STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of LASHAWNDA RENEE HAWKINS, DIAMON NICOLE HAWKINS, KENYA MONAE HAWKINS, CRYSTAL DOMINIQUE MITCHELL, and KENYETTA LEE HOWARD, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CALEETHA LASHAWN HAWKINS, FRANKLIN BATES, and DION MITCHELL,

Respondents,

and

CALVIN LEE HOWARD,

Respondent-Appellant.

UNPUBLISHED
December 11, 2007

No. 278255
Wayne Circuit Court
Family Division
LC No. 98-371747-NA

Before: Jansen, P.J., and O'Connell and Fort Hood, JJ.

PER CURIAM.

Respondent Calvin Lee Howard appeals as of right from an order terminating his parental rights to his children, Kenya Monae Hawkins and Kenyetta Lee Howard under MCL 712A.19b(3)(c)(i) and (g). We affirm.

Respondent argues that termination of his parental rights was not supported by a statutory ground for termination and was clearly contrary to the children's best interests. We disagree.

The existence of a statutory ground for termination must be proven by clear and convincing evidence. MCR 3.977(F)(1)(b) and (G)(3); *In re Miller*, 433 Mich 331, 344-345; 445 NW2d 161 (1989). The trial court's findings of fact are reviewed for clear error and may be set aside only if, although there may be evidence to support them, the reviewing court is left with a definite and firm conviction that a mistake has been made. MCR 3.977(J); *In re Conley*, 216 Mich App 41, 42-43; 549 NW2d 353 (1996). Once a statutory ground for termination is

established, "the court shall order termination of parental rights . . . unless the court finds that termination . . . is clearly not in the child's best interests." MCL 712A.19b(5). The trial court's best interests decision should be based on the whole record and is also reviewed for clear error. *In re Trejo*, 462 Mich 341, 353-354, 356; 612 NW2d 407 (2000).

We conclude that the trial court did not clearly err in finding that § 19b(3)(g) was established by clear and convincing evidence. It is essentially undisputed that respondent failed to provide proper care for his children. Respondent is functionally illiterate and is developmentally disabled to an unspecified degree. He requires assistance with tasks such as navigating the bus system to an unfamiliar place. Although employed, respondent apparently is unable to live independently and does not claim that he could care for the children independently. Further, his involvement in this case was sporadic. There were long periods of time when he did not participate in services and did not attend court hearings or visit the children, followed by periods of consistent visitation and participation. Overall, the trial court did not clearly err in finding clear and convincing evidence that respondent failed to provide proper care.

Respondent argues that, given his plan to place the children in the care of his aunt, Charlena Howard, and her husband, the trial court erred in finding that there was no reasonable expectation that he would be able to provide proper care within a reasonable time, considering the ages of the children. The children were placed in Howard's care for a few months in 2004, but were removed at her request, due to financial difficulties. After their removal, respondent never proposed a plan to return the children to Howard's care, with or without respondent, until January 2007. In the meantime, Howard had not seen the children at all and there is no indication that she attempted to assist respondent to achieve consistency in visitation, or with any other issues. At the time of termination in May 2007, Kenyetta had been a court ward since January 2002, and had been in placement since February 2003. Kenyetta had been in care since January 2004. Respondent's plan to place the children with Howard simply came too late. The trial court provided respondent with more than ample, reasonable time to demonstrate that he would be able to parent the children. See *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000). He was unable to do so. Thus, the trial court did not clearly err in finding that there was clear and convincing evidence that there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time, considering the children's ages.

Respondent argues that petitioner never offered him programs that might enable him to parent with a relative, or with other permanent assistance. However, respondent never raised such programs as a possibility until the termination hearing. A challenge to the *nature* of the services provided by the agency must be timely raised. See *In re Terry*, *supra* at 25-27. The caseworker was under the impression that respondent wanted to plan for the children on his own, and respondent has not identified any evidence to dispute that understanding.

Regarding the children's best interests, the evidence showed that the children were bonded to respondent, looked forward to his visits, and were happy to see him. Respondent was loving and appropriate during visits. Nonetheless, considering his limitations in light of the children's needs, the evidence did not clearly show that termination of respondent's parental rights was not in the children's best interests. Thus, the trial court did not err in terminating respondent's parental rights to the children.

Affirmed.

/s/ Kathleen Jansen
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood