

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of JOSEPH LAVON PARKER, JR.,  
Minor.

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FAMILY INDEPENDENCE AGENCY,  
  
Petitioner -Appellee,

v

JOSEPH PARKER,

Respondent -Appellant.

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UNPUBLISHED  
December 12, 2000

No. 226441  
Ingham Circuit Court  
Family Division  
LC No. 00-031841-NA

Before: O’Connell, P.J., and Zahra and B. B. MacKenzie,\* JJ.

PER CURIAM.

Respondent appeals as of right from the order of the Ingham Circuit Court, Family Division, that terminated his parental rights to Joseph Lavon Parker, Jr., (dob 2/17/95), pursuant to MCL 712A.19b(3)(h); MSA 27.3178(598.19b)(3)(h). We affirm.

Respondent argues on appeal that clear and convincing evidence was not presented regarding § 19b(3)(h). This Court reviews a decision terminating parental rights for clear error. MCR 5.974(I); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Reversal is appropriate only where the decision is found to be “more than just maybe or probably wrong.” *Id.*, quoting *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). The family court’s decision that a ground for termination has been proven by clear and convincing evidence, and, where appropriate, the court’s decision regarding the children’s best interest, are reviewed for clear error. *Trejo, supra* at 357.

Termination was supported in this case under § 19b(3)(h). Irrefutable evidence established that respondent had been incarcerated since Joseph was one-year-old and that his earliest parole date was March 2002. Thus, even without considering respondent’s incarceration prior to termination of his parental rights, his future incarceration will deprive the child of a normal home for at least another two years. See *In re Neal*, 163 Mich App 522, 527; 414 NW2d

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

916 (1987); *In re Perry*, 193 Mich App 648, 650; 484 NW2d 768 (1992). We expressly reject respondent's contention that the child will not be deprived of a "normal home," given that he is living in a good, stable home with respondent's father. Foster care provided by a relative while a parent is incarcerated does not constitute a "normal home" for purposes of § 19b(3)(h). Further, the evidence established that respondent had no role in securing this familial foster care placement, rather it was secured at the behest of the agency upon court involvement.

Respondent further contends that petitioner did not prove that he had failed to provide proper care and custody for the child or that he could not reasonably be expected to do so within a reasonable time considering the child's age. Respondent points to his own testimony that, during his incarceration, he had provided \$500 to \$600 of financial support and sent toys and gifts through the Salvation Army to the child. Even assuming that this testimony was sufficient to demonstrate that respondent provided support, it cannot be ignored that when respondent was responsible for his child's care prior to his incarceration, his life revolved around various illegal activities, including drug trafficking. *In re Perry, supra*. Further, although the child initially came within the jurisdiction of the court because of his mother's alcohol abuse and inability to provide stable housing or care, the evidence established that respondent failed to adequately protect the child from his mother's neglect.

Under the circumstances, we find no clear error in the family court's finding that petitioner had proven § 19b(3)(h) by clear and convincing evidence. Neither do we find clear error in the family court's finding that no showing was made that termination was not in the child's best interests. Accordingly, termination was mandatory pursuant to MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *Trejo, supra* at 344, 352-354.

Affirmed.

/s/ Peter D. O'Connell

/s/ Brian K. Zahra

/s/ Barbara B. Mackenzie