

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CAYLA ELIZABETH and DEREK
EUGENE MCVICKER, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

FLOYD EUGENE MCVICKER,

Respondent-Appellant,

and

KATHY SWICK SHOFFNER, BILL VERMOLYN
and BARRY MOORE,

Respondents.

Before: Young Jr., P.J., and Wahls and Jansen, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right the juvenile court order terminating his parental rights to the minor children. We affirm.

The juvenile court erred in terminating respondent-appellant's parental rights under MCL 712A.19b(3)(h); MSA 27.3178(598.19b)(3)(h), because there was no clear and convincing evidence that respondent-appellant would be imprisoned for a period exceeding two years. MCR 5.974(I), *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Nonetheless, clear and convincing evidence was presented showing that termination was proper under MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g). See *In re Perry*, 193 Mich App 648, 650-651; 484 NW2d 768 (1992).

Further, respondent-appellant failed to show that termination of his

parental rights was clearly not in the children's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470; 564 NW2d 156 (1997). Thus, the juvenile court did not err in terminating respondent-appellant's parental rights. *Id.*

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Myron H. Wahls

/s/ Kathleen Jansen