

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MALIKA EBONY SHABAZZ,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

HAKIM MALIK SHABAZZ,

Respondent-Appellant,

and

GLADYS COLON,

Respondent.

UNPUBLISHED
February 10, 2009

No. 286130
Kalamazoo Circuit Court
Family Division
LC No. 06-000296-NA

Before: Murray, P.J., and Markey and Wilder, JJ.

PER CURIAM.

Respondent Hakim Malik Shabazz appeals as of right from an order that terminated his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court must find that at least one statutory ground for termination set forth in MCL 712A.19b(3) has been established by clear and convincing evidence in order to terminate parental rights. *In re Sours*, 459 Mich 624, 632; 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 clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000). We review the trial court's decision terminating parental rights for clear error. MCR 3.977(J); *Trejo, supra* at 356-357. A finding is clearly erroneous if, although there is evidence to support it, we are 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). "[R]egard shall 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).

Respondent first argues that his constitutional right to counsel was violated when he was without counsel after the trial court took jurisdiction of the case until just before termination proceedings began. Although the constitutional provisions explicitly guaranteeing the right to counsel apply only in criminal proceedings, the right to due process also indirectly guarantees assistance of counsel in child protective proceedings. *In re Powers Minors*, 244 Mich App 111, 121; 624 NW2d 472 (2000). The right is also guaranteed by statute, MCL 712A.17c(4), and court rule, MCR 3.915(B).

It is undisputed that respondent's attorney was discharged without explanation after a dispositional review hearing and that respondent was without an attorney for several months, including at the permanency planning hearing where proofs were taken. However, the deprivation of the right to counsel in the context of termination proceedings is subject to a harmless error analysis. See *In re Hall*, 188 Mich App 217, 222-223; 469 NW2d 56 (1991). Respondent has failed to show that he was harmed by the fact that he was unrepresented prior to the termination hearings. Respondent appeared in the prior hearings by speakerphone. Proofs were taken, but all of the pertinent testimony at those hearings related to the mother's progress because respondent was at all times incarcerated and unable to provide for the child's needs. Moreover, on appeal respondent does not demonstrate that, had he been represented by counsel at the permanency planning hearing or review hearings, the proofs would have established that he had a plan for the minor child's care once he was released from prison. Respondent was re-appointed counsel for the termination hearing and was ably represented. Respondent has not shown that the results would have been different had he been represented at the prior hearings.

Respondent next argues that the trial court erred in terminating his parental rights. We disagree and conclude that the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The child was placed into care in December 2006 because of her mother's ongoing problems with mental health and substance abuse. At all relevant times, respondent was imprisoned. At the time of the final of three termination hearing dates over almost five months, the conditions leading to adjudication continued to exist, and not only was respondent unable to provide the child with proper care or custody at the time of the termination, but the trial court further concluded that respondent would be unable to do so within a reasonable time thereafter considering the child's age.

Respondent was due to be released from prison in September 2008, approximately five months after the termination trial. He testified that it would take him at least two months after he was released from prison to find employment and housing suitable for the child. Respondent also testified that he was taking Prozac for stress, but there was no medical testimony to clarify the precise nature of respondent's mental health condition which led to the prescription, nor any testimony on the impact on respondent's mental health condition once he was released from prison, and had to immediately find employment and housing and begin caring for the first time for the minor child. The minor child would have been a temporary ward for over two years at the time of respondent's release from prison. Given the circumstances, including respondent's extensive criminal history and the uncertainty about respondent's ability to properly care for the minor child on his release from prison, the trial court did not clearly err by finding that respondent would be unable to provide the child with proper care or custody within a reasonable time considering the child's age.

The trial court also did not clearly err in finding, on the whole record, that termination was not clearly contrary to the child's best interests. MCL 712A.19b(5); *In re Trejo, supra* at 356-357. The evidence revealed that respondent was active in his child's life before his incarceration and maintained contact with her while in prison. Witnesses testified that the child knew who her father was and was happy to see him at the court hearings. Nevertheless, the trial court did not clearly err in noting that the child had been under the court's supervision for half of her life, and that leaving the child in continued supervision while the respondent took a number of months to attempt to re-establish himself as a caretaker, without any guarantee he could successfully do so, would deprive the child of the permanence and stability to which she was entitled.

Finally, respondent argues that cumulative error in this case deprived him of a fair hearing. We disagree. With the exception of respondent's claim that he was wrongfully denied counsel, respondent failed to adequately brief any of the ten claims of error. "The failure to brief the merits of an allegation of error is deemed an abandonment of an issue." *In re JS & SM*, 231 Mich App 92, 98; 585 NW2d 326 (1998), overruled in part on other grounds, *In re Trejo, supra* at 353 n 10. In addition, a party may not state his position and then leave it to this Court to search for authority in support of that position. *Badie v Brighton Area Schools*, 265 Mich App 343, 357; 695 NW2d 521 (2005). Nevertheless, we have reviewed each of respondent's contentions of error and find them to be without merit.

Affirmed.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Kurtis T. Wilder