

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CHEL'C ANN MARIE
SHAVRNOCH, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JOHN J. SHAVRNOCH,

Respondent-Appellant,

and

SABRIENA HORLE,

Respondent.

UNPUBLISHED
May 13, 2008

No. 281363
Genesee Circuit Court
Family Division
LC No. 03-117310-NA

Before: Kelly, P.J., and Owens and Schuette, JJ.

PER CURIAM.

Respondent Shavrnock appeals as of right from a circuit court order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(i) and (g).¹ We affirm.

I. FACTS

Respondent Horle, who is not a party to this appeal, is the mother of Cody Horle and Chel'C Shavrnock. Respondent Shavrnock (hereinafter "respondent") is Chel'C's father.

Petitioner filed two neglect petitions: the first in November 2003, and the second in April 2006. The 2003 petition alleged that both Horle and respondent had drug problems. Further, respondent once took the children with him on a retail fraud expedition. The court took

¹ Although petitioner also sought termination under §§ 19b(3)(a)(ii), (c)(ii), and (j), there is no indication that the trial court relied on those statutory grounds.

jurisdiction over the children and continued them in Horle's custody; it appears that respondent was incarcerated by then. The case was dismissed in December 2004.

The 2006 petition alleged that both Horle and respondent had recently been admitted to the hospital for drug overdoses and then discharged. Respondent admitted to using crack cocaine and heroin. It was also alleged that respondent was on parole for a breaking and entering conviction and on probation for an uttering and publishing conviction. The court made the children temporary court wards and ordered Horle and respondent to participate in services, including a psychological evaluation, counseling, drug screens, parenting classes, weekly NA classes, housing, employment, and parenting time.

In July 2007, petitioner filed a supplemental petition for termination. It alleged that respondent was referred for in-home counseling services and did not participate; he failed to appear for five separate intake meetings for parenting classes; he failed to submit to random drug screens as requested; he did not attend AA/NA meetings; he did not obtain employment; and he had never visited Chel'C. In September 2006, he was arrested for breaking and entering.

Respondent was arrested in September 2006 and is now in prison for violation of parole. His early release date is March 25, 2009. If he had to serve his full sentence, he would not be released until 2028. The court held a hearing on October 4, 2007. Respondent appeared by telephone.

Jennifer Hartzell, the foster care worker, testified that the children came into care because of substance abuse by the parents. A service plan was established for both parents. The plan required respondent to obtain a psychological evaluation, obtain a substance abuse assessment and follow recommendations, attend individual counseling and parenting classes, provide random drug screens, attend NA meetings at least once a week, and obtain and maintain housing and employment. Respondent did not complete any of the goals.

Hartzell recommended termination of respondent's parental rights because he "has not completed any of his parent agency agreement, he has not demonstrated that he's able to properly care for the child and he is currently incarcerated and unable to provide a home to her."

Respondent testified that he was seeking drug treatment in prison. He admitted that he should not have waited until he was incarcerated to seek treatment for his drug problem, but at least he was doing something to improve his situation.

The trial court held that "the [respondent] is simply not in a position to step up and be a caring and loving father . . . it will be the order of the Court that there is clear and convincing evidence that has been presented that his rights should be terminated."

II. STATUTORY GROUNDS FOR TERMINATION

Respondent first argues that the trial court clearly erred in finding that the statutory grounds for termination were established by clear and convincing evidence. We disagree.

A. Standard of Review

Termination of parental rights is appropriate where petitioner proves by clear and convincing evidence at least one ground for termination. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). This Court reviews the lower court's findings under the clearly erroneous standard. *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999); see also MCR 3.977(J). A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

B. Analysis

Respondent's parental rights to the minor child were terminated under MCL 712A.19b(3)(c)(i) and (g). Section 19b(3)(c)(i) provides for termination if there is clear and convincing evidence that "[t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age." Further, a trial court may terminate parental rights if there is clear and convincing evidence that "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." MCL 712A.19b(3)(g). Here, respondent had a serious substance abuse problem that previously caused the child to become a court ward for a year beginning in 2004. Respondent continued to abuse drugs and the child again became a court ward in 2006. Respondent failed to comply with the service plan for reunification. He absconded from parole, committed a new felony offense, and returned to prison. Therefore, we conclude that the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. *In re Archer*, 277 Mich App 71, 73; 744 NW2d 1 (2007).

III. BEST INTERESTS OF THE CHILD

Respondent also argues that the trial court erred in its best-interests determination. Again, we disagree.

A. Standard of Review

Once a statutory ground for termination is established by clear and convincing evidence, the court must terminate parental rights unless it finds from the whole record that termination clearly is not in the child's best interests. MCL 712A.19b(5); *Trejo, supra* at 353. The trial court's decision on best interests is also reviewed for clear error. *Trejo, supra* at 356-357.

B. Analysis

The evidence did not clearly show that termination of respondent's parental rights was not in the child's best interests. The evidence showed that respondent and his daughter loved one another and that he was desirous of maintaining a relationship with her. Unfortunately, the courts had been trying to help him overcome his drug problem and become a responsible parent since 2003. His daughter had been a court ward for a year, and respondent was incarcerated for part of that time. When he was released, he resumed using drugs and his daughter once again became a court ward. Respondent did nothing to treat his drug addiction or otherwise facilitate reunification. Instead, he absconded from parole, committed a new felony, and was returned to

prison and will not be released until anywhere between 2009 and 2028. Any bond that existed between respondent and his daughter was not outweighed by respondent's persistent refusal to place his daughter's needs above his own such that one could find that termination was clearly contrary to the child's best interests.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Donald S. Owens

/s/ Bill Schuette