

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of AHMARI DOMINIQUE SWAIN,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CYRUS COLLINS,

Respondent-Appellant.

UNPUBLISHED

October 7, 2004

No. 254452

Ingham Circuit Court

Family Division

LC No. 00-548323-NA

Before: Griffin, P.J., and Saad and O'Connell, JJ.

MEMORANDUM.

Respondent appeals as 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. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). There was clear and convincing evidence that respondent had deserted the minor child because respondent himself testified that he had never seen the child, had any contact with him, or provided any financial or emotional support for the child. The same evidence established that respondent had failed to provide proper care and custody for the child and that there was no reasonable likelihood that he could do so in a reasonable amount of time. Although respondent's failure to know the child was caused in part by the mother's actions in keeping the child from respondent, the trial court correctly found that respondent could have made a better effort to find the child. The minor child was seven years old at the time of the trial. Respondent, who had been incarcerated for three years, was not scheduled to be released from prison for another year. There was also clear and convincing evidence that the minor child would be harmed if he was placed in respondent's custody. Respondent has a lengthy criminal record, including two felony and at least four misdemeanor convictions. There was no evidence that respondent would be able to change his lifestyle in any manner within a reasonable time.

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 never seen the minor child and there was no

bond between them. Respondent is essentially a stranger to the minor child. It would not be in the child's best interests to be in respondent's custody given respondent's incarceration and criminal history. Thus, the trial court did not err in terminating respondent's parental rights to the minor child.

We also conclude that the record does not support respondent's claim that he was denied due process. First, the trial court looked at the totality of the circumstances, recognizing that respondent was to be released from prison in another year and respondent's desire to make a home for the minor child. Nevertheless, the trial court found the factors favoring termination to be compelling. Second, respondent's claim that he was denied counsel at trial is not cause for reversal. Respondent failed to establish his right to an attorney when he failed to demonstrate legal parentage according to MCR 3.903(A)(7).

Affirmed.

/s/ Richard Allen Griffin
/s/ Henry William Saad
/s/ Peter D. O'Connell