STATE OF MICHIGAN

COURT OF APPEALS

In re P. M. L., Minor.

UNPUBLISHED
May 21, 2020

No. 351143
Shiawassee Circuit Court
Family Division
LC No. 18-003915-AY

In re S. R. L., Minor.

No. 351144
Shiawassee Circuit Court
Family Division
LC No. 18-003916-AY

Before: RONAYNE KRAUSE, P.J., and SERVITTO and REDFORD, JJ.

PER CURIAM.

In these consolidated[1] appeals, respondent-mother appeals as of right the trial court's orders terminating her parental rights to minor children, PML and SRL, under the Adoption Code, MCL 710.51(6). We affirm the trial court's orders but remand these cases to the trial court for the ministerial task of correcting clerical errors in the orders terminating respondent-mother's parental rights.

I. BACKGROUND

Respondent-mother and petitioner-father never married but they had two children together, PML and SRL. Respondent-mother and petitioner-father initially shared custody of the children and respondent-mother served as the children's custodial parent. Petitioner-father married petitioner-stepmother during 2014. During February 2016, the circuit court granted petitioner-father sole legal and physical custody of the children but ordered that respondent-mother could

[1] *In re PML, Minor; In re SRL Minor*, unpublished order of the Court of Appeals, entered October 30, 2019 (Docket Nos. 351143 and 351144).

have supervised parenting time. Respondent-mother's parenting-time visits were initially supervised by her mother but because of a domestic violence altercation between respondent-mother and her mother,[2] the circuit court ordered that petitioner-father would supervise parenting-time visits. From October 19, 2016 to December 29, 2016, respondent-mother missed most of the scheduled parenting-time visits with the children because she canceled visits and failed to appear and also because she contracted an infection that required her hospitalization for treatment. Respondent-mother did not visit the children after December 29, 2016. In March 2017, the circuit court modified the parenting-time order to require that respondent-mother's parenting-time visits be supervised by an independent supervisor. Although respondent-mother knew that she could obtain financial assistance to cover the cost associated with hiring an independent supervisor, she did not seek such assistance and never arranged for parenting-time visits.

In relation to its February 2016 custody ruling, the circuit court ordered respondent-mother to pay child support. Respondent-mother failed to make regular monthly child support payments which resulted in the entry of show cause orders and her incarceration in the county jail on a few occasions. While she served time in jail during 2018, corrections officers found her in possession of a controlled substance which resulted in her conviction of violation of MCL 801.263(2). The circuit court imposed a sentence of 30 months to 60 months' imprisonment. Respondent-mother is presently serving that sentence and her earliest release date is January 11, 2021.

On October 18, 2018, petitioners filed two petitions to terminate respondent-mother's parental rights to the children for purposes of stepparent adoption. The trial court held a two-day evidentiary hearing and found that clear and convincing evidence established grounds for termination of respondent-mother's parental rights to the children under MCL 710.51(6). The trial court also found that termination of respondent-mother's parental rights served the children's best interests. The trial court entered two orders terminating respondent-mother's parental rights to the children.

II. STANDARD OF REVIEW

We review for clear error the trial court's factual findings during an adoption code proceeding. *In re ALZ*, 247 Mich App 264, 271; 636 NW2d 284 (2001). A trial court clearly errs when, although evidence supports its findings, this Court is left with the definite and firm conviction that the trial court made a mistake. *Id*. at 271-272. We review de novo questions of statutory interpretation. *In re Hill*, 221 Mich App 683, 689; 562 NW2d 254 (1997).

III. ANALYSIS

Respondent-mother argues that trial court clearly erred by finding that clear and convincing evidence supported the termination of her parental rights under MCL 710.51(6), and also clearly erred when it determined that termination of respondent-mother's parental rights served the children's best interests. We disagree regarding both claims of error.

[2] Respondent was apparently the perpetrator and was charged with domestic violence based on respondent physically hurting her mother. We do not know the outcome of those charges.

The petitioners in a stepparent adoption proceeding have the burden of proving by clear and convincing evidence that termination of the noncustodial parent's rights is warranted. *In re Hill*, 221 Mich App at 691. "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 at 272. "The court's authority to terminate parental rights under the statute is permissive rather than mandatory." *Id*. (citation omitted).

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 a parent having custody of the child according to a court order 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. A child support order stating that support is $0.00 or that support is reserved shall be treated in the same manner as if no support order has been entered.
>
> (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.

"In 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 (citation omitted). "[I]n applying MCL 710.51(6), courts are to look at the two-year period immediately preceding the filing of the termination petition." *In re Talh*, 302 Mich App 594, 597-598; 840 NW2d 398 (2013).

In this case, petitioner-father and respondent-mother were never married. Petitioner-father's paternity of the children was legally established in a paternity action in 2013. The relevant two-year period of review in this case spanned from October 18, 2016 through October 18, 2018, the date of the filing of the petitions. The record reflects that the trial court properly considered the appropriate two-year period.

Evidence established that during February 2016, the circuit court granted petitioner-father sole physical and legal custody of the children. An order entered by the circuit court required respondent-mother to pay child support for both children in the combined amount of approximately $300 per month. Evidence and testimony established that respondent-mother failed or neglected to make regular payments of the required child support which resulted in the circuit court's issuance of orders requiring respondent-mother to show cause why she failed to do so. At the evidentiary hearing, respondent-mother testified that she had two jobs in 2016 but her employers terminated her employment and then she received unemployment benefits. Petitioner-father

testified that respondent-mother paid him a total of $668 in child support between October 2016 and July 2017. The deputy director of the county friend of the court testified that respondent-mother made a single voluntary payment of $200 during that period, but the additional child support payments stemmed from garnishments of respondent-mother's income and of her unemployment benefits. Respondent-mother did not dispute that she failed to make the required child support payments when she had employment and when she received unemployment benefits.

Respondent-mother testified that she was incarcerated from October 2017 to January 2018 for contempt of court arising from her failure to pay child support, and for disturbing the peace. During her incarceration she did not attempt to provide any support for the children. The record also reflects that the circuit court jailed respondent-mother on other occasions.[3] This Court has held that an incarcerated parent may still retain the ability to comply with the support requirements of MCL 710.51(6). *In re Caldwell*, 228 Mich App 116, 121; 576 NW2d 724 (1998). Notably, respondent-mother admitted that she chose not to provide any support for the children during the periods of her incarceration.

The record reflects that the circuit court modified the child support order and reduced respondent-mother's support obligation because of her financial circumstances during February 2017. Respondent-mother, however, continued to fail or neglect to provide any support for the children. The circuit court suspended respondent-mother's child support obligation and later reduced her child support obligation to zero during November 2017 because of her incarceration. Evidence established that respondent-mother failed or neglected to pay $2,546 in child support between September 2016 and September 2018. While the child support order was in effect, she failed to pay a total of $6,244. Respondent-mother last made a small child support payment in June 2017.

The record supports the trial court's conclusion that clear and convincing evidence established that, during the requisite two-year review period, respondent-mother had the ability to support or assist in supporting the children, but she failed or neglected to provide regular and substantial support for them. Accordingly, the trial court did not clearly err regarding its findings under MCL 710.51(6)(a).

Although not raised by respondent-mother, we note that the trial court made clerical errors in its written orders terminating respondent-mother's parental rights to the children. At the conclusion of the evidentiary hearing, the trial court found that petitioners presented clear and convincing evidence establishing the grounds under MCL 710.51(6)(a) that respondent-mother failed or neglected to assist in providing regular and substantial support for the children for a period of two years or more before the filing of the petition despite her ability to do so. However, in the written orders terminating respondent-mother's parental rights, the trial court checked a box in the form order indicating that a child support order had been entered, and respondent-mother failed to substantially comply with the order for a period of two years or more before the filing of the petition. Because the child support order had been reduced to zero, MCL 710.51(6)(a) required

[3] Respondent-mother's domestic violence charge occurred at some point during the two-year period, but again, we do not know the outcome of that charge.

the trial court to conduct its analysis by treating the case in the same manner as if no support order had been entered. The record reflects that the trial court applied the correct analysis and recognized that the evidence established that the child support order had been reduced to zero. In filling out the form order, the trial court checked the wrong box on each of the orders it entered. Because the trial court's ruling from the bench does not indicate a substantive error but only a clerical error, the clerical errors require correction. Although we affirm the trial court's findings respecting MCL 710.51(6)(a), we remand for the ministerial task of the correction of the clerical errors in its orders. MCR 6.435(A); MCR 7.216(A)(4).

The trial court also did not clearly err when it determined that clear and convincing evidence established that respondent-mother had the ability to visit, contact, or communicate with the children, but regularly and substantially failed or neglected to do so during the two years before the filing of the petitions. Evidence established that when respondent-mother was not incarcerated she had the ability to participate in regular supervised visits with the children. Petitioner-father testified that respondent-mother sporadically attended visits with the children between October 2016 and December 2016. The record reflects that respondent-mother failed to attend numerous visits with the children during that period. Further, despite having opportunities to do so, respondent-mother admitted that she had not seen the children since December 29, 2016. The record reflects that she could have had supervised visits after that date but failed to take advantage of the opportunities made available to her. Although respondent-mother offered a mixture of excuses for her absence from the children's lives, the record supports the trial court's finding that respondent-mother failed to make the children a priority in her life and neglected to visit them.

An incarcerated parent may still retain the ability to comply with the contact requirements of MCL 710.51(6)(b). *In re Caldwell*, 228 Mich App at 116. This Court, however, has held that attempts to communicate by letters and telephone calls are not regular or substantial contacts within the meaning of MCL 710.51(6)(b). *In re Kaiser*, 222 Mich App 619, 624; 564 NW2d 174 (1997). The record reflects that respondent-mother attempted to contact the children by telephone during the periods of her incarcerations. The children, however, never spoke with respondent-mother on the telephone on a consistent basis. The record does not indicate that respondent-mother sought the assistance of the court to enable contacts or communications with the children.

Respondent-mother admitted that she did not attempt to call the children while incarcerated for the entire period from October 2017 through January 2018. Respondent-mother testified that she mailed the children two letters each per month during that period of incarceration. Petitioner-stepmother testified that the children received a total of four letters from respondent-mother during that four-month period. We defer to the trial court's determinations regarding the weight of evidence and the credibility of witnesses. *In re Medina*, 317 Mich App 219, 227; 894 NW2d 653 (2016). The record reflects that respondent-mother's efforts did not amount to regular and substantial contact or communication with the children during the two-year period before the filing of the petitions. Therefore, the trial court did not err by finding that clear and convincing evidence established statutory grounds for termination under MCL 710.51(6)(b) because respondent-mother had the ability to visit, contact, or communicate with the children, but regularly and substantially failed or neglected to do so for a period of two years or more before the filing of the petitions.

On appeal, respondent-mother asserts that the trial court clearly erred when it found clear and convincing evidence to terminate respondent-mother's parental rights under MCL

710.51(6)(a) and (b) because petitioners presented inadmissible hearsay evidence to support grounds for termination. Specifically, respondent-mother argues that petitioner-father read hearsay reports regarding respondent-mother's child support arrearages and petitioner-father presented hearsay testimony that several individuals criticized respondent-mother while speaking with petitioner-father. Respondent-mother, however, waived such claims of error.

Waiver is the intentional relinquishment of a known right. *In re Ferranti*, 504 Mich 1, 33; 934 NW2d 610 (2019). "A waiver is shown through express declarations or declarations manifesting a party's purpose and intent." *Elahham v Al-Jabban*, 319 Mich App 112, 117; 899 NW2d 768 (2017) (citation omitted). "One who waives [her] rights under a rule may not then seek appellate review of a claimed deprivation of those rights, for [her] waiver has extinguished any error." *Varran v Granneman*, 312 Mich App 591, 623; 880 NW2d 242 (2015) (citation and quotation marks omitted). At the evidentiary hearing, petitioner-father testified regarding the contents of documents from the Michigan Child Support Enforcement System detailing respondent-mother's child support arrearages. He also testified regarding his recollection of respondent-mother's failure to make the required child support payments while the child support order remained in effect and her lack of support after the court reduced her child support obligation to zero. Respondent-mother did not object to petitioner-father's testimony, and petitioner-father moved to admit the documents as an exhibit. The trial court asked respondent-mother's counsel whether he had any objection to the admission of the documents, and respondent-mother's counsel responded, "I have no objection to that." Respondent-mother, therefore, expressly waived any objection to the admission of such documents.

Respondent-mother's claim of error regarding the admissibility of petitioner-father's testimony that several individuals criticized respondent-mother lacks support by citation to the record or supporting authority. Respondent-mother asserts that petitioner-father gave inadmissible hearsay testimony and that the trial court should not have relied on it; but she does not specify the testimony about which she takes issue, does not describe how the testimony constituted hearsay, and she points to nothing in the record that establishes that the trial court relied on inadmissible hearsay testimony for its findings of grounds for termination under MCL 710.51(6)(a) and (b). "An appellant may not merely announce [her] position and leave it to this Court to discover and rationalize the basis for [her] claims, nor may [s]he give issues cursory treatment with little or no citation of supporting authority." *Houghton ex rel Johnson v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003) (citations omitted). "An appellant's failure to properly address the merits of [her] assertion of error constitutes abandonment of the issue." *Id*. at 339-340 (citation omitted). Considering that respondent-mother failed to properly address the merits of her assertion, respondent-mother abandoned her claim of error regarding the admissibility of petitioner-father's testimony.

The trial court did not clearly err when it found that petitioners presented clear and convincing evidence to support grounds for termination of respondent-mother's parental rights under MCL 710.51(6) (a) and (b). Therefore, respondent-mother is not entitled to reversal.

Respondent-mother claims that the trial court erred when it determined that termination of her parental rights served the children's best interests. "In general, issues that are raised, addressed, and decided by the trial court are preserved for appeal." *In re TK*, 306 Mich App 698, 703; 859 NW2d 208 (2014). In this case, respondent-mother never objected to the trial court's

consideration of the children's best interests, she never requested that the trial court make specific findings regarding each child's best interests, nor did she challenge the trial court's findings regarding the children's best interests. Respondent-mother, therefore, failed to preserve this claim of error for appeal. We review unpreserved claims of error for plain error affecting substantial rights. *In re Williams*, 286 Mich App 253, 274; 779 NW2d 286 (2009). "To avoid forfeiture under the plain-error rule, the proponent must establish that a clear or obvious error occurred and that the error affected substantial rights." *In re Beers*, 325 Mich App 653, 677; 926 NW2d 832 (2018) (citation omitted). "An error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings." *Id*. (quotation marks, alteration, and citation omitted).

Although the trial court is required to consider the children's best interests before approving their adoption, MCL 710.51(1)(b) and MCL 710.22(g), it is not obligated to consider the children's best interests before terminating parental rights under the Adoption Code. *In re Hill*, 221 Mich App at 696. Nevertheless, because termination is permissive under MCL 710.51(6), this Court has held that the trial court may consider evidence relating to the children's best interests when ruling on a petition filed pursuant to MCL 710.51(6). *In re Hill*, 221 Mich App at 696. Even if a petitioner establishes that the conditions set forth for termination of the noncustodial parent's rights pursuant to MCL 710.51(6) have been met, "a court need not grant termination if it finds that it would not be in the best interests of the child." *In re Newton*, 238 Mich App 486, 494; 606 NW2d 34 (1999).

Respondent-mother argues that the trial court incorrectly determined the best interests of the children by failing to consider the children's bond with her, PML's wishes regarding termination, and that she never abandoned, abused, neglected, or placed the children's safety at risk. She also asserts that the trial court's best-interest determination must be viewed as erroneous as a matter of law because petitioners failed to establish the statutory grounds for termination under MCL 710.51(6). We disagree.

The record reflects that the trial court considered the evidence and found that respondent-mother loved the children. The trial court, however, found that respondent-mother lacked the ability to provide the children stability and permanence of the type that would foster the children's development. Further, the trial court found that respondent-mother lacked the ability to provide meaningful parental guidance to the children. Evidence established that respondent-mother had a history of committing domestic violence against family members. She also had a substance abuse problem that interfered with her ability to parent and be present for the children. She admitted that while in jail she had a controlled substance in her possession that resulted in her incarceration which prevented her from engaging meaningfully in the children's lives. Evidence also established that respondent-mother lacked appropriate parenting skills and failed to act as a good role model during parenting-time visits by engaging in verbal altercations with petitioner-father in front of the children that escalated at least on one occasion to the point that the police were called to intervene. The record also established that, when respondent-mother had opportunity to visit with the children, she canceled or failed to show up. Further, although able to provide support for the children, respondent-mother chose not to make any effort to do so. Respondent-mother's conduct demonstrated a lack of concern for the welfare of the children. The record also reflects that the children had a stable, permanent home environment with petitioners, and petitioner-stepmother expressed her love and affection for the children and desire to adopt them as her own. While the trial court did not express specific factual findings regarding best-interest factors, the court's

opinion and the evidence in the record established that termination of respondent-mother's parental rights to the children served their best interests.

In stating its opinion from the bench, the trial court stated:

> The question has been asked, not directly, but by suggestion why? I mean, what's the problem? Why terminate her parental rights? How is that in the best interests of the children? And for this, I address from the standpoint not of either parent but of the children. Yes, [respondent-father] has sole physical and legal custody. Yes, [respondent-mother] is in prison for perhaps a year or little more. But, I refer back to my opening comments that the children's lives continue to march on. And there is a higher goal that's often referenced in the abuse and neglect cases when the issue of parental rights termination comes and that is the word permanence. It's kind of a slippery word that I was still coming to terms with even in my first year or so on the bench. And sometimes, quite frankly, the witnesses from DHHS have a hard time defining it. But, it is a sense of confidence and stability of your guiding figures in your life. Meaning your parents. It is not permanence of residence. I mean in the last 10, 15 years we've seen scads of middle class people lose their homes to the banking scandals. Things like that. These things can happen. And, you know, incomes decrease. And the vacation to Disneyland turns into a weekend in a tent in Harrisonville, Michigan. This is—this is not what I mean by stability. And kids go from packing their lunch to taking advantage of the free lunch offered by the schools. There is financial instability. But there is a stability of guidance and stability of knowledge from of whom the children can rely.
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> And to that end, evaluating the evidence, likewise it seems clear and convincing that it is in the best interests of [SL and PL] [sic] for the parental rights of [respondent-mother] to be terminated at this time. And I will sign the order.

Respondent-mother has failed to establish any plain error.

Respondent-mother asserts that this Court's opinion in *In re Olive/Metts*, 297 Mich App 35; 823 NW2d 144 (2012), supports her assertion that the trial court had a duty to determine the best interests of each child individually. *In re Olive/Metts*, however, applies to the termination of parental rights under MCL 712A.19b(5), not the termination of parental rights under the Adoption Code. Thus, respondent-mother's contention lacks merit. Respondent-mother has failed to establish that the trial court committed plain error that affected her substantial rights. Therefore, respondent-mother is not entitled to any relief.

Affirmed. We remand for the ministerial correction of the clerical errors in the trial court's orders as explained in this opinion. We do not retain jurisdiction.

/s/ Amy Ronayne Krause
/s/ Deborah A. Servitto
/s/ James Robert Redford