

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of ADAM KEITH PAPOI, JR., and  
JOHNATHAN M. GIRDLEY, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ADAM PAPOI, SR.,

Respondent-Appellant,

and

CAROLENE CAMPESE GIRDLEY,

Respondent.

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UNPUBLISHED

June 12, 2007

No. 275356

Berrien Circuit Court

Family Division

LC No. 2004-000106-NA

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

MEMORANDUM.

Respondent Adam Papoi, Sr., appeals as of right from an order terminating his parental rights to the minor children under MCL 712A.19b(3)(a)(ii) and (g). We affirm.

The existence of a statutory ground for termination must be proven by clear and convincing evidence. MCR 3.977(F)(1)(b) and (G)(3); *In re Miller*, 433 Mich 331, 344-345; 445 NW2d 161 (1989). The trial court's findings of fact are reviewed for clear error. MCR 3.977(J); *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996). Once a statutory ground for termination is established, "the court shall order termination of parental rights . . . unless the court finds that termination . . . is clearly not in the child's best interests." MCL 712A.19b(5). That determination is to be made from evidence on the whole record and is reviewed for clear error. *In re Trejo*, 462 Mich 341, 353-354, 356; 612 NW2d 407 (2000).

Papoi's parental rights were terminated under MCL 712A.19b(3)(a)(ii) and (g):

(a) The child has been deserted under either of the following circumstances:

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(ii) The parent of the child has deserted the child for 91 or more days and has not sought custody of the child during that period.

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(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 age of the child.

Papoi argues that the evidence did not support termination under these grounds because he did not abandon or neglect the children, but merely failed to establish paternity and was confused about his responsibilities. We disagree.

At the initial dispositional hearing in November 2004, services were not made available to Papoi because he was only a putative father. He was advised that he could seek community services on his own, but did not do so.

At the July 10, 2006, termination hearing, Papoi inquired about his parental rights and represented that he was willing to submit to drug screens, participate in counseling, attend parenting classes, and do whatever else was necessary. The court advised Papoi to seek any services that might be available and also ordered petitioner to provide services to Papoi, to “give him every opportunity to show that he is in fact meaning what he says.”

On August 16, 2006, the trial court determined that the children were not an issue of the mother’s marriage, and that her ex-husband did not have standing to seek custody. Although Papoi did not appear, the court granted Papoi 30 days to acknowledge paternity and negotiate a case service plan addressing housing, employment, substance abuse, and criminality. No visitation would be provided until he complied. The court warned that if Papoi “fails to do that, then what I would expect to do is to reconsider the motion to terminate his parental rights at a hearing 91 days hence.”

At a hearing on December 13, 2006, the caseworker testified that Papoi failed to comply with the court’s order. Previously, on August 23, 2006, Papoi appeared to sign an affidavit of parentage, but was not permitted to do so then because he had no photo identification. Papoi claimed that he was in the process of obtaining a state identification card, but he never produced one and the affidavit was never signed. Papoi did not obtain any of the evaluations requested by the caseworker, and submitted to only two out of four drugs screens, both of which were positive for marijuana, including a screen submitted one day before the final hearing.

In sum, during the 119-day period between August 16 and December 13, 2006, Papoi failed to establish paternity or take other steps in furtherance of reunification. Thus, there was clear and convincing evidence that Papoi deserted his children for 91 or more days, and failed to seek custody during that time period. A statutory ground for termination was established under § 19b(3)(a)(ii).

For the same reasons, there was clear and convincing evidence that Papoi failed to provide proper care and custody for the children. Additionally, considering Papoi's complete failure to address his problems in the time allotted, the trial court did not clearly err in finding that there was no reasonable expectation that Papoi would be able to provide reasonable care and custody within a reasonable time, considering the ages of the children. Thus, a statutory basis for termination was also established under § 19b(3)(g).

Finally, Papoi had not visited the children since they were taken into care in September 2004, and the evidence showed that the children "blossomed" while in foster care. Because the evidence did not clearly show that termination of Papoi's parental rights was not in the children's best interests, the trial court did not err in terminating Papoi's parental rights to the children. *In re Trejo, supra*.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ David H. Sawyer

/s/ Peter D. O'Connell