

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of OLIVIA MARIA VANDYKE and
VINESSA JAMIE VANDYKE, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

GARY VANDYKE,

Respondent-Appellant,

and

CRYSTAL RAJE,

Respondent.

UNPUBLISHED
September 30, 2004

No. 254770
Lake Circuit Court
Family Division
LC No. 02-000904-NA

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

MEMORANDUM.

Respondent Gary VanDyke appeals as of right the order terminating his parental rights. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondents were referred to protective services after their child was diagnosed with a two to three week old displaced fracture in her femur. The mother voluntarily relinquished her parental rights, and respondent father reported that he was unable to care for the children due to his medical condition. Respondent father subsequently suffered a massive stroke and is confined to a nursing home.

Pursuant to MCL 712A.19b(3), the petitioner for the termination of parental rights bears the burden of proving at least one ground for termination. *In re Trejo Minors*, 462 Mich 341, 350; 612 NW2d 407 (2000). Once the petitioner has presented clear and convincing evidence that persuades the court that a ground for termination is established, termination of parental rights is mandatory unless the court finds that termination is clearly not in the child's best interests. *Id.* at 355-356. Decisions terminating parental rights are reviewed for clear error. *Id.* at 356.

The petition alleged that respondent failed to rectify conditions leading to the petition and failed to provide proper care and custody. MCL 712A.19b(3) provides for termination when

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) 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 was clear and convincing evidence to support the termination of respondent's parental rights. Given respondent's condition, he could do nothing to rectify the conditions that led to the filing of the petition. Clearly, without regard to intent, respondent has not provided proper care and custody for the children, and there is no reasonable expectation that respondent will recover sufficiently to provide proper care within a reasonable time. There is no evidence that termination was not in the best interests of the children.

Affirmed.

/s/ Stephen L. Borrello
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood