STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of HEAVEN NOELLE WILSON,
Minor.

DOUGLAS COLWELL WILSON II and CARIANNE WILSON,

Petitioners-Appellees,

v

AMY MARIE JACKSON,

Respondent-Appellant.

UNPUBLISHED
February 24, 2009

No. 287432
Jackson Circuit Court
Family Division
LC No. 07-006854-AY

Before: Donofrio, P.J., and K. F. Kelly and Beckering, JJ.

PER CURIAM.

Respondent appeals as of right from a circuit court order terminating her parental rights to the minor child pursuant to § 51(6) of the Adoption Code, MCL 710.51(6). We affirm.

Respondent and petitioner Douglas Wilson II were divorced in January 2005. Wilson was awarded legal and physical custody of the parties' daughter. In November 2007, Douglas Wilson and his new wife, petitioner Carianne Wilson, filed a petition to terminate respondent's parental rights for purposes of stepparent adoption. MCL 710.51(6) authorizes termination in such circumstances if both of the following conditions are met:

> (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. [MCL 710.51(6).]

The petitioners in an adoption proceeding must prove both subsections (a) and (b) by clear and convincing evidence before termination can be ordered. *In re ALZ*, 247 Mich App 264, 272; 636 NW2d 284 (2001). The trial court's findings of fact are reviewed for clear error. *In re Hill*, 221 Mich App 683, 691-692; 562 NW2d 254 (1997). "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).

Because Wilson's and respondent's judgment of divorce reserved the issue of child support, the trial court was required to determine whether respondent had the ability to pay support under the first clause of § 51(6)(a). *In re SMNE,* 264 Mich App 49, 55; 689 NW2d 235 (2004). The trial court did not clearly err in finding that respondent had the ability to pay support. Despite various difficulties facing respondent because of her drug addiction and criminal charges, respondent admitted that she earned $300 to $400 a week working as a maid; her attorney represented that she performed such work from November 2005 to December 2006. Respondent also testified that she worked at a restaurant some time in 2007. The trial court also did not clearly err in finding that respondent failed to provide regular and substantial support for her daughter. Respondent admitted that she never paid any support to Wilson and, although she bought gifts for the child, most of them were never delivered. Therefore, the trial court did not err in finding that § 51(6)(a) had been proved by clear and convincing evidence.

The trial court also did not clearly err in finding that respondent had the ability to visit, contact, or communicate with the child. Both Wilson and respondent testified that she called to request visitation and that she did visit with the child at various times, although they disagreed about how often the visits took place. While respondent contends that Wilson failed or refused to cooperate in arranging visitation, that did not render respondent unable to visit, given that she had a legal right to a relationship with her child, the judgment of divorce specifically granted her the right to exercise parenting time, and she did not seek court intervention to facilitate visitation if she believed her rights were being violated.[1] *In re SMNE, supra* at 51.

In addition, the trial court did not clearly err in finding that respondent regularly and substantially failed to visit with her child. The evidence showed that respondent had frequent contact with the child for two weeks in January 2005, additional contact once every few months through the rest of 2005, a few visits during the first half of 2006, one unauthorized visit in April 2007, and one chance meeting in September 2007. Although respondent claimed that she had more extensive contact with the child between November 2005 and July 2006, the trial court rejected her testimony as incredible and found that she did not have regular and substantial contact. This Court gives "special deference to the trial court's findings when they are based on its assessment of the witnesses' credibility." *H J Tucker & Assoc, Inc v Allied Chucker & Engineering Co,* 234 Mich App 550, 563; 595 NW2d 176 (1999); MCR 2.613(C). Therefore, the trial court did not clearly err in finding that § 51(6)(b) had been proved by clear and convincing evidence.

[1] We note that respondent did file two motions to compel visitation, one in November 2006 and one in September 2007, but neither was heard.

Because subsections (a) and (b) of § 51(6) were both proved by clear and convincing evidence, the trial court did not err in terminating respondent's parental rights to the child.

Affirmed.

/s/ Pat M. Donofrio
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering