had been met.

Pursuant to an order of filiation and support, respondent was required to pay $49 per week as child support. Friend of the Court records indicated that respondent made only two child support payments during the pertinent two-year period. Although respondent claimed to have made additional payments in cash or through money orders, the trial court found that respondent's testimony lacked credibility. We defer to the trial court's assessment of the witness' credibility. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991).[1] Regardless, even if we accepted respondent's contention regarding the payments, these payments fell well short of establishing that he substantially complied with the child support payment order, as required by § 51(6)(a).

Additionally, we reject respondent's claim that it is unfair to evaluate his compliance with the support order for the preceding two-year period because he was incarcerated for seven months of that period. There is no incarcerated parent exception to MCL 710.51(6). *In re Caldwell*, 228 Mich App 116, 121; 576 NW2d 724 (1998). Moreover, the record plainly indicates that respondent failed to comply with his child support payment obligations before his incarceration. In light of these facts, we are not persuaded that the trial court clearly erred in finding that MCL 710.51(6)(a) had been established by clear and convincing evidence. *Hill, supra* at 591-592.

Furthermore, the trial court did not clearly err in determining that respondent, despite "having the ability to visit, contact, or communicate with the child," regularly and substantially neglected to do so for the statutory period. MCL 710.51(6)(b). Indeed, the trial court found petitioners' testimony to be more credible than respondent's. Again, we defer to the trial court's assessment of credibility. *In re Newman, supra* at 65. Regardless, even if we were to accept respondent's version of the facts, we would nevertheless conclude that respondent's limited efforts in participating in the minor child's life were insufficient to prevent petitioners from being able to satisfy their evidentiary burden under MCL 710.51(6)(b). Accordingly, we reject defendant's contention that the trial court clearly erred in terminating his parental rights pursuant to MCL 710.51(6).[2]

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[1] We find no support in the record for respondent's claim that the trial court's assessment of his credibility was affected by bias or prejudice.

[2] Respondent also asserts that termination was clearly not in the child's best interests. However, respondent does not discuss the merits of this issue in his brief. "It is axiomatic that where a party fails to brief the merits of an allegation of error, the issue is deemed abandoned by this

(continued…)

Affirmed.

/s/ Donald S. Owens
/s/ David H. Sawyer
/s/ Jessica R. Cooper

(…continued)

Court." *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). Accordingly, we decline to address this issue.