

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ELIZABETH ROSE PAUL,
Minor.

LAURIE PAUL and ERIC PAUL,

Petitioners-Appellees,

v

MIKE YAHIA HALAWANI,

Respondent-Appellant.

UNPUBLISHED
August 26, 2008

No. 283407
Macomb Circuit Court
Family Division
LC No. 2007-000374-NA

In the Matter of TAREK JAMES PAUL, Minor.

LAURIE PAUL and ERIC PAUL,

Petitioners-Appellees,

v

MIKE YAHIA HALAWANI,

Respondent-Appellant.

No. 283408
Macomb Circuit Court
Family Division
LC No. 2007-000375-NA

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

PER CURIAM.

Respondent father filed separate appeals as of right from the trial court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(g). The appeals were consolidated for our review. We affirm.

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 Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(J); *Trejo, supra* at 355-357; *Sours, supra* at 632-633. 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). 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.

There was clear and convincing evidence to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(g). Respondent has been unable to provide proper care and custody for Elizabeth and Tarek due to his incarceration. Respondent has been in and out of prison since 1989 for drug-related convictions. Most recently, he pleaded guilty in 2006 to possession of less than 25 grams of a narcotic/cocaine, MCL 333.7403(2)(a)(v). Respondent was eligible for early release on July 1, 2007 but was denied parole. His maximum discharge date is February 28, 2025. It is unclear when respondent will be released from prison and available to parent. Respondent has spent 2,146 days incarcerated, not including the time spent in rehabilitation, which is over half of Elizabeth's and Tarek's lives. Respondent's drug use and extensive criminal history demonstrates his inability to provide proper care and custody of Elizabeth and Tarek.

Furthermore, since his divorce from petitioner Laurie Paul in 1998, respondent failed to visit or contact the children on a consistent basis. Respondent did not regularly send holiday cards or birthday cards to Elizabeth and Tarek. At most, he only wrote to them every couple of months. Respondent last wrote Elizabeth and Tarek on August 26, 2007, and last spoke to Elizabeth on the phone in 2006.

Likewise, respondent was in prison so often due to his drug addiction there were many extended periods of time when he was unable to see Elizabeth and Tarek. During the times of his release, respondent made a minimal effort to see the children and only saw them sporadically. He saw them only three times during an eight-month period between October 2002 and May 2003 even though he was allowed weekly visits. He failed to petition the court for visitation between June 2003 and June 2005. He only sought visitation with the children in January 2000, October 2002 and June 2005. Because of his lack of effort, he failed to establish a relationship with Elizabeth and Tarek.

Respondent's inability to provide proper care and custody for Elizabeth and Tarek is also evident from his failure to financially support them since his divorce from Laurie in 1998. Respondent's child support arrears as of September 2007 totaled \$13,102.89 even though Laurie forgave \$5,000 on one occasion and \$8,000 on another. The only time respondent paid child support on a regular basis was for four or five months in 1999 when he was employed at a restaurant. Thereafter, respondent only sent two checks when he was released from prison in August 2002, and two payments in 2005 while he was in prison. An incarcerated parent retains the ability to financially support and contact his child to some degree. No incarcerated parent exception exists. *In re Caldwell*, 228 Mich App 116, 121; 576 NW2d 724 (1998).

Respondent also contends that his due process rights were violated when the court terminated his parental rights. Respondent has failed to show a due process violation. Although

respondent does have a right to continued companionship and custody of his children—a protected liberty interest under the Due Process clause, *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003), there is also a substantial societal interest in the protection and welfare of children. Thus, respondent’s right to parent is not absolute. Once clear and convincing evidence establishes a ground for termination of parental rights under MCL 712A.19b(3), the liberty interest of the parent no longer includes the right to custody and control of the children. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000), citing *In re LaFlure*, 48 Mich App 377, 387; 210 NW2d 482 (1973).

In this case, proof of parental unfitness was based on MCL 712A.19b(3)(g)—respondent failed to provide proper care and custody of Elizabeth and Tarek. Respondent had been in and out of prison since 2000 due to drug possession and use, and failed to financially support the children. Thus, termination of respondent’s parental rights did not violate his due process rights.

Affirmed.

/s/ Bill Schuette

/s/ Brian K. Zahra

/s/ Donald S. Owens