

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MALEKE LONG, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ROBERT LONG,

Respondent-Appellant,

and

MONYATA MARIE MITCHELL,

Respondent.

UNPUBLISHED
December 4, 2007

No. 278379
Kent Circuit Court
Family Division
LC No. 06-050527-NA

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

PER CURIAM.

Respondent-appellant, the father of Maleke Long, appeals as of right a circuit court order terminating his parental rights pursuant to MCL 712A.19b(3)(a)(ii) [the parent has deserted the child for 91 or more days and has not sought custody during that period]; (c)(i) [the conditions leading to the adjudication continue to exist with no reasonable likelihood of rectification within a reasonable time given the child's age], and (g) [irrespective of intent, the parent fails to provide proper care or custody and no reasonable likelihood exists that he might do so within a reasonable time given the child's age]. We affirm. We are deciding this appeal without oral argument pursuant to MCR 7.214(E).

I. Facts and Proceedings

On January 5, 2006, a caller advised Child Protective Services (CPS) that Eric Johnson, a friend of Maleke's mother, gave Maleke, then aged 8, some marijuana. A CPS worker determined that respondent was incarcerated at the time of the informant's call. Further investigation revealed that Maleke lived in Johnson's home, and that Johnson regularly sold marijuana from the home. A CPS worker contacted the mother

and requested that she remove Maleke from Johnson's care. The mother refused to cooperate with the CPS worker, and fled Michigan. Later in January 2006, the CPS worker located Maleke at the home of his maternal grandparents. The worker obtained an emergency court order authorizing Maleke's placement in foster care. She then filed a petition seeking temporary wardship, alleging that Maleke's mother had an extensive and recent criminal history, and that respondent could not care for Maleke because of his incarceration.

At a hearing conducted on March 29, 2006, respondent admitted to having an extensive criminal history, including convictions for armed robbery and controlled substance possession. He additionally admitted that because of incarceration, he was unable to provide Maleke a stable home. A caseworker testified that Maleke's mother remained a fugitive. A referee authorized the petition.

At a review hearing on June 29, 2006, a caseworker testified that Maleke had been placed with respondent's sister and her husband, and was doing very well. A different caseworker provided similar testimony at a review hearing on September 28, 2006. On December 6, 2006, petitioner filed a termination petition. On January 3, 2007, the circuit court conducted a permanency planning hearing. A caseworker testified that Maleke continued to do well in the custody of his paternal aunt and uncle. The caseworker stated that respondent last contacted petitioner, by letter, in August 2006, and she urged the circuit court to pursue termination proceedings.

At the termination hearing held on May 9, 2007, respondent testified that he resided in the Bellamy Creek Correctional Facility, and last saw Maleke in June 2004. Respondent averred that before his incarceration, he cared for Maleke "on a daily basis." According to respondent, on his release from prison he would have a job and access to a substantial inheritance, with which he planned to buy a home. Respondent admitted to a prior incarceration for an armed robbery he committed in 1986, and to having subsequent convictions on charges arising from his possession and use of cocaine and marijuana. He conceded that he had been eligible for parole in October 2005, and again on a later date, but was not released. Other evidence established respondent's maximum discharge date as February 16, 2018. A caseworker testified that if respondent were released from prison in the near future, he still would need to demonstrate compliance with treatment, specifically "a good nine to 12 months of consistency and ability to maintain a safe environment," before petitioner could consider him a suitable care provider. She characterized this period as an unreasonable time for Maleke to remain in foster care.

At the conclusion of the hearing, the circuit court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), and (g).¹ The circuit court further found that Maleke's "best interest would be served by termination."

Respondent now appeals as of right.

¹ Maleke's mother voluntarily relinquished her parental rights on the same day.

II. Issues Presented and Analysis

Respondent first contends that insufficient evidence of any statutory ground supported the circuit court's decision to terminate his parental rights. This Court reviews for clear error a circuit court's finding that a ground for termination has been established by clear and convincing evidence "and, where appropriate, the court's decision regarding the child's best interest." *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005) (internal quotation omitted); see also MCR 3.977(J). "A trial court's decision to terminate parental rights is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake had been made." *In re Gazella*, 264 Mich App 668, 672; 692 NW2d 708 (2005).

Clear and convincing evidence supported the circuit court's reliance on MCL 712A.19b(3)(a)(ii) as a ground for terminating respondent's parental rights. Respondent had been incarcerated for almost three years at the time of the termination hearing. During this interval, he did not see or contact Maleke, and made no effort to provide his son with support. Respondent last corresponded with Maleke's caseworker in August 2006. These facts clearly and convincingly establish that respondent deserted Maleke for more than 91 days and did not seek custody during that period.

Furthermore, clear and convincing evidence also supported the circuit court's finding that the conditions leading to the adjudication continued to exist without reasonable likelihood of correction within a reasonable time. Respondent was incarcerated when Maleke entered foster care and remained incarcerated on the date of the termination hearing. Although respondent testified that he would soon be released, he acknowledged that he already was twice refused parole, and that he had no guarantee of leaving prison in the foreseeable future. He admitted that he last provided care for Maleke in 2004. No evidence suggested that respondent thereafter assisted with any of Maleke's financial needs, despite his assertion that he had access to a "substantial" inheritance. In light of these facts, the circuit court did not clearly err in terminating respondent's rights pursuant to MCL 712A.19b(3)(c)(i).

The circuit court also appropriately invoked MCL 712A.19b(3)(g) as a ground for terminating respondent's parental rights. Respondent had no contact with Maleke for almost three years, did not attend any parenting classes while in prison, and could not demonstrate any likelihood of release within a year. The record thus clearly and convincingly supported the circuit court's finding that respondent failed to provide proper care or custody for Maleke, and would not be able to do so within a reasonable time given Maleke's young age.

Respondent also contends that the termination of his rights conflicted with Maleke's best interests. Once a ground for termination under MCL 712A.19b(3) is established, "the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made, unless the court finds that termination of parental rights to the child is clearly not in the child's best interests." MCL 712A.19b(5).

The evidence presented does not support a finding that terminating respondent's parental rights would clearly contravene Maleke's best interests. At the time of the hearing, Maleke had lived with his aunt and uncle for almost a year. According to the caseworkers' reports, the aunt and uncle "possess the resources and capabilities" necessary to address Maleke's needs, and "will be able to provide Maleke with a stable and family-like environment for him to grow." As noted above, respondent remained incarcerated, with no expected release date. We find no clear error in the circuit court's determination that termination of respondent's parental rights served Maleke's best interests.

Affirmed.

/s/ Bill Schuette
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher