STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of MAKENZIE SHYANN AUSTIN, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JAMES GRADY WHITAKER,

Respondent-Appellant.

UNPUBLISHED
August 15, 2000

No. 223339
Jackson Circuit Court
Family Division
LC No. 94-018092-NA

Before: Murphy, P.J., and Kelly and Talbot, JJ.

PER CURIAM.

Respondent-Appellant ("respondent") appeals as of right from a family court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(g) and (j); MSA 27.3178(598.19b)(3)(g) and (j). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, respondent argues that clear and convincing evidence was not presented regarding either statutory basis, and that termination was clearly not in the child's best interest. We review a family court's decision to terminate parental rights in its entirety for clear error. *In re Hall-Smith*, 222 Mich App 470, 473; 564 NW2d 156 (1997). Under § 19b(3)(b)(g), the petitioner must show that respondent, without regard to intent, failed to provide proper care and custody and there exists no reasonable likelihood of change within a reasonable amount of time considering the age of the child. We find no clear error in the trial court's findings regarding this statutory basis, notwithstanding respondent's evidence of belated improvement and the Family Independence Agency's less than optimal provision of services. See *In re Hamlet*, 225 Mich App 505; 571 NW2d 750 (1997). As our Supreme Court stated in *In re Miller*, 433 Mich 331, 345; 445 NW2d 161 (1989), although a parent who produces some evidence of improvement in parental fitness has met the burden of going forward with the evidence, "[m]eeting the burden of production . . . does not mean that the parent has necessarily

prevailed." Here, respondent's evidence of belated improvement does not overcome the clear and convincing evidence that respondent has not provided and will not provide proper care and custody of the child within a reasonable time considering her age.

We agree with respondent that clear and convincing evidence was not presented to support termination under § 19b(3)(j). Notwithstanding respondent's immaturity and history of domestic violence and assaultive behavior, no evidence was presented that he was directly abusive toward the child or physically harmed her in any way. Nonetheless, because a court may order termination of a parent's rights when clear and convincing evidence establishes at least one statutory ground, MCL 712A.19b(3); MSA 27.3178(598.19b)(3); MCR 5.974(F)(3), and sufficient evidence supported termination in this case under § 19b(3)(g), the lack of evidence as to § 19b(3)(j) does not invalidate the termination order.

Pursuant to MCL 712A.19b(5); MSA 27.3178(598.19b)(5) termination of parental rights was required unless the court found that termination was clearly not in the child's best interest. *In re Trejo*, ___ Mich ___; ___ NW2d ___ (No. 112528, issued 7/5/2000), slip op p 27. On this record, we do not conclude that the court's finding was clearly erroneous or that termination was clearly not in the child 's best interest. Accordingly, the court did not err in terminating respondent's parental right to the children. *Id.*

Affirmed.

/s/ William B. Murphy
/s/ Michael J. Kelly
/s/ Michael J. Talbot