

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KATLYIN MARIE MILLER,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TERRY A. RITTENHOUSE,

Respondent-Appellant.

UNPUBLISHED
September 9, 2004

No. 254674
Grand Traverse Circuit Court
Family Division
LC No. 03-000512-NA

Before: Donofrio, P.J., and White and Talbot, JJ.

PER CURIAM.

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

The trial court did not clearly err in finding that the statutory grounds had been established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). At the time of adjudication, respondent was unable to provide for the needs of the minor child. Although he was provided with services and assistance to overcome his intellectual limitations, there was more than sufficient evidence that respondent was still not able to care for the physical or emotional needs of the minor child and that his abilities would not improve with additional services or time. Respondent did not understand the developmental needs of the minor child or the changes in her development. He did not recognize that she had outgrown her diapers, did not give her increasing amounts of formula as she grew even though he was told to do so, and did not understand her need to play with toys and explore her world. He constantly stuck his fingers in her mouth, flicked a lit flame from a lighter in front of her, gave her a plastic bag to play with, allowed a dog to lick the inside of her mouth, and continued to smoke around her or wear clothes around her that smelled of smoke even though he was told that she was allergic to smoke. He was unable to pick up on the cues of the minor child and engaged in activities with her that caused her to withdraw the best that she could. All of the individuals who attempted to assist respondent recommended termination of his parental rights. Since no progress with respect to respondent's parenting skills had been made and, in fact, the interaction between the minor child and respondent had gotten more difficult, and because the experts indicated that they did not expect any additional progress to be made, the court did not err in concluding that there was no reasonable likelihood that the conditions would be rectified within a

reasonable time. The evidence is clear that a great deal of support was given to respondent and he did not gain the insight needed to properly parent the minor child.

The same evidence establishes that, without regard to his intent, respondent failed to provide proper care or custody for the minor child in the past, would not be able to provide proper care and custody within a reasonable time given the child's young age, and there is a reasonable likelihood of harm if the child were placed in his home. Respondent argues that he did not have custody of the minor child because he only had visitation and that there was no showing of neglect that seriously threatened the child. The evidence showed that respondent was not able to provide for the proper care of the minor child for all of the reasons described above. Furthermore, based on the fact that significant services were provided to respondent and he did not make progress toward understanding what was required to provide proper care and custody of the minor child, the court did not err in finding that there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time considering the age of the child. Further, the court correctly found that there was a reasonable likelihood the child would be harmed if placed with respondent, based on his conduct over the period of time that he exercised his parenting time with the minor child.

Respondent also contends he was denied the effective assistance of counsel. Apparently respondent did not feel that his court-appointed attorney was representing his rights with vigor. He attempted to obtain other counsel, but for reasons not clear in the record provided to this Court, other counsel that he obtained withdrew. Respondent decided to represent himself and the court required his court-appointed counsel to be in the courtroom on standby in case respondent wanted to use him. Respondent had every opportunity to obtain counsel or to utilize the counsel that the court appointed to represent him. There is no showing that he was denied the effective assistance of counsel.

Affirmed.

/s/ Pat M. Donofrio
/s/ Helene N. White
/s/ Michael J. Talbot