

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SHU-NIA COLE, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CHARLES KINGSLEY,

Respondent-Appellant,

and

KATRINA COLE,

Respondent.

UNPUBLISHED

June 12, 2007

No. 274876

Kent Circuit Court

Family Division

LC No. 05-053003-NA

In the Matter of ANTHONY COLE, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CHARLES KINGSLEY,

Respondent-Appellant,

and

KATRINA COLE,

Respondent.

No. 274877

Kent Circuit Court

Family Division

LC No. 05-053011-NA

Before: Davis, P.J., and Hoekstra and Donofrio, JJ.

PER CURIAM.

In these consolidated appeals, respondent-appellant appeals as of right from the order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We affirm.

Termination of parental rights is appropriate where petitioner proves by clear and convincing evidence at least one ground for termination. *In re Trejo Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000). Once this has occurred, the trial court shall terminate parental rights unless it finds that the termination is clearly not in the best interests of the children. *Id.* at 354. This Court reviews the trial court's findings under the clearly erroneous standard. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

The trial court clearly erred in terminating respondent-appellant's parental rights under MCL 712A.19b(3)(c)(i). The record indicates that the sole "condition" concerning respondent-appellant that led to the adjudication was his incarceration. However, at the time of the termination hearing, respondent-appellant was no longer incarcerated. Because this condition no longer existed, termination was not warranted under this subsection. However, such error was harmless because, as will be discussed below, the trial court did not clearly err in relying on MCL 712A.19b(3)(c)(ii), (g), and (j). *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Although the condition that led to adjudication no longer existed, another condition, respondent-appellant's substance abuse, existed that caused the children to come within the court's jurisdiction. MCL 712A.19b(3)(c)(ii). Respondent-appellant contends that no services were provided to him to address this problem. However, respondent-appellant was referred for a drug assessment and provided with random drug screens. Reasonable efforts were made to preserve and reunify the family, but respondent-appellant failed to take full advantage of the services. The record reveals that despite the provision of services, respondent-appellant relapsed into drug usage twice during the pendency of this case. Respondent-appellant argues that after his second relapse, petitioner did not offer any services to him from June 2006 until the termination hearing. Contrary to respondent-appellant's contention, he was offered drug screens in June, July, and August. Petitioner was not required to provide services once the termination petition was filed in August 2006. In addition, the fact that respondent-appellant sought his own treatment does not compel the conclusion that petitioner's efforts toward reunification were not reasonable. *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005).

Although respondent-appellant had been "clean" for approximately three months at the time of the termination hearing, Dr. Thomas Spahn testified that respondent-appellant needed to demonstrate sobriety for at least nine months. Dr. Spahn expressed concern that respondent-appellant did not accept personal responsibility for his drug use. Testimony also revealed that the children's mother was a "trigger" for respondent-appellant's substance abuse, and that he had had contact with her on a couple of occasions. Given respondent-appellant's short period of sobriety, his history of relapsing into substance abuse, and his recent contact with the children's mother, the trial court did not clearly err in finding that this condition, respondent-appellant's substance abuse, continued to exist and that there was no reasonable likelihood that the condition would be rectified within a reasonable time considering the children's ages.

Such evidence also supports the trial court's finding that respondent-appellant failed to provide proper care for his children and that he was unable to provide such care within a reasonable time considering the children's ages. MCL 712A.19b(3)(g). Finally, respondent-appellant's substance abuse posed a risk of harm to his children. MCL 712A.19b(3)(j).

Furthermore, the trial court did not clearly err in its best interests determination. While the trial court is not required to make a finding that termination is in the children's best interests, MCL 712A.19b(5), it "is permissible if the evidence justifies it." *In re Gazella*, 264 Mich App 668, 677-678; 692 NW2d 708 (2005). The trial court acknowledged that respondent-appellant loves his children and that they love him. But, as noted by the trial court, these children needed more than respondent-appellant's love. They needed a father who was able to provide them with a safe and stable environment. Given that respondent-appellant's substance abuse prohibited him from properly parenting his children, that he would need to demonstrate his sobriety for at least nine months before he started demonstrating that he could properly parent these children, and that these children were doing well in their relative placement, the trial court did not clearly err in finding that termination was in the children's best interests.

Affirmed.

/s/ Alton T. Davis
/s/ Joel P. Hoekstra
/s/ Pat M. Donofrio