

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ANGELO BORGAIS and
ANTHONY BORGAIS, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RICARDO MONTALVO,

Respondent-Appellant,

and

MELISSA BORGAIS and JESUS RAMIREZ,

Respondent.

UNPUBLISHED

July 6, 2006

No. 267536

Calhoun Circuit Court

Family Division

LC No. 05-000319-NA

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

PER CURIAM.

Respondent Ricardo Montalvo appeals as of right from the trial court order terminating his parental rights to Angelo Borgais under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

I. FACTS

Respondent Montalvo had his parental rights terminated to his minor child, Angelo, after the child's mother, Melissa Borgais, was arrested for driving under the influence with Angelo in the car.¹ At the termination hearing, respondent was given a case service plan by which to abide. Respondent was required to submit to a psychological evaluation but arrived late so it could not be completed. Respondent was supposed to follow up the appointment to finish the evaluation but never did. Ms. Latimer, the foster care worker assigned to the case, recommended the

¹ Borgais' rights were terminated at the same time as respondent Montalvo's but Borgais is not a party to this appeal.

respondent for a substance abuse assessment but respondent never completed it. Accordingly, the respondent did not receive any treatment and made no progress in the area of substance abuse. Ms. Latimer requested that respondent establish his paternity of Angelo but respondent also failed to complete this.

Respondent alleged he was a disc jockey and that he did other odd jobs for employment but he never obtained any permanent employment. Respondent had an apartment for a short time and after lived in a motel before being incarcerated in the months preceding the trial. Respondent did not have any housing secured for Angelo. Respondent did visit with Angelo and both looked forward to the visits; however, these visits were terminated when Ms. Latimer discovered there were four counties with warrants for respondent's arrest for "false pretenses." Respondent testified that he was in custody for a period of three weeks in two different cities to "take care" of his warrants which caused him to miss his psychological evaluation follow up appointment as well as his drug screen assessment appointments. Respondent contends the warrants were the main reason he did not comply with the service plan set out for him.

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.* Regard is given to the special ability of the trial court to judge the credibility of the witnesses who appeared before it. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

B. Analysis

The trial court did not clearly err in finding that statutory ground for termination of respondent's parental rights had been established by clear and convincing evidence. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 357; 612 NW2d 407 (2000). Respondent's parental rights were terminated pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We agree that the trial court properly terminated respondent's parental rights pursuant to MCL 712A.19b(3)(g). Since only one statutory ground needs to be found, we will not address the merits of subsections 3(c)(i) and 3(j). Subsection (g) provides, 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:

* * *

(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)(g).]

Respondent failed to provide proper care and custody for Angelo and there was no reasonable likelihood that he would be able to do so within a reasonable time considering Angelo's age. Respondent did not have a home for Angelo nor the means to support Angelo at any time during the pendency of the case. Respondent's failure to participate in the services required by the treatment plan evidenced his inability to provide Angelo with proper care and custody within a reasonable time. Respondent made no progress in evaluating his psychological condition, drug use or paternity of Angelo in the nine months from adjudication to trial and there was no indication that he would be able to do so within the near future. Therefore, the trial court did not clearly err in finding that a statutory ground was established by clear and convincing evidence under subsection (g) and that respondent's parental rights should accordingly be terminated.

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, supra* at 352-354. 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

We also find that the trial court did not clearly err in its best interests determination. MCL 712A.19b(5). Although it appeared that respondent and Angelo were attached to one another, their visits were interrupted. Respondent failed to establish paternity which caused Ms. Latimer to suspend visitations and then respondent was incarcerated, making visits impossible. Moreover, respondent's complete failure to participate in the treatment plan displayed a lack of commitment to Angelo. The lack of commitment, coupled with his inability to provide Angelo with proper care and custody within a reasonable time, support the trial court's best interests determination.

Affirmed.

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