

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of GABRIEL PAUL YOUNG,
CYNTHIA CECILA MARIE YOUNG, and LUIS
ERIBERTO YOUNG, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

PAUL KENDALL YOUNG,

Respondent-Appellant,

and

NICOLE COLLEEN YOUNG,

Respondent.

UNPUBLISHED

September 30, 2004

No. 254079

Kalamazoo Circuit Court

Family Division

LC No. 02-000178-NA

Before: Griffin, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Respondent Paul Kendall Young appeals as of right from the trial court's order terminating his parental rights to the minor children under MCL 712A.19b(3)(g). We affirm.

I. Facts and Procedure

Respondent and Nicole Colleen Young were married in 1998, lived in Knoxville, Tennessee, and had the three minor children. In May 2002, Nicole left respondent, took the children to Michigan, and moved in with her boyfriend, Eriberto Sepulveta. On June 3, 2002, a petition to take temporary custody of the children was filed, alleging that Sepulveta was abusing the children and Nicole was failing to stop the abuse and protect the children. On June 11, 2002, after a preliminary hearing, the children were removed from the home and placed under the supervision of the Family Independence Agency. Two days later, respondent received a letter regarding the abuse allegations and learned for the first time that Nicole and the children were in Michigan. In August 2002, respondent moved to Michigan.

At a hearing on October 8, 2002, at which respondent was present, Nicole pleaded no contest to amended allegations that Sepulveta abused the children, and the court took jurisdiction over the children. Respondent was ordered to follow a parent/agency agreement and complete a psychological examination. Respondent had a hard time controlling his anger, and participated in anger management therapy.

In June 2003, respondent was placed on probation after he was convicted of malicious destruction of property for punching a hole in the wall. While he was living in Michigan, respondent was unable to maintain steady employment and spent time living on the street and at homeless shelters. He missed some of his scheduled visits with the children. During his visits with the children, he had a hard time controlling the children and showed a lack of appropriate parenting skills. He was also rude to workers during these visits and easily became angry. In April 2003, respondent's driver's license was restricted for three months for drunk driving. In May 2003, respondent tested positive for marijuana use and was ordered to complete random drug screening, but failed to do so. On July 31, 2003, after being injured in a bicycle accident, respondent moved to Chicago to live with his mother. According to respondent, after he arrived in Chicago, he began working approximately sixty-five hours a week at two different jobs and finished his GED. Once in Chicago, respondent stopped going to therapy sessions and visiting the children. After a formal hearing on August 18, 2003, a decision was made to move forward with termination proceedings.

A petition to terminate parental rights was filed on September 24, 2003. At that point, respondent had missed eleven out of forty-five total scheduled visits with the children, had failed to complete any random drug screens, and had been dropped from the therapy program. At the time of the termination proceedings, respondent lived in a one-room apartment in Chicago. At the termination hearing, the court found that respondent had not paid any money to support the children, did not come to Michigan to visit the children, did not call or send cards to the children, did not have a suitable place for the children to live despite working two jobs, still had anger issues, refused to take drug screens after testing positive for marijuana use, failed to maintain adequate contact with the caseworker, failed to continue with counseling, and did not demonstrate appropriate parenting skills. The court then terminated respondent's parental rights under MCL 712A.19b(3)(g).

I. Analysis

A. Hearsay Evidence

Respondent first argues that the order terminating his parental rights to the minor children should be reversed because the trial court considered inadmissible hearsay evidence during the termination hearing. It appears that the trial court was under the incorrect impression that the termination hearing was a dispositional hearing that was not subject to the rules of evidence. Termination in this case was sought by a supplemental petition, based on circumstances that were not alleged in the original petition. Therefore, the rules of evidence applied. MCR 3.977(F)(1)(b); MCR 3.903(A)(14); *In re Gilliam*, 241 Mich App 133, 137; 613 NW2d 748 (2000). The trial court erred in failing to apply the rules of evidence at the termination hearing.

Errors in admission or exclusion of evidence are ordinarily not cause for reversal unless such would be inconsistent with substantial justice. MCR 2.613(A). Here, respondent does not

specifically identify which evidence was improperly admitted, but it appears that respondent objects to the admission of out-of-court statements he made to his therapist and a psychological evaluation. To the extent that the testimony of respondent's therapist involved statements by respondent, however, those statements were party admissions admissible under MRE 801(d)(2), and it was not error for the therapist to testify concerning them or base his opinions on them. Further, it appears that respondent signed a release waiving any privilege to the communications.

Assuming, without deciding, that the psychological evaluation was inadmissible hearsay,¹ we conclude that the admission of this evidence was harmless error. Respondent fails to explain how the admission of this evidence affected the outcome of the hearing. The therapist merely testified that the evaluation did not change his opinion testimony. Testimony from other witnesses confirmed that respondent had anger issues. Further, there is no indication that the trial court used any information from the evaluation in its findings or ultimate decision. Therefore, the admission of this inadmissible evidence was harmless and does not warrant reversal.

B. The Decision To Terminate Respondent's Parental Rights

1. Standard of Review

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth 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). Once a ground for termination is established, the court must order termination unless there is clear evidence on the entire record that it is not in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The trial court's decision is reviewed for clear error. *In re IEM*, *supra* 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).

2. Discussion

Respondent argues that the trial court clearly erred in finding that the statutory basis for termination was proven by clear and convincing evidence. We disagree. The trial court terminated respondent's parental rights under MCL 712A.19b(3)(g), which provides: "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."

There is evidence that respondent participated in some programs, such as parenting classes, a substance abuse assessment, and psychological counseling, and made some progress in these programs. However, he stopped going to counseling when he moved to Chicago. Respondent's therapist testified that respondent needed more therapy regarding his anger and other emotional issues before he could be an effective parent. The evidence shows that respondent was convicted of malicious destruction of property, easily became angry and hostile

¹ Petitioner concedes that the psychological evaluation was inadmissible hearsay.

with case workers, and continued to have problems with his temper. Despite respondent's progress in parenting classes, he still was unable to properly control the children or watch more than one child at a time, and generally lacked appropriate parenting skills. He missed one-quarter of his available visits with his children and did not visit or contact the children after he moved to Chicago. He also did not maintain adequate contact with his caseworker, who was not even aware at the termination hearing that he had moved into an apartment. In regard to substance abuse, respondent tested positive for marijuana use and failed to thereafter complete random drug screens. He was also convicted of drunk driving in April 2003. There was some evidence that respondent was sporadically employed, but did not hold a job for a substantial period of time. He spent time living on the streets, in homeless shelters, in an apartment with a roommate, with his mother, and finally in a one-bedroom apartment in Chicago. There is no indication that respondent could provide suitable housing for the children. Given this evidence, the trial court did not clearly err in finding that the statutory ground for termination was established by clear and convincing evidence. MCR 3.977(F); *In re IEM*, *supra* at 450.

Respondent also argues that the trial court clearly erred in failing to find that there was clear evidence that termination was not in the best interests of the children. MCL 712A.19b(5); *In re Trejo*, *supra* at 356-357. Respondent points to evidence that he has a bond with his children and loves his children. However, this evidence does not outweigh the evidence showing that respondent could not provide proper care or custody of the children. Nor does it demonstrate that termination was clearly not in the best interests of the children. Thus, the trial court did not clearly err in terminating respondent's parental rights.

Affirmed.

/s/ Richard Allen Griffin

/s/ Kurtis T. Wilder

/s/ Brian K. Zahra