STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
June 18, 2013

In the Matter of CLJ, Minor.

No. 312778
Tuscola Circuit Court
Family Division
LC No. 12-002901-AY

Before: BECKERING, P.J., and SAAD and O'CONNELL, JJ.

PER CURIAM.

In this stepparent adoption case, petitioner-appellant, H.H., appeals of right from the trial court's order denying her supplemental petition to terminate the parental rights of respondent-appellee to their minor child and denying petitioner, A.H., and H.H.'s petition for stepparent adoption of the minor child. We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

The minor child was born in 2009 to respondent and H.H.[1] Within days of the child's birth, respondent began a term of incarceration with an earliest release date of October 7, 2013. Respondent and H.H. continued to be a couple for "a little while after [the minor child] was born" but "split up" a short time before December 2009. H.H. married A.H. in January 2011.

On March 29, 2012, H.H., as the child's custodial parent, filed a supplemental petition[2] and affidavit to terminate respondent's parental rights as the noncustodial parent of the child on the basis of "lack of support of and parenting time with the child." The petition provided that respondent was incarcerated, failed to comply with a support order for a period of at least two years before the filing of a petition for adoption, and had regularly and substantially failed or neglected to visit, contact, and communicate with the child for at least two years before the filing of a petition for adoption despite having the ability to do so.

On April 4, 2012, H.H. and A.H. joined in the filing of a petition for stepparent adoption of the minor child. The petition stated that the child had been living in H.H. and A.H.'s home for

[1] Respondent has acknowledged paternity of the minor child.

[2] There is no record of an original petition.

24 months before the filing of the petition and that respondent had "failed to provide support or comply with a support order and failed to visit or contact the [minor child] for a period of 2 years or more."

The trial court conducted a trial on July 11, 2012, and received testimony from respondent, H.H., A.H., and respondent's 23-year-old daughter. The court then issued an opinion and order denying the petitions for stepparent adoption and termination of respondent's parental rights. The court found that it had previously held respondent's child-support obligation to the minor child in abeyance due to his incarceration. The court also found that respondent had not had any physical contact with the minor child, had minimal contact with the child through birthday and Christmas cards, and had not provided financial support for the child since her birth. The court noted that respondent testified that he was willing to provide financial support to the child from his $80 to $100 monthly income by reducing his support payment to his older child and that he wanted to have contact with the minor child but was at the mercy of H.H. regarding visitation. The court determined that it would exercise its discretion not to terminate respondent's parental rights because termination was premature, notwithstanding that H.H. and A.H. "provided the necessary evidence to comport with [MCL 710.51(6)(a) and (b)]." The court emphasized that respondent wanted a relationship with the child and was willing to provide child support. It further emphasized that respondent would potentially get out of prison on October 7, 2013, which would allow him to physically visit the child without having to rely on H.H. and A.H. to bring the child for visits. The court noted that because the child was only three years old, the child could not communicate with respondent through letters; thus, the child would require an adult to read the letters to her and explain their meaning. Finally, the court stated that respondent "must take this opportunity to measure up to his obligations as a parent to his daughter . . . ."

II. ANALYSIS

On appeal, H.H. contends that the trial court erred by denying the petitions for termination of respondent's parental rights and stepparent adoption.

"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 for clear error the trial court's factual findings. *Id* at 691-692. A factual finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *Id.* at 692. This Court reviews for an abuse of discretion the trial court's decision to grant or deny the petition for adoption. *In re Toth*, 227 Mich App 548, 556; 577 NW2d 111 (1998). Similarly, we review for an abuse of discretion a court's decision to terminate parental rights under MCL 710.51(6). See MCL 710.51(6) (providing that the court "may" terminate parental rights in certain specified circumstances); *In re Forfeiture of Bail Bond*, 276 Mich App 482, 492; 740 NW2d 734 (2007) (explaining that the statutory term "may" is permissive and indicative of discretion); *In re Hill*, 221 Mich App at 696 (stating that MCL 710.51(6) is permissive). A court abuses its discretion when it reaches a decision falling outside the range of reasonable and principled outcomes. *Saffian v Simmons*, 477 Mich 8, 12; 727 NW2d 132 (2007).

"The procedure and standard for determining whether to terminate the parental rights of a noncustodial parent and allow adoption by a stepparent are governed by MCL 710.51 . . . ." *In re ALZ*, 247 Mich App 264, 272; 636 NW2d 284 (2001). MCL 710.51 provides in pertinent part as follows:

> (6) 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:
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> (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.
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> (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.

Thus, "[i]n order to terminate parental rights under the statute, the court must determine that the requirements of subsections a and b are both satisfied." *In re ALZ*, 247 Mich App at 272. However, the statute is permissive not mandatory because it provides that the "court *may* issue an order terminating the rights of the parent if the requirements of subsections a and b are both met." *In re Hill*, 221 Mich App at 696 (emphasis in original). This Court has explained that "a court *may* consider the best interests of the child in deciding whether to grant a petition to terminate the noncustodial parent's rights." *In re Newton*, 238 Mich App 486, 494; 606 NW2d 34 (1999) (emphasis added). "[E]ven if the petitioner proves the enumerated circumstances that allow for termination, a court need not grant termination if it finds that it would not be in the best interests of the child." *Id.*; see also *In re ALZ*, 247 Mich App at 273. However, the statute does not permit termination solely on the basis of the child's best interest without meeting the requirements of subsections 6(a) and (b). *In re Newton*, 238 Mich App at 494.

Here, the trial court determined that H.H. and A.H. "provided the necessary evidence to comport with section 51(6) (a) and (b)." However, the court concluded that it would exercise its discretion not to terminate respondent's parental rights. The court opined that respondent wanted a relationship with the child and was willing to provide child support. It also opined that respondent would potentially get out of prison on October 7, 2013, which would allow him to physically visit the child without having to rely on H.H. and A.H. to bring the child for visits. The court emphasized that because the child was only three years old, the child could not communicate with respondent through letters; the child would require an adult to read the letters to her and explain their meaning. On the basis of these facts, the court concluded that termination of respondent's parental rights was premature.

We conclude that the trial court did not abuse its discretion by denying the petitions to terminate respondent's parental rights and for stepparent adoption. MCL 710.51(6) did not

require the trial court to grant the petitions upon the establishment of the circumstances enumerated in subsections (a) and (b); the court had the discretion to deny the motions. See *In re Hill*, 221 Mich App at 696. The record evidence provided support for the trial court's conclusion that termination of parental rights would be premature. Specifically, both respondent and his older daughter testified that respondent wanted a relationship with the child. Respondent testified that he was willing to provide child support, and there was evidence that respondent could possibly be released from prison in the near future, which the court opined would allow him to physically visit the child without relying on H.H. and A.H. The court's reference to the need for an adult to read and explain respondent's letters to the child illustrates that the court recognized that respondent was largely dependent on others to communicate with the child. Considering the court's explanation in its totality, it is reasonable to conclude that the court determined that termination would be premature without providing respondent an opportunity to communicate with the child at a time when he is not largely dependent on others to facilitate the communication, particularly when respondent expressed a desire to have a relationship with the child and provide her support. Therefore, notwithstanding the establishment of MCL 710.51(6)(a) and (b), the trial court's decision to deny the petitions for termination and stepparent adoption did not fall outside the range of reasonable and principled outcomes. See *Saffian*, 477 Mich at 12.

H.H. argues that the trial court erred by finding that termination was not in the child's best interest without relying on the factors enumerated in the best-interest statute, MCL 710.22(g). We disagree. Although a trial court may decline to terminate parental rights under MCL 710.51(6) if it determines that termination is not in a child's best interest despite the establishment of the circumstances detailed in MCL 710.51(6)(a) and (b), see *In re Newton*, 238 Mich App at 494, the trial court did not make a best-interest determination in this case. And it was not required to do so. See *id.* (stating that a trial court *may* consider the child's best interest when deciding whether to terminate parental rights under MCL 710.51(6)). Furthermore, the plain language of MCL 710.51(6) does not limit a trial court's discretionary ability to decline to terminate parental rights despite the establishment of MCL 710.51(6)(a) and (b) to only situations where the trial court determines that termination is not in a child's best interest as defined by MCL 710.22(g). See generally *South Haven v Van Buren Co Bd of Comm'rs*, 478 Mich 518, 528; 734 NW2d 533 (2007) (stating that courts will enforce clear and unambiguous statutes as written); see also generally *Gilliam v Hi-Temp Prod Inc*, 260 Mich App 98, 109; 677 NW2d 856 (2003) ("This Court must presume the Legislature intended the meaning clearly expressed and must enforce a statute as written."). And H.H. does not provide this Court with any legal authority standing for such a proposition.

H.H. also argues that the trial court clearly erred by considering "what [respondent] may do in the future rather than what actually occurred in the two year statutory period," relying on respondent's earliest release date of October 7, 2013, and considering the child's inability to read respondent's letters for a finding of the child's best interest. We disagree for two reasons. First, as previously discussed, the trial court did not make a best-interest determination. Second, H.H. provides this Court with no citation to legal authority to explain why the court's consideration of these facts was improper. "A party may not leave it to this Court to search for authority to sustain or reject its position." *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003) (quotation marks and citation omitted). Therefore, these arguments are abandoned. See *id.*

Finally, H.H. argues that it was in the child's best interest to terminate respondent's parental rights and grant the stepparent adoption. But again, the trial court did not deny the petitions because of a best-interest determination. Thus, it would be inappropriate for this Court to conduct a best-interest determination when the trial court had the discretion to do so but did not. See *In re Newton*, 238 Mich App at 494. Denial of the petitions for termination and stepparent adoption was a reasonable and principled outcome given the reasons articulated by the trial court.

Affirmed.

/s/ Jane M. Beckering
/s/ Henry William Saad
/s/ Peter D. O'Connell