

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ANTHONY WILLIAMS, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

V

ANTHONY JEROME WILLIAMS, SR.,

Respondent-Appellant,

and

DENISE HARPER,

Respondent.

UNPUBLISHED

June 29, 2006

No. 267240

Kent Circuit Court

Family Division

LC No. 04-058364

Before: Davis, P.J., and Sawyer and Schuette, JJ.

PER CURIAM.

Respondent Anthony Williams appeals as of right from the order of the trial court terminating his parental rights to his minor child pursuant to MCL 712A.19b(3)(c)(i) and (g). We affirm.

I. FACTS

Respondent Williams was incarcerated on a conviction for larceny before his child was born. The mother, Denise Harper, abandoned the child when he was four months old, initiating the termination investigation. Respondent was incarcerated at the time of the termination hearings. Respondent testified that he had been incarcerated at the time of the child's birth, was still incarcerated, and had never supported the child financially or cared for him physically. Respondent had allegedly never even seen the child. Respondent's earliest possible parole date was in April 2006 (seven months away) while his latest possible release date was December 2018. Respondent testified that the larceny conviction that had resulted in his incarceration arose from his use of cocaine and alcohol, and that he previously had been convicted of marijuana possession. Respondent admitted that at the time of the hearing he was not able to provide a stable environment for the child. Since his incarceration, respondent had successfully completed

a substance abuse treatment program, a premarital counseling class, and had been accepted into a voluntary residential substance abuse treatment program. Respondent was also participating in a self-guided electronics repair technology class. Upon his release, respondent planned to live with Ms. Harper, the child's mother, and work for Good Will Industries with hopes of later working in electronics repair.

Respondent's parental rights were terminated pursuant to MCL 712A.19b(3)(c)(i) and (g). The parental rights of Denise Harper were terminated pursuant to the same order. Respondent appeals this order of the trial court.

II. STATUTORY GROUNDS FOR TERMINATION

A. Standard of Review

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been demonstrated by clear and convincing evidence. *In re Fried*, 266 Mich App 535, 540-541; 702 NW2d 192 (2005). This Court reviews the trial court's findings of fact for clear error. MCR 3.977(J); *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made. *Id.* In applying the standard, this Court should recognize the special opportunity the trial court has to assess the credibility of the witnesses. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

B. Analysis

The trial court did not clearly err in finding that statutory grounds for termination exist. Respondent's parental rights were terminated pursuant to MCL 712A.19b(3)(c)(i) and (g), which provide, in pertinent part:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds...

(i) The conditions that led to adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age. [MCL 712A.19b(3)(c)(i), (g).]

Respondent contends that the trial court erred in finding that clear and convincing evidence supported termination of his parental rights under these provisions¹. We disagree. At the time of termination, respondent was incarcerated, as he had been since the child's birth. As a result, respondent had never provided for the child financially, had never cared for the child physically, and had little to no bond with the child. Though respondent was hoping for an early release in 2006, he acknowledged that his incarceration could possibly continue until 2018 and he had no concrete plans for providing for the child in the future. Respondent did successfully participate in many services available to him while incarcerated, but even if released early, some time would be necessary for him to demonstrate that he could remain substance-free and that he had truly overcome the substance abuse that led to his incarceration. At a minimum, the child would be in foster care for 22 months which is an unreasonable time for the child to wait for permanency. The trial court did not clearly err in finding under (c)(i) that the conditions that led to adjudication continued to exist and there was no likelihood that they would be rectified within a reasonable time, or in finding under (g) that respondent failed to provide proper care and custody for the child and that there was no reasonable likelihood that respondent would be able to do so within a reasonable time. Thus, statutory grounds for termination of respondent's parental rights are established by clear and convincing evidence under the statute.

III. BEST INTERESTS OF THE CHILD

A. Standard of Review

Once a statutory ground for termination has been established by clear and convincing evidence, the trial court shall order termination of parental rights unless the court finds from evidence on the whole record that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich App 346, 352-354; 612 NW2d 407 (2000). Decisions terminating parental rights are reviewed for clear error. *Id.* at 356-357. A finding of fact is clearly erroneous if a reviewing court is left with a definite and firm conviction that a mistake was made. *In re JK, supra* at 209-210. In applying the standard, this Court should recognize the special opportunity the trial court has to assess the credibility of the witnesses. MCR 2.613(C); *In re Miller, supra* at 337.

B. Analysis

The trial court did not clearly err in finding that termination of respondent's parental rights was not contrary to the best interests of the child. Respondent never demonstrated that he could provide a stable home for the child. During the child's entire life, respondent was unavailable to care for the child as he was incarcerated for larceny that arose from drug use. Respondent never supported the child financially nor cared for him physically because of this. Respondent never demonstrated that he would be able to support the child when released; no definite plans existed for providing for the child now or in the future. In addition, the child

¹ Respondent also contends that the trial court applied the wrong evidentiary standard and considered evidence not legally admissible. We also disagree with this argument. Respondent fails to identify on appeal what evidence he believes was wrongly admitted or in what way the trial court applied a wrong standard, no subject objection was raised before the trial court, and our review of the record reveals no such error.

allegedly had never seen respondent and consequently no bond existed between father and son. Thus, the trial court did not clearly err in finding that termination was not contrary to the child's best interests.

Affirmed.

/s/ Alton T. Davis
/s/ David H. Sawyer
/s/ Bill Schuette