

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SAMANTHA HALE, JEFFREY
HALE, and SABRINA HALE, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JEFFREY HALE,

Respondent-Appellant.

UNPUBLISHED

January 29, 2009

No. 286692

Oakland Circuit Court

Family Division

LC No. 07-731702-NA

Before: Hoekstra, P.J., and Fitzgerald and Zahra, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor children under MCL 712A.19b(3)(g) and (j). We affirm.

Respondent initially argues that the trial court abused its discretion in permitting Fire Marshal Steven Hume to testify as an expert in fire investigation. We disagree. Marshal Hume was properly qualified as an expert under MRE 702. *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 779-781; 685 NW2d 391 (2004); *Kinzie v AMF Inc*, 167 Mich App 528, 533; 423 NW2d 253 (1988). Marshal Hume had 32 years of experience with the Farmington Hills Fire Department, including 22 years as fire marshal. He testified that he was involved in the investigation of any significant fire and all intentionally set fires. He possessed a bachelor's degree in fire science and had attended the Michigan State Police Fire Investigation School, plus state and county courses. He was a member of the International Association of Arson Investigators, the Michigan chapter of the international organization, and the Oakland County Association of Fire Investigators. He investigated over 2,400 fires and testified as an expert about 30 times. Respondent points to Marshal Hume's lack of certification in arson investigation, but this was just one of many factors the trial court referee considered. The referee did not abuse his discretion in finding Marshal Hume was qualified by his experience, training, education, and specialized knowledge to testify as an expert in fire investigation.

Next, respondent contends that the trial court abused its discretion in denying respondent's motion to appoint an expert to investigate the fire. A court may appoint an expert nominated by a party or on its own motion. MRE 706(a); *In re Bell*, 138 Mich App 184, 187; 360 NW2d 868 (1984). In *Bell*, the panel found no abuse of discretion in denial of a parent's

request to appoint medical and psychological experts, even where the petitioner's experts included three medical doctors and a psychiatrist. Respondent here did dispute the validity of the testimony that Marshal Hume would presumably give, but did not suggest an expert or offer well-reasoned arguments regarding why another expert's conclusions would differ from Marshal Hume's. Even if the court's ruling was an abuse of discretion, we find any error harmless in light of the evidence supporting termination of respondent's parental rights.

Respondent also argues that clear and convincing evidence did not support termination of his parental rights under MCL 712A.19b(3)(g) and (j). These subsections call for termination when a parent fails to provide proper care or custody (subsection g), or when there is a reasonable likelihood that a child will be harmed if returned to the parent's home (subsection j). Here, respondent had no home for the children to return to, having been sentenced to 32 months to ten years in prison for the attempted arson. Supporting termination of respondent's parental rights at initial disposition were his repeated episodes of domestic violence, convictions for assault and alcohol-related offenses, and conviction for attempted arson and domestic violence for the instant offenses. The testimony of respondent's ex-wife and older daughter were very strong, as was the reasoning of psychologist Douglas Park, PhD, favoring termination. Respondent was not offered services because the permanency plan was termination. MCL 712A.18f(3)(d). Services had been offered in connection with respondent's terms of probation and had failed to stop respondent's drinking or assaultive behavior. The trial court's conclusions were supported by clear and convincing evidence and we have no definite and firm conviction that a mistake was committed in finding sufficient evidence under subsections (g) and (j). MCR 3.977(J); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Finally, respondent argues that termination of his parental rights was clearly contrary to the children's best interests. We disagree. Samantha thought she had a poor relationship with respondent and wanted never to see him again. She and respondent's ex-wife, Melinda, both described incidents of violence and drunkenness by respondent, while Jeffrey told Dr. Park that respondent was "mean" and "scary." Jeffrey had a bond with respondent, but in Dr. Park's opinion, this did not outweigh the factors favoring termination. This conclusion was supported by the evidence. The evidence showed that respondent set the fire with no regard to whether anyone was inside the house. He deliberately burned the family's treasured possessions, such as photo albums, and attempted to rationalize and excuse his behavior, only giving lip service to the idea of needing to take responsibility. Although respondent loved his children, the trial court did not clearly err in finding clear and convincing evidence that termination was not clearly contrary to their best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353, 364-365; 612 NW2d 407 (2000).

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Brian K. Zahra