

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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UNPUBLISHED  
July 12, 2011

In the Matter of T. A. Tessmer, Minor.

No. 302068  
Chippewa Circuit Court  
Family Division  
LC No. 10-004093-AY

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In the Matter of C. E. Tessmer, Minor.

No. 302069  
Chippewa Circuit Court  
Family Division  
LC No. 10-004094-AY

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Before: SAWYER, P.J., and WHITBECK and OWENS, JJ.

PER CURIAM.

In these consolidated appeals, respondent, C. Constantinou, appeals as of right from an order that terminated her parental rights to the two minor children T. A. Tessmer, Jr., and C. E. Tessmer under MCL 710.51(6). We affirm.

**I. FACTS**

In October 2010, K. Tessmer filed a petition for adoption of T. A. Tessmer and C. E. Tessmer. K. Tessmer had married T. A. Tessmer, Sr., four months earlier. At a hearing a month later, T. A. Tessmer, Sr. testified that he and C. Constantinou were married in August 2000. C. Constantinou completed her nursing degree while the children were still young, and she began working as a travel nurse in 2002 and 2003. C. Constantinou began traveling to Hawaii, New York, and California. According to T. A. Tessmer, Sr., C. Constantinou did not come home in between assignments except for a one- or two-week period in the summer of 2003. By that time, T. A. Tessmer, Sr. had already filed for divorce. The divorce became final in November 2004, and T. A. Tessmer, Sr. was granted full physical and legal custody of the children. C. Constantinou did not even appear at the divorce hearing. C. Constantinou had not seen the children since 2005 and had not attempted telephone contact with them since 2007. Since 2003, C. Constantinou had seen the children only 20 times. C. Constantinou knew where the children were because T. A. Tessmer, Sr. did not move out of the home until September 2010. He also

maintained the same telephone number until he canceled his land line service and started using cellular phones exclusively.

In spite of C. Constantinou's absence from their lives, T. A. Tessmer, Sr. testified that he allowed the children to maintain contact with their maternal grandmother, J. McDonald. At one point, J. McDonald gave nine-year-old C. E. Tessmer a cellular phone that C. Constantinou had purchased for her. T. A. Tessmer, Sr. was angry that J. McDonald gave C. E. Tessmer the phone without consulting him first, but he did not take the phone away. Phone contact only lasted approximately two months. T. A. Tessmer, Sr. believed that C. Constantinou stopped paying the bill because the phone no longer worked. Earlier in 2010, C. Constantinou posted a message on C. E. Tessmer's Facebook page that said, "Hi, . . . It's me, mom. I miss you." T. A. Tessmer, Sr. was very upset that C. Constantinou would simply post a message online after having been absent for so long. He replied to C. Constantinou and told her that the best thing she could do was never contact the children again. C. Constantinou only attempted to contact C. E. Tessmer; she never tried to contact T. A. Tessmer, Jr.

T. A. Tessmer, Sr. believed it was important to allow the children to have contact with C. Constantinou's family and allowed J. McDonald frequent visitation. He knew that J. McDonald tried to facilitate contact between C. Constantinou and the children, but T. A. Tessmer, Sr. did not believe it was J. McDonald's responsibility to do so. T. A. Tessmer, Sr. was upset about the cell phone incident and other times in which J. McDonald would pass on gifts from C. Constantinou to the children without consulting him first. But he denied ever refusing J. McDonald time with the children. T. A. Tessmer, Sr. admitted that he did not want C. Constantinou to have contact with the children.

T. A. Tessmer, Sr. testified that C. Constantinou owed a significant amount of child support—close to \$29,000. She made a lump sum payment of about \$5,000 in 2007 and then another lump sum payment of \$10,000 in September 2010. Since that time, C. Constantinou consistently paid \$277 a week in support.

When T. A. Tessmer, Sr. and his current wife, K. Tessmer, moved in together, they took the children to counseling in order to ensure that they did not have "issues" with C. Constantinou leaving them and being absent for such a long time. The children had an excellent relationship with K. Tessmer and called her "Mom." Their grades had improved, and they were more outgoing. T. A. Tessmer, Sr. worked the second shift and was gone from 2:00 p.m. until 10:00 p.m. K. Tessmer acted as a mother to the children and ensured that they did their homework, had supper, did their chores, and went to bed. T. A. Tessmer, Sr. believed that termination of C. Constantinou's parental rights was in the children's best interests because "[t]hey have stability, they know they have a mother and . . . [K. Tessmer's] not going to walk out on them. And I think for [C. Constantinou] to be allowed to continue to do this is detrimental to the kids."

Thelma Bosbous from Chippewa County Friend of the Court (FOC) testified that C. Constantinou was originally ordered to pay \$800 a month in child support. And there were no motions filed seeking to reduce or hold in abeyance any of her support obligations. C. Constantinou made a \$10,000 child support payment in September 2010, but before that there had been no support payments since a \$1,100 payment in May 2007. Though C. Constantinou had an affirmative obligation to update the FOC regarding her current address and contact information, she failed to do so. C. Constantinou was \$28,385.82 in arrearages. According to

Bosbous, C. Constantinou contacted the FOC in September 2010 regarding visitation rights, so she was aware of how to contact the office.

K. Tessmer testified that she understood the significance of terminating C. Constantinou's parental rights. K. Tessmer would be considered the children's mother, with all of the responsibilities that status included. T. A. Tessmer, Jr. and K. Tessmer were very close. T. A. Tessmer, Jr. told K. Tessmer about school, his grades, and his girlfriend. K. Tessmer worked from home and was able to provide for the children's needs throughout the day. She fully supported the children's continued relationship with C. Constantinou's side of the family. K. Tessmer believed that the drastic step of termination was warranted because "I think the children think of me as their mother and I want to be their mother. I think that they've had enough disappointment in their life and they deserve the stability of family." K. Tessmer participated in the children's school and extracurricular activities. She was also responsible for taking them to their appointments.

The children's maternal grandmother, J. McDonald, testified that she had maintained contact with the children throughout their lives. C. Constantinou contacted the children by phone when they were with J. McDonald. C. Constantinou would sometimes call J. McDonald when she knew J. McDonald had the children; or sometimes J. McDonald would contact C. Constantinou and allow the children to talk to her. The calls lasted approximately 10 minutes. That changed in 2009 when T. A. Tessmer, Sr. told J. McDonald that, if she wanted to keep seeing her grandchildren, she would have to cease allowing them to have contact with C. Constantinou. When J. McDonald went to deliver the children's Christmas gifts in December 2009, she was told she could not see them anymore. Two months later T. A. Tessmer, Sr. called J. McDonald and said that she could see them if she obeyed his rules. Before that, J. McDonald's contact with the children was at least monthly. J. McDonald honored T. A. Tessmer, Sr.'s wishes to discontinue allowing the children to have contact with C. Constantinou. But she believed that it was a mistake because the children continued to show an interest in C. Constantinou and what she was doing. C. Constantinou would send the children Christmas gifts or send J. McDonald money to buy them gifts. C. E. Tessmer's cellular phone was a Christmas gift from 2008. C. Constantinou did not acknowledge the children's birthdays.

J. McDonald did not believe that termination of C. Constantinou's parental rights was in the children's best interest because "I think a mother, no matter what the circumstances, still can play a part in their life and the children at a certain time are going to—to look for that." She believed that C. Constantinou was "making every effort" to change. The children were also close to their cousins. C. Constantinou had two older children from a prior relationship, who were 18 and 21 years old. J. McDonald worried that terminating C. Constantinou's parental rights would make it difficult for the children to maintain contact with their half-siblings. C. Constantinou did not raise her older children, and J. McDonald had testified for their father in court because "at that time that was the best place for them." As with C. E. Tessmer and T. A. Tessmer, Jr., C. Constantinou had not seen her grown children in five years. J. McDonald acknowledged that K. Tessmer was a good mother to the children.

C. Constantinou testified that in March 2007 she was living in New York when a new parenting-time order was put into place, providing for two weeks of visitation at the end of the summer as well as phone conversations. C. Constantinou did not exercise the physical parenting time because, at the time, she was in a very abusive marriage with a police officer who

threatened to harm the children. C. Constantinou also lost her job. C. Constantinou simply “couldn’t get a control” on her life. T. A. Tessmer, Sr. did not allow C. Constantinou to have frequent telephone conversations with the children. T. A. Tessmer, Sr. would interrupt the conversations, saying “give me that phone, you’re not to talk to your mother.” After that, C. Constantinou attempted to contact the children only when they were with J. McDonald. C. Constantinou was unaware that the family had moved. She did not have their cell phone numbers. C. Constantinou divorced the abusive officer in 2008 and was re-married again.

C. Constantinou admitted that she failed to meet her financial obligations to support the children, but she disputed that she failed to maintain substantial contact. She did not ask for a reduction in child support because “I just had so much going on and so much trauma.” C. Constantinou had difficulty keeping a stable job because of her legal difficulties, which included two convictions for petty larceny (bad checks). In 2007, C. Constantinou earned approximately \$65,000; in 2008 she earned \$45,000; and in 2009 she earned \$59,000. She had to pay legal fees for her criminal cases as well as for her divorce.

The trial court found that within the two years preceding the petition, C. Constantinou failed to support the children as ordered by the court and also failed to maintain any substantial contact with them. The trial court found that it was in the children’s best interests to terminate C. Constantinou’s parental rights. C. Constantinou now appeals as of right.

## II. TERMINATION OF PARENTAL RIGHTS

### A. STANDARD OF REVIEW

C. Constantinou argues that the trial court clearly erred in terminating her parental rights under MCL 710.51(6). According to C. Constantinou, there was no evidence to support the trial court’s conclusion that she failed to substantially comply with the support order and failed to visit with the children within the two years before the filing of the petition. This Court reviews for clear error the trial court’s order terminating parental rights.<sup>1</sup> “A finding is clearly erroneous when, although there is evidence to support it, the reviewing court, after examining all of the evidence, is left with a definite and firm conviction that a mistake has been made.”<sup>2</sup>

### B. LEGAL STANDARDS

The Fifth<sup>3</sup> and Fourteenth Amendments<sup>4</sup> to the United States Constitution protect a parent’s liberty interest in the custody of his or her children.<sup>5</sup> “The right to custody is not an absolute right, however, and may be terminated.”<sup>6</sup>

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<sup>1</sup> *In re Martyn*, 161 Mich App 474, 478; 411 NW2d 743 (1987).

<sup>2</sup> *Id.*

<sup>3</sup> US Const, Am V.

MCL 710.51(6), allowing for stepparent adoption, states as follows:

If the parents of a child are divorced . . . 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.

A petitioner seeking termination of parental rights in an adoption proceeding must prove by clear and convincing evidence that termination is warranted.<sup>7</sup>

### C. APPLYING THE LEGAL STANDARD

With regard to MCL 710.51(6)(a), before making her September 2010 child support payment, C. Constantinou was over \$38,000 in child support arrearages. She candidly stated that she failed to support the children. Though C. Constantinou was earning a substantial amount of money in 2007, 2008, and 2009, she claimed that she had numerous problems that prevented her from making the payments, including legal expenses for criminal charges and her divorce case. A trial court "has the discretion to disregard the respondent's reasons for violating the support order."<sup>8</sup> Even if C. Constantinou was experiencing hardship, she did nothing to seek relief from the court-ordered support. Nor did she file for a modification of the award. She simply chose not to pay. K. Tessmer and T. A. Tessmer, Sr. proved by clear and convincing evidence that MCL 710.51(6)(a) was met.

Turning to MCL 710.51(6)(b), C. Constantinou essentially argues that she was thwarted in her attempts to contact the children, citing *In re ALZ*<sup>9</sup> in support of her argument. In *In re ALZ*, the natural father did not have the ability to visit, contact, or communicate with the child during the statutory period because the petitioner refused all such contact.<sup>10</sup> However, unlike the

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<sup>4</sup> US Const, Am XIV.

<sup>5</sup> *In re Martyn*, 161 Mich App at 478.

<sup>6</sup> *Id.*

<sup>7</sup> *In re Hill*, 221 Mich App 683, 691; 562 NW2d 254 (1997); *In re Martyn*, 161 Mich App at 478.

<sup>8</sup> *In re Martyn*, 161 Mich App 474, 480; 411 NW2d 743 (1987).

<sup>9</sup> *In re ALZ*, 247 Mich App 264; 636 NW2d 284 (2001).

<sup>10</sup> *Id.* at 270-271.

father in *ALZ*, C. Constantinou cannot argue in good faith that K. Tessmer and T. A. Tessmer, Sr. thwarted her attempts at contacting the children.

C. Constantinou and T. A. Tessmer, Sr. were married in 2000, after both children were born. C. Constantinou obtained a nursing degree and worked as a traveling nurse beginning in 2002 and 2003. She traveled to Hawaii, New York, and California and rarely came home. Petitioner filed for divorce, which became final in 2004. C. Constantinou did not even attend the hearing. She admitted that she had not physically seen the children since 2005—over five years before the filing of the petition. She had not tried calling the children at their home since 2007. Although a 2007 modified decree authorized C. Constantinou to have two weeks of visitation at the end of every summer and also frequent telephone contact, C. Constantinou failed to avail herself of those opportunities. In December 2008, C. Constantinou provided nine-year-old C. E. Tessmer with a cellular phone behind the back of K. Tessmer and T. A. Tessmer, Sr. T. A. Tessmer, Sr. admitted that he was angry that J. McDonald gave the phone to the child without consulting him first, but he did not make the child give it back. Contact via the cell phone only lasted several months and then the phone stopped working.

C. Constantinou's next attempt at contacting C. E. Tessmer was through a Facebook page in 2009. Again, T. A. Tessmer, Sr. admitted that he was angry at C. Constantinou for her nonchalant note to the child after so many years of total absence. He sent C. Constantinou a message suggesting that she not contact the children again. C. Constantinou claims that the actions of K. Tessmer and T. A. Tessmer, Sr. were an impediment to her relationship with the children. However, C. Constantinou had a legal right to visitation and telephone contact by court order and, if she believed her rights were being violated, she could have returned to court and sought an enforcement order.<sup>11</sup>

Although both C. Constantinou and her mother, J. McDonald, testified that C. Constantinou spoke with the children when they were at J. McDonald's home for visits, these calls were ten minutes in length and only took place once a month. We reject C. Constantinou's contention that 120 minutes of telephone contact over the course of a year constituted regular and substantial contact, especially when she earned a decent wage and knew where the children were living. Regardless of her personal trauma, it was clear that the children were not high on C. Constantinou's list of priorities. K. Tessmer and T. A. Tessmer, Sr. proved by clear and convincing evidence that MCL 710.51(6)(b) had been met.

### III. BEST INTERESTS

#### A. STANDARD OF REVIEW

C. Constantinou argues that it was not in the children's best interests to terminate her parental rights when she was interested in maintaining contact with them and they continued to

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<sup>11</sup> *In re SMNE*, 264 Mich App 49, 51; 689 NW2d 235 (2004).

show an interest in her. We review the trial court's decision regarding the child's best interests for clear error.<sup>12</sup>

## B. LEGAL STANDARDS

Termination under MCL 710.51(6) is permissive rather than mandatory, and a court may consider the best interests of the child in deciding whether to grant a petition to terminate the noncustodial parent's rights.<sup>13</sup> Even if the statutory grounds are established, the trial court need not grant termination if it finds that termination would not be in the best interests of the child.<sup>14</sup>

## C. APPLYING THE LEGAL STANDARDS

C. Constantinou did not deny that the children were in a good place with K. Tessmer and T. A. Tessmer, Sr. They were clearly a family unit, and K. Tessmer had been acting as the children's mother for over a year. She worked from home and was able to attend to their daily needs, including school work, medical appointments, transportation to extracurricular activities, and a bedtime routine. This was particularly critical because T. A. Tessmer, Sr. worked the second shift and often did not get home until the children were in bed. T. A. Tessmer, Sr. believed that the children were thriving in the stable environment. J. McDonald feared that her visits with the children would be denied, but K. Tessmer and T. A. Tessmer, Sr. believed that continued contact with the mother's side of the family was important and both intended to foster that contact. Although the children may have still been curious about C. Constantinou, as she and J. McDonald contended, this curiosity about their mother does not trump the children's need for permanence and stability. C. Constantinou testified that she was not seeking a change of custody and did not want to disrupt their lives, but her continued sporadic involvement served no benefit to the children. Given C. Constantinou's continued instability and failure to make the children a priority in her life, termination of her parental rights was in the children's best interests. Therefore, we conclude that the trial court did not clearly error in ordering termination of C. Constantinou's parental rights.

We affirm.

/s/ David H. Sawyer  
/s/ William C. Whitbeck  
/s/ Donald S. Owens

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<sup>12</sup> *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

<sup>13</sup> *In re Newton*, 238 Mich App 486, 493-494; 606 NW2d 34 (1999).

<sup>14</sup> *Id.*