

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MISSY LEANNE SMEDBERG,
a/k/a MISSY LEANNE HARDWICK, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

WALTER SMEDBERG,

Respondent-Appellant.

UNPUBLISHED

May 13, 2004

No. 251461

Delta Circuit Court

Family Division

LC No. 02-000033-NA

Before: Gage, P.J., and O'Connell and Zahra, JJ.

PER CURIAM.

Respondent appeals of right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(a)(ii), (g), and (j). We affirm.

I. Facts and Procedure

During Grace Hardwick's marriage to another man, she became pregnant with respondent's child. The minor child was born while Hardwick was still married. Later, because of Hardwick's lack of parenting skills, the child was placed in foster care, and respondent was allowed supervised visitation. On June 12, 2002, the trial court gave respondent, as the putative father, sixty days to establish paternity. On June 28, 2002, respondent's attorney told the trial court that respondent could not perfect his legal parental rights to the child until Hardwick obtained a divorce. Hardwick obtained a divorce, and the divorce judgment acknowledged that the minor child was not an issue of the marriage. Respondent and Hardwick began living together and eventually married. On December 18, 2002, the trial court terminated Hardwick's parental rights, in part because she was living with respondent, who had yet to establish his paternity. Meanwhile, respondent did not sign paternity papers for the child, allegedly because he wanted to have a DNA test. On March 11, 2003, the trial court required respondent to appear in court to state his intent with regard to establishing paternity and gave him until 4:00 p.m. that day as a last chance to file the paternity papers. Respondent signed and filed the paternity papers that day. On May 12, 2003, a petition was filed to terminate respondent's parental rights because he had never paid child support, had never requested visitation or contacted the FIA or the foster family to inquire about the child's welfare, failed to follow a substance abuse plan, and continued to reside with Hardwick, whose parental rights had been terminated. The trial court

held several termination hearings and, on July 24, 2003, terminated respondent's parental rights under MCL 712A.19b(3)(a)(ii), (g), and (j).

II. Analysis

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re IEM*, 233 Mich App 438, 450; 592 NW2d 751 (1999). The trial court's decision regarding termination is reviewed for clear error. *Id.* at 451. A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made. *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000).

Respondent argues that the trial court clearly erred in finding that the statutory bases for termination were proven by clear and convincing evidence. The trial court's first ground for terminating respondent's parental rights was that he had deserted the child for ninety-one days or more and had not sought custody during that period. MCL 712A.19b(3)(a)(ii). We reject respondent's argument that this finding "flies in the face of all the evidence of record." Respondent testified that he had not seen the child for over a year, had never called the FIA to inquire about the child, and had never paid child support. The evidence establishes that respondent was extremely negligent in establishing himself as the child's legal father and a period of more than ninety-one days passed where respondent did not visit the child, inquire after the child's well being, support the child, or seek custody of the child. As a result, the child, who was approximately 1½ years old at the time of the termination hearing, did not know respondent at all. Despite respondent's assertion to the contrary, there is no evidence that the court or the FIA prohibited him from visiting the child during this period.

The trial court's second ground for terminating respondent's parental rights was that respondent failed to provide proper care and custody for the child and there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable period of time. MCL 712A.19b(3)(g). The third ground for terminating respondent's parental rights was that there was a reasonable likelihood that the child would be harmed if she lived in respondent's home. MCL 712A.19b(3)(j). The record shows that respondent acknowledged paternity approximately nine months after the deadline set by the trial court, and only did so when prompted by the court. Respondent's failure to perfect his right as the legal father of the minor child with no rational reason for this delay shows a failure to provide proper care or custody. The evidence also supports the trial court's finding that respondent would not provide proper care or custody within a reasonable time and that the child would be harmed if placed in respondent's custody. Respondent was married to and periodically resided with Hardwick, whose parental rights to the child had been terminated. Respondent failed to recognize Hardwick's poor parenting ability and the danger that the child would be exposed to in her care. The trial court correctly found that respondent should have been aware of Hardwick's poor parenting ability and the severe medical problems the child developed in Hardwick's care. Furthermore, respondent did not offer any valid reason for failing to comply with an FIA case plan that involved him going to a substance abuse assessment. In sum, all three statutory grounds for termination were supported by clear and convincing evidence.

Further, the evidence did not show that termination of respondent's parental rights was clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341,

356-357; 612 NW2d 407 (2000). Respondent had no bond with the child, had not seen the child in over a year, had never paid child support, and had failed to comply with an FIA case plan. Further, the evidence supported the trial court's finding that the child's health would be endangered in respondent's home. Respondent does not point to any evidence supporting his argument that termination was clearly not in the child's best interests.

Affirmed.

/s/ Hilda R. Gage
/s/ Peter D. O'Connell
/s/ Brian K. Zahra