

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of RMR, Minor.

CHAD ELLIS ROGERS and LYNN J. ROGERS,

Petitioners-Appellees,

v

BONNIE JEAN TALLEY,

Respondent-Appellant.

UNPUBLISHED
December 22, 2009

No. 292707
Jackson Circuit Court
Family Division
LC No. 09-006509-AY

Before: Murphy, C.J., and Jansen and Zahra, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating her parental rights to the minor child pursuant to MCL 710.51(6). We affirm.

MCL 710.51(6) provides:

If the parents of a child are divorced, or if the parents are unmarried but the father has acknowledged paternity or is a putative father who meets the conditions in section 39(2) of this chapter, 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.

The court's authority to terminate parental rights under this subsection is permissive rather than mandatory, and the court need not grant termination, even if the statutory grounds are established, if it finds that termination would not be in the best interests of the child. *In re*

Newton, 238 Mich App 486, 493-494; 606 NW2d 34 (1999). Respondent concedes that she failed to comply with the support order for the requisite two-year period. Therefore, the focus is on whether respondent substantially failed to maintain a relationship with the child for a period of two or more years preceding the filing of the adoption petition.

A trial court may find that, although a noncustodial parent's contacts were insufficient, the parent did not have the ability to contact the minor child because the custodial parent resisted attempted contacts. *In re ALZ*, 247 Mich App 264, 274; 636 NW2d 284 (2001). Again, the noncustodial parent must have "the *ability* to visit, contact, or communicate with the child." MCL 710.51(6)(b) (emphasis added). Respondent admitted, however, that she made no attempt whatsoever to contact the child in the year preceding the termination hearing, and she testified that her last visit with the child was in April 2006. The last time respondent and the child had contact was in June 2006. Petitioners filed the petition to terminate respondent's parental rights in February 2009. Respondent claims that her earlier efforts to contact the child were thwarted by petitioners; therefore, she lacked the ability to visit, contact, or communicate with the child. However, respondent did nothing to enforce her parental rights to parenting time in the courts. See *In re Martyn*, 161 Mich App 474, 482-483; 411 NW2d 743 (1987) (no legal obstacles to visitation existed). While a PPO was issued against respondent in June 2006, the order provided for supervised parenting time by respondent; however, she failed to avail herself of this continuing opportunity to visit the child. Her claims of economic hardship associated with visiting costs ring hollow, especially where she failed to pursue legal avenues to address any financial impediments. See *In re Simon*, 171 Mich App 443, 449; 431 NW2d 71 (1988) (termination proper where the respondent never went to the court to request privileges). Further, respondent testified that she failed to send the child cards or letters because she did not have petitioners' correct mailing address, even though she had been to the home on one prior occasion and lived approximately five miles away. As the trial court stated, respondent simply "gave up." The result was lost contact with the child for at least two years. During that time the child received the love and support of his stepmother, whom he looked to as a mother. Petitioners' home was stable and the child's needs were met. It was clear that termination of respondent's parental rights was in the child's best interests. The trial court did not err in terminating respondent's parental rights.

Affirmed.

/s/ William B. Murphy
/s/ Kathleen Jansen
/s/ Brian K. Zahra