

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of NIKKIANN MARIE CHAPMAN,
ASHLEY MARIA CHAPMAN, CARIETHA
AUTUMN CHAPMAN, KLYN DANIEL
CHAPMAN, JR., and RYAN LEE CHAPMAN,
Minors.

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

UNPUBLISHED
December 1, 2005

Petitioner-Appellee,

v

KLYN DANIEL CHAPMAN,

Respondent-Appellant.

No. 262623
Mecosta Circuit Court
Family Division
LC No. 03-004549-NA

Before: Smolenski, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

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

I. FACTS

On the morning of September 24th, 2003, police were dispatched to the home of respondent and his partner, Lisa Flewelling, where they found thirteen-year-old Nikkiann alone in filthy, cluttered conditions. Flewelling had taken the four other children on a trip a few days prior and left Nikkiann home alone with only the loose supervision of a neighbor. There was inadequate food in the refrigerator and cupboards, rotten food in the kitchen, trash covering the floors, no sheets on the beds, a broken front window and broken chairs. The trial court issued a pickup order for the children and they were placed with a paternal aunt on September 24th, 2003.

The family had a history of chronic neglect, and respondent was an admitted alcoholic, who had been incarcerated periodically during most of his adult life. Respondent had drunk driving convictions, as well as convictions for driving on a suspended and/or revoked license, and was on parole for those offenses at the time this proceeding commenced. Flewelling, was referred to protective services eleven times, and substantiated one for neglect of the children in February 2002.

On September 24th 2003, when the children were taken into temporary custody, respondent had absconded from parole and his whereabouts were unknown. He was aware of the September 25, 2003 preliminary hearing because a protective services worker spoke to him on the telephone the day before, but respondent did not attend the hearing. Flewelling pleaded no contest to the trial courts temporary jurisdiction on October 21st, 2003, but requested a trial at the continued hearing on November 13, 2003. Respondent did not attend either the October 21st hearing or the November 13th hearing. The children were removed from the paternal aunt's custody on November 13th, 2003 because respondent and Flewelling showed up in the early hours of the morning demanding the children, and a police report was filed. The children were then placed with a maternal aunt. On November 15th, 2003 respondent was arrested for Operating While Impaired and second Driving With License Suspended offense, as well as a Parole Absconder offence and Driving Without Insurance. His presentencing report indicated that he had two prior felonies and eleven misdemeanors. He was convicted and imprisoned with an earliest release date of January 1st, 2004.

Petitioner filed for termination of respondent's and Flewelling's parental rights on September 10th, 2004, and the termination hearing was scheduled for November 4th, 2004. However, the termination hearing was postponed in anticipation of respondent's release. Respondent was released from prison but absconded from parole on January 27th, 2005. He was apprehended while driving under the influence of alcohol and jailed again on February 12th, 2005. Flewelling voluntarily released her parental rights to the children on February 24, 2005.

The termination hearing with regard to respondent took place on April 7th, 2005. Respondent was present. Caseworker Robert Rae testified that the children were removed in September 2003, and that respondent made no attempt to contact Rae, plan for the children, or arrange to see the children before his incarceration in November 2003. Based on statements made by the children, Rae testified that respondent had spent only brief periods of time with his children during their lives, was incarcerated very often, and did not provide consistent or substantial support. Respondent's parole officer, who had access to respondent's entire criminal history, testified that since 1988 respondent had never gone twenty-four months without a conviction.

II. STANDARD OF REVIEW

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 Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). If a statutory ground for termination is established, the trial court must terminate parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000). On appeal from termination of parental rights proceedings, this Court reviews the trial court's findings under the clearly erroneous standard. MCR 3.977(J); *Sours*, *supra* at 633. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989). To be clearly erroneous, a decision must be more than maybe or probably wrong. *Sours*, *supra* at 633. Further, regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613 (C); *Miller*, *supra* at 337.

III. ANALYSIS

A. Termination of Parental Rights

The trial court did not clearly err in determining that the statutory grounds for termination of parental rights were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Only one statutory ground was necessary for termination of respondent's parental rights, and the record showed that the trial court relied on subsections 19b(3)(c)(i) and (g) for termination, and referenced but did not rely upon subsections 19b(3)(h) and (j). *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). The evidence showed that respondent had been an alcoholic for the duration of the children's lives, and that his alcoholism had rendered him unable to provide proper care or custody since his first child's birth in 1990. He was periodically incarcerated during the past fifteen years and never free to provide care or custody for the children for any substantial length of time. He was arrested and facing impending incarceration again at the time of the termination hearing. Despite attending substance abuse education classes and AA meetings in prison, respondent had not been able to conquer his alcohol addiction. Placement with paternal relatives as a plan for custody of the children during his incarceration was not in the children's best interests.

B. Best Interests of Child

The evidence did not show that termination of respondent-appellant's parental rights was not in the child's best interests. MCL 712A.19b(5); *Trejo, supra* at 356-357. There is nothing in the record to suggest that the trial court erred in terminating the rights of the respondent-appellant.

IV. DEFENDANT'S ARGUMENTS

Respondent argues that there is a lack of clear evidence to suggest that he would be incarcerated for more than two years, thus failing to satisfy the statutory requirements of 712A.19(b)(3)(h). Additionally, respondent argues that his rights should not be terminated based on a criminal record that does not contain crimes against the children. Finally, respondent argues that his due process rights were violated because the trial court noted possible grounds for termination that were not included in the termination petition.

A. 712A.19(b)(3)(h)

Respondent argues on appeal that the trial court erred in relying upon subsection 19b(3)(h) as a ground for termination because there was no evidence that respondent's incarceration would deprive the children of a normal home life for at least two years. The trial court merely referred to subsection 19b(3)(h), and therefore this argument is without merit.

B. 712A.19(b)(3)(g)

Respondent next argues that the trial court erred in relying upon respondent's habitual criminality in finding that subsection 19b(3)(g) was established because the crimes for which respondent was convicted were alcohol-related, and not offenses against the children or offenses specified by statute as required under subsection 19b(3)(n). The trial court did not rely upon or

even reference subsection 19b(3)(n). Respondent's recent offenses were primarily alcohol-related. The trial court based termination upon respondent's long-term alcoholism, which led to frequent incarcerations as well as an inability to care for the children while not incarcerated. Respondent's criminality was merely one consequence of his alcoholism and not the only fact upon which the trial court based termination. The trial court correctly found that respondent had failed to rectify his alcoholism, had failed to provide proper care or custody for the children, and that there was no reasonable expectation that he would be able to do so within a reasonable time.

C. Due Process Rights

Finally, respondent argues that his procedural right to due process was violated when the trial court terminated his parental rights on grounds that were not specified in the petition, specifically subsections 19b(3)(h) and (j). Procedural due process considerations require that a respondent must be afforded notice of the nature of the proceedings and an opportunity to be heard. *In re Nunn*, 168 Mich App 203, 208-209; 423 NW2d 619 (1988), citing *In re Slis*, 144 Mich App 678, 683; 375 NW2d 788 (1985). The petition must contain the essential facts constituting an offense against the child under the Juvenile Code. MCR 3.961(B)(3). As stated above, the trial court did not rely upon subsection 19b(3)(h) or (j) in terminating respondent's parental rights, and therefore there is no basis for this argument. Additionally, the petition did allege respondent's frequent incarcerations in past years, and respondent argued against termination under subsection 19b(3)(h) in his closing argument. Respondent was apprised of the allegations against him, and his right to due process was not violated.

Affirmed.

/s/ Michael R. Smolenski
/s/ Bill Schuette
/s/ Stephen L. Borrello