

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of AVION DEQUA' PIERCE,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LARRY WHITE,

Respondent-Appellant,

and

HELEN PIERCE,

Respondent.

UNPUBLISHED

September 18, 2007

No. 276832

Genesee Circuit Court

Family Division

LC No. 01-113595-NA

Before: O'Connell, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

Respondent-appellant Larry White (respondent) appeals as of right the order terminating his parental rights to the minor child under MCL 712A.19b(3)(g), (j), and (n)(ii).¹ We affirm.

Petitioner commenced a child protective proceeding with the filing of a petition seeking termination of parental rights at the initial dispositional hearing. With regard to respondent, the petition alleged that respondent had an extensive history of domestic violence, drug abuse, and criminal activity resulting in three felony convictions. The petition also alleged that respondent had a pending felony charge of delivery of less than fifty grams of cocaine.

The trial court did not clearly err in determining that clear and convincing evidence established at least one statutory ground for termination. MCR 5.974(I); *In re Miller*, 433 Mich

¹ The trial court also terminated the parental rights of the child's mother, Helen Pierce, but she is not a party to this appeal.

331, 337; 445 NW2d 161 (1989). The evidence showed that there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time. His criminal history indicated that in the past sixteen years he had been convicted of three felonies, one of which was committed while he was on parole for another felony, and that he was arrested for delivery of less than fifty grams of cocaine, a twenty-year felony, on May 3, 2006, less than four months before the birth of the child. This charge was pending at the time of the trial in this case. Given defendant's recidivism, there was a reasonable expectation that defendant would be incarcerated for a lengthy period of time, that he would again engage in criminal activity, and that he would be unable to provide the stable parenting the child needed within a reasonable time considering the child's age.² The trial court did not err on finding that subsection 19b(3)(g) had been established by clear and convincing evidence.

The evidence also showed that there was a reasonable likelihood that the child would be harmed if placed in respondent's care. The record amply demonstrated that respondent has a history of anger control problems, criminal behavior leading to incarceration, and substance abuse. His history of domestic violence against the child's mother and his involvement with drugs and criminal activity posed a substantial risk of harm to the child. The trial court did not clearly err in finding that subsection 19b(3)(j) had been established by clear and convincing evidence.

Any error assigned by respondent with regard to the trial court's finding that MCL 712A.19b(3)(n)(ii) provided grounds for terminating appellant's parental rights is harmless given the evidence that plainly established the other two statutory grounds. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Once a petitioner establishes at least one statutory ground for termination, MCL 712A.19b(5) requires termination unless the court finds that termination is clearly not in the child's best interest. *In re Trejo*, 462 Mich 341, 364-365; 612 NW2d 407 (2000). Respondent has not established any basis for disturbing the trial court's assessment of the child's best interest. The whole record showed that, despite respondent's claim that he wanted to parent his child, there was absolutely no evidence to lead the court to conclude that termination was clearly not in the child's best interest. Respondent was facing a felony drug charge, was an habitual offender, and had a history of drug abuse, domestic violence, and inability to control his anger. The court noted the need for the child to have a stable environment. The court did not clearly err in finding that termination of respondent's parental rights was in the child's best interest.

² Respondent states in his brief that he was not given the opportunity to engage in court-ordered services. However, it is clearly established that, if petitioner requests termination in the initial petition, the need to develop and consider a case plan to reunite the family is eliminated, and the trial court can terminate parental rights at the initial dispositional hearing. MCL 712A.19b(4) and MCR 3.977(E).

Affirmed.

/s/ Peter D. O'Connell
/s/ William B. Murphy
/s/ E. Thomas Fitzgerald