

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ROBERT DALE MICH,
JENNIFER MICH, SCOTT MICH, and CASEY
MICH, Minors.

DEPARMENT OF SOCIAL SERVICES,

Petitioner-Appellee,

v

DALE MICH,

Respondent-Appellant

and

KELLY MICH, DERRICK WHITING,
and MARK CHEMO,

Respondents.

Before: Michael J. Kelly, P.J., and Reilly and Jansen, JJ.

PER CURIAM.

The probate court terminated respondent's parental rights to his minor children pursuant to MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i) [conditions leading to the adjudication continue to exist], MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g) [failure to provide proper care or custody], and MCL 712A.19b(3)(h); MSA 27.3178(598.19b)(3)(h) [incarceration such that the children will be deprived of a normal home for more than two years].¹ We affirm.

Defendant first argues that the probate court clearly erred in terminating his parental rights pursuant to MCL 712A.19b(3)(c)(i) and (3)(g); MSA 27.3178(598.19b)(3)(c)(i) and (3)(g). To support this contention, defendant merely summarizes testimony that was presented at the termination

hearing. He has failed to cite authority in support of his position. Therefore, this

issue is not preserved for appeal. *Mitchel v Dahlberg*, 215 Mich App 718, 728; 547 NW2d 74 (1996); *Singerman v Municipal Service Bureau, Inc*, 211 Mich App 678, 684; 536 NW2d 547 (1995).

However, at least one statutory ground for termination was supported by clear and convincing evidence on the record. A basis for termination exist where the parent, regardless of intent, fails to provide proper care or custody for his children and there is no reasonable expectation that the parent will be able to provide proper care and custody with a reasonable time considering the ages of the children. MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g). At the time of the termination hearing in 1995, respondent had been incarcerated since September 1994 and was an admitted cocaine addict. The record established that respondent had very little personal contact with his children while he was in jail, and only wrote to them on three occasions. There is no indication that the Mich children received any support from respondent, other than gifts of money and candy on holidays. Even then, respondent's father, Francis Mich, gave these gifts to the children and intended to subtract their value from respondent's possible future inheritance. Further testimony established that respondent failed to comply with the requirements of his agency agreement, which included participation in substance abuse treatment programs. Of greatest significance, respondent neglected to make suitable arrangements for custody during the term of his incarceration, and instead left the children with their severely alcoholic mother, who was plainly unable to care for them. No evidence showed that respondent was able, or willing, to provide for proper care and custody of his children within a reasonable time considering their ages and immediate needs. In light of this evidence, we find clear and convincing support for termination, MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g).

Next, respondent argues that termination of his parental rights pursuant to MCL 712A.19b(3)(h); MSA 27.3178(598.19b)(h) violated the Double Jeopardy Clauses of the federal and state constitutions, US Const, Am V; Const 1963, art 1, § 15, because it constituted a second punishment for the offenses for which he was incarcerated. See *United States v Halper*, 490 US 435, 440; 109 S Ct 1892; 104 L Ed 2d 487, 496 (1989). We need not address this issue, because it is apparent to us that termination of respondent's parental rights pursuant to MCL 712A.19b(3)(h); MSA 27.3178(598.19b)(3)(h) was erroneous. This subsection permits the probate court to terminate a parent's parental rights upon finding that

[t]he parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, 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.

The probate court must determine whether the child will be deprived of a normal home for two years in the future, not whether past incarceration has already deprived the child of a normal home. *In re Perry*, 193 Mich App 648, 650; 484 NW2d 768 (1992); *In re Neal*, 163 Mich App 522, 527; 414 NW2d 916 (1987).

Here, in making its finding as to MCL 712A.19b(3)(h); MSA 27.3178(598.19b)(3)(h), the probate court looked to the length of respondent's sentence, which was a minimum of three years. Thus, it found that respondent's children would be deprived of a normal home for more than two years due to respondent's incarceration. However, the probate court was required to look to the future, that is from the date of its finding on this factor, to determine whether respondent's children would be deprived of a normal home for more than two years. When the trial court entered its order terminating respondent's parental rights, there was a possibility that he would be released in approximately sixteen months. Therefore, the probate court's finding on this factor was not supported by clear and convincing evidence and was clearly erroneous. This error was harmless, because it was still proper to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g). See *Perry, supra* at 651. It is not necessary to address respondent's double jeopardy argument, as it relates solely to claimed error under MCL 712A.19b(3)(h); MSA 27.3178(598.19b)(h), which was erroneously relied upon below as a basis for termination.

Affirmed.

/s/ Michael J. Kelly
/s/ Maureen Pulte Reilly
/s/ Kathleen Jansen

¹ The probate court also terminated the rights of the Mich children's mother and the fathers or putative fathers of other children, but those parents are not involved in this appeal.