

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of LEON McPHERSON, III, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LEON McPHERSON, JR,

Respondent-Appellant.

UNPUBLISHED

December 26, 2000

No. 227226

Genesee Circuit Court

Family Division

LC No. 99-111829-NA

Before: Griffin, P.J., and Holbrook, Jr., and Murphy, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating his parental rights to his eight-month-old son pursuant to MCL 712A.19b(3)(a)(ii) and (g); MSA 27.3178(598.19b)(3)(a)(ii) and (g). We affirm.

A two-prong test applies to a decision of the family division of circuit court to terminate parental rights. "First, the probate court must find that at least one of the statutory grounds for termination, MCL 712A.19b; MSA 27.3178(598.19b), has been met by clear and convincing evidence." *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). We review the family court's decision for clear error. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake had been made. *Miller, supra*. Once a statutory ground for termination of parental rights is established, the court must terminate parental rights unless it finds that termination of parental rights to the child is clearly not in the child's best interest. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); MCR 5.974(E)(2); *In re Trejo*, 462 Mich 341, 364-365; 612 NW2d 407 (2000).

Respondent first challenges the trial court's findings that clear and convincing evidence supported termination under the identified statutory provisions. Those subsections, MCL 712A.19b(3)(a)(ii) and (g); MSA 27.3178(598.19b)(3)(a)(ii) and (g), provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(a) The child has been deserted under either of the following circumstances:

* * *

(ii) The child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

Respondent argues that termination is improper and cannot be justified in this case on the rationale that his actions of self-improvement were "too little - too late." Respondent contends that the reasons for his demonstrated lack of involvement in the child's life primarily relate to the affirmative efforts of FIA employees to exclude him from court proceedings and from services provided to the child's mother. Contrary to respondent's arguments, however, at most the FIA employees informed respondent of various court orders mandating no contact with the child's mother and no visitation with the child, and advised him of the possible consequence of violation of those orders.

On review of the record it appears clear that respondent freely elected to avoid presenting himself to the trial court to answer questions regarding the alleged domestic abuse. Despite testimony evidencing respondent's seemingly sincere concern for the child's circumstances during contacts and phone conversations with various workers, respondent failed to follow through with action that would have supported his professed intention to deal with the issues of domestic abuse and tangibly demonstrated his announced desire to initiate contact with his child. Specifically, as the trial court found, when advised by the foster care worker that he should both meet with the worker and contact his attorney in order to initiate efforts to lift the court orders, respondent not only failed to appear for scheduled meetings but also failed to seek assistance from his attorney.

The foster care worker testified that he spoke directly with respondent about the orders and that he clearly informed respondent that discontinuance of the "no-visitation" was conditioned on respondent answering to the court. He further testified that he provided respondent with respondent's attorney's telephone number, advising him to contact his attorney and request that his attorney file a motion for rehearing on the issue of visitation. The foster care worker testified that because respondent failed to take any steps to contact his attorney, to go

back into court or to request visitation, he believed that he was justified in filing the petition to terminate parental rights based on abandonment for more than 91 days.

We conclude that the trial court did not clearly err in relying on subsection (3)(a)(ii) and terminating respondent's parental rights on the ground that respondent deserted the child for more than 91 days. Clear and convincing evidence supporting one statutory ground for termination is all that is required, thus we need not address subsection (3)(g).

Respondent next challenges the court's determination concerning the child's best interests.

Contrary to respondent's contention, the trial court did not impose on respondent a burden of producing evidence that termination was not in the child's best interests. Rather, the court appropriately considered and weighed all the evidence relative to the child's best interests. In so doing, the court concluded that testimony concerning the successful attachment of the child to the foster mother was dispositive, outweighing the father's testimony that he believed the child would benefit from placement with him because his three other children would help the child socially.

Review of the entire record demonstrates that the child has been with the foster mother his whole life, taken from his natural mother five days after birth because of her drug use, and kept away from respondent who was charged, and later jailed pending trial, in connection with various incidents of domestic abuse. Contrary to respondent's argument that he cannot be blamed for his lack of involvement in the child's life, the FIA did not entirely keep him from involvement in services, nor did workers threaten him with arrest if he appeared at court proceedings. In fact, respondent was advised to attend a meeting to set up a service plan and arrange appearance before the court. Respondent never appeared for this meeting, and initiated no efforts through the court to resolve these issues. Under these circumstances, the court did not abuse its discretion in failing to find that termination was clearly not in the child's best interests.

Affirmed.

/s/ Richard Allen Griffin
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy