

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DAVID KEMERER, NATASHA
KEMERER, PAUL TULPPO, RUSSELL
TULPPO, and MORGAN TULPPO, Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

UNPUBLISHED
November 29, 2005

Petitioner-Appellee,

v

DAVID C. KEMERER, ANGELA K. HANEY,
a/k/a ANGELA K. TULPPO, and LONNIE
TULPPO,

No. 262018
Missaukee Circuit Court
Family Division
LC No. 03-005796-NA

Respondents-Appellants.

Before: Bandstra, P.J., and Neff and Markey, JJ.

PER CURIUM.

Respondents appeal as of right the trial court orders terminating their parental rights to the minor children. The trial court terminated the parental rights of respondent David Kemerer pursuant to MCL 712A.19b(3)(a)(ii), and terminated the parental rights of respondents Angela Haney and Lonnie Tulppo pursuant to MCL 712A.19b(3)(g) and (j). We affirm.

Respondents argue that the statutory grounds for termination were not supported by clear and convincing evidence, and that the trial court clearly erred in its factual findings. We disagree.

We review a trial court's findings of fact in a parental termination case under the clearly erroneous standard. MCR 3.977(J). A finding of fact is clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Deference must be accorded to the trial court's assessment of the credibility of the witnesses before it. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991). The burden of proof is on the petitioner to prove a statutory ground for termination by clear and convincing evidence. *In re Trejo Minors*, 462 Mich 341, 350; 612 NW2d 407 (2000).

A parent's failure to comply with a parent-agency agreement is evidence of the parent's failure to provide proper care and custody of the child. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Here, there was overwhelming evidence that respondents Lonnie Tulppo and Angela Haney had been unable to consistently meet the basic needs of all five children for many years. Several witnesses testified that the children were not adequately clothed or bathed on a regular basis. Additionally, the evidence clearly and convincingly indicated that the children were emotionally, medically, and developmentally neglected by their parents.

The evidence showed that Lonnie Tulppo's and Angela Haney's neglect of their children was largely due to their substance abuse problems. The first step in resolving the family's many problems was that Lonnie and Angela successfully address their substance abuse. Although they attempted treatment and appeared to be successful for a short period of time, they both resumed using alcohol and drugs to deal with stress, and then refused to further participate in any services. Because Lonnie and Angela both refused to do anything more to address the requirements of their treatment plan, the trial court did not clearly err in finding that they would not be able to provide proper care and custody of their children within a reasonable time, and that the children would be at risk of harm if returned to respondents. *JK, supra*. Accordingly, the trial court properly found that termination of their parental rights was warranted under MCL 712A.19b(3)(g) and (j).

Regarding respondent David Kemerer, the evidence established that he purposely went into hiding from his family and friends because of a drug problem and did not see or contact his children for approximately a year and a half. He also feared that he would be arrested for past-due child support. Although respondent Kemerer contends that he could not have abandoned his children for purposes of MCL 712A.19b(3)(a)(ii), because they were residing with respondents Lonnie Tulppo and Angela Haney, the evidence established that respondent Kemerer had joint custody of his children and failed to seek custody for well more than the 91-day period required by MCL 712A.19b(3)(a)(ii). His failure to exercise his custody rights for the statutory period supports termination of his parental rights under MCL 712A.19b(3)(a)(ii). See *In re TM (After Remand)*, 245 Mich App 181, 193-194; 628 NW2d 570 (2001). The trial court did not clearly err in finding that this statutory ground for termination was supported by clear and convincing evidence.

Respondents also argue that the trial court clearly erred in finding that termination of their parental rights was in the children's best interests. We disagree.

The evidence showed that none of the children had a strong bond with any of the respondents, and the children themselves recognized that they would be better off living apart from respondents. The evidence did not clearly show that termination of respondents' parental rights was not in the children's best interests. MCL 712A.19b(5); *Trejo, supra* at 354. Therefore, the trial court did not err in terminating respondents' parental rights to the children. *Id.* at 356-357.

We affirm.

/s/ Richard A. Bandstra
/s/ Janet T. Neff
/s/ Jane E. Markey