STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of H.L.M., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LAWRENCE J. MEEUWENBERG,

Respondent-Appellant,

and

LINDA HOLSTER,

Respondent.

UNPUBLISHED
April 30, 2002

No. 235790
Delta Circuit Court
Family Division
LC Nos. 98-000120-NA

In the Matter of L.J.M., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LAWRENCE J. MEEUWENBERG,

Respondent-Appellant,

and

LINDA HOLSTER,

Respondent.

No. 235791
Delta Circuit Court
Family Division
LC No. 98-0001121-NA

Before: Owens, P.J., and Markey and Murray, JJ.

PER CURIAM.

In these consolidated appeals, respondent-appellant Lawrence Meeuwenberg appeals by right from the trial court's order terminating his parental rights to the minor children under MCL 712A.19b(3)(g), (h) and (j). We affirm.

Respondent raises several issues relating to the jury's determination that the trial court had jurisdiction over the children. First, our review of the record demonstrates that the trial court properly instructed the jury in accordance with the applicable court rules, MCR 5.911(C) and MCR 2.516. Even though only five out of six jurors in a child protection proceeding need agree in order to return a verdict, MCR 5.911(C)(2)(b), in this case the jury unanimously agreed that respondent's home was unfit for the children. Respondent has cited no authority for his contention that the jury was required to unanimously agree regarding the specific facts for its general decision, nor do we believe that that is the law. Thus, we find that the trial court did not abuse its discretion in refusing to instruct as respondent requested.

Next, respondent argues that the trial court erred in denying his motion for directed verdict regarding whether the court had jurisdiction over the children. In deciding this issue, we must determine whether a preponderance of legally admissible evidence demonstrates that factual support exists for a ground permitting judicial intervention. *In re AMB*, 248 Mich App 144, 176-177; 640 NW2d 262 (2001).

A directed verdict was not warranted. Respondent essentially argues that if the mother had remained sober, he would have retained parental rights to his children. While this may be true, it is not dispositive on these facts. Although respondent relies on *In the Matter of Curry*, 113 Mich App 821; 318 NW2d 567 (1982), this case presents a very different situation. In *Curry*, *supra*, the incarcerated parents had entrusted the minor children to their grandmothers. There was no evidence that the grandmothers' homes were unfit. *Curry, supra* at 823-824. A panel of this Court noted that, "[u]ntil there is a demonstration that the person entrusted with the care of the child by that child's parent is either unwilling or incapable of providing for the health, maintenance, and well being of the child, the state should be unwilling to interfere." *Curry, supra* at 826-827. Here, respondent did nothing to provide for the care and custody of the children although he was aware of and contributed to the unfitness of their home. When he was not incarcerated, respondent was often intoxicated in the children's presence, he was arrested in their presence for violating a PPO involving respondent mother, and he had been incarcerated and unable to provide for them much of their lives. The children had not developed an attachment to respondent, and there is no hope of their doing so within a reasonable time because he will be imprisoned until at least October 14, 2004. Hence, the trial court properly concluded that the evidence amply enabled the jury to determine by a preponderance of the evidence that the trial court had jurisdiction and denied the motion for directed verdict.

In addition, we disagree with respondent's claim that the evidence at the adjudicatory trial was limited by the statute of limitations for personal actions. MCL 600.5813. Child protection proceedings are "proceedings" brought by petition, not "actions" brought by civil complaint. MCR 5.101.

The trial court did not clearly err in finding that at least one statutory ground for termination was established by clear and convincing evidence. MCR 5.974(I); *In re Trejo*, 462 Mich 341, 350, 352, 356-357; 612 NW2d 407 (2000); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondent's argument that his parental rights should not be terminated because there is no "logical connection" between his behavior and the absence of a fit home for the children is without merit. There was sufficient legally admissible evidence that respondent had not been able to remain sober or law-abiding during the entire period of the court's involvement with the children, and respondent's earliest release date from prison is not until October 2004.

Additionally, the evidence did not show that termination of respondent's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo, supra* at 356-357. Respondent had been in and out of the children's lives for years, and there was evidence that they had no attachment to him. The trial court did not err in terminating respondent's parental rights to the children.

We affirm.

/s/ Donald S. Owens
/s/ Jane E. Markey
/s/ Christopher M. Murray