

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of BRITTANY HEATHER  
AVERILL, Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CHARLES E. AVERILL, JR.,

Respondent-Appellant.

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UNPUBLISHED

March 22, 2007

No. 272917

Saginaw Circuit Court

Family Division

LC No. 04-029497-NA

Before: Zahra, P.J., and Bandstra and Owens, JJ.

MEMORANDUM.

Respondent Charles E. Averill, Jr., appeals as of right from the trial court's order terminating his parental rights to his minor child pursuant to MCL 712A.19b(3)(c)(i) and (h). We affirm.

Respondent contends that the trial court erred in finding that clear and convincing evidence supported termination of his parental rights pursuant to MCL 712A.19b(3)(c)(i) and (h). We disagree. Respondent was incarcerated at the time of adjudication, continued to be incarcerated at the time of termination, and was no more able to provide for proper care and custody of the child at the time of termination than at adjudication. Moreover, respondent's earliest release date was September 2012. Although respondent had proposed his own parents as potential caregivers for the child in the interim, it was questionable whether they were physically able or even actually willing to care for the child for the minimum of six years before respondent's earliest release date. The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. See *In re Fried*, 266 Mich App 535, 540-541; 702 NW2d 192 (2005); MCR 3.977(J). Similarly, the evidence did not clearly show that termination of respondent's parental rights was against the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Thus, the trial court did not err in terminating respondent's parental rights to the child.

We affirm.

/s/ Brian K. Zahra

/s/ Richard A. Bandstra

/s/ Donald S. Owens