

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DOMINQUE ISAAC BERMEIRE
JOHNSON, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MICHAEL ANTHONY JOHNSON,

Respondent-Appellant,

and

TERRA LATESE POPE,

Respondent.

UNPUBLISHED

January 27, 2004

No. 248502

Macomb Circuit Court

Family Division

LC No. 01-051870-NA

Before: Donofrio, P.J., and Griffin and Jansen, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from the trial court's order terminating his parental rights to the minor child under MCL 712A.19b(3)(g). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E)(1)(b).

The trial court did not clearly err in finding that the statutory ground for termination was established by clear and convincing evidence. MCR 5.974(I), now MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). When the child first came into care, at the age of eight, respondent-appellant had served seven years of an eight to forty-year sentence for armed robbery and aggravated assault. At the termination hearing, respondent-appellant testified that he had been denied parole a month before the hearing and claimed that his parole had been postponed because of his enrollment in an assault offenders program required of him by the parent-agency agreement. Respondent-appellant expected that his next parole hearing would be held before the end of the year and stated that there was a good chance he would be released. Respondent-appellant, however, did not provide the court with any plans regarding how he would take care of the child if in fact he was paroled. No other testimony was presented to the court that would give an indication of when he might be paroled. The trial court found that respondent-appellant had complied to the best of his ability with the parent-agency agreement,

but the court did not know whether respondent-appellant could provide proper care and custody for the child within a reasonable time.

Based on the length of respondent-appellant's sentence, the uncertainty of parole, the lack of a plan for the care of the child both during and after release from prison, the trial court did not clearly err in determining that respondent-appellant had failed to provide care or custody of the minor child and there was not a reasonable likelihood that he could do so within a reasonable time given the child's age.

Further, the evidence did not show that termination of respondent-appellant's parental rights was clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Respondent-appellant had been incarcerated since the child was one year old. Although there had been a few telephone calls and a few visits early on, the only contact between respondent-appellant and the minor child since that time was through the letters that respondent-appellant sent to the child. The court's finding regarding the child's best interests was not clearly erroneous.

Affirmed.

/s/ Pat M. Donofrio
/s/ Richard Allen Griffin
/s/ Kathleen Jansen