

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SIDNEY NEWSON and SIERRA
NEWSON, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DENNIS DWAYNE NEWSON,

Respondent-Appellant.

UNPUBLISHED

March 19, 2009

No. 287190

Wayne Circuit Court

Family Division

LC No. 93-308615-NA

Before: Cavanagh, P.J., and Fort Hood and Davis, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). 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)¹; *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.

¹ MCL 712A.19b(5) was amended, effective July 11, 2008, to require that the trial court make an affirmative finding that termination of a parent's parental rights is in the best interests of the child. 2008 PA 199. The amended statute does not affect the instant case because the termination order was entered on May 1, 2008.

Termination of respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i) and (g) was appropriate. At the time of the adjudication, respondent's developmental deficiencies affected his ability to properly care for his children. Sidney, who is autistic, had limited communications skills, and was still in diapers at the time of her removal from respondent's care. Given respondent's own limitations, he was unable to care for his daughters on his own. By the time of the permanent custody hearing, respondent had participated in therapy, attended parenting classes, and even attended a support group for parents of autistic children. However, his developmental deficiencies continued to interfere with his ability to properly care for Sidney and Sierra. For example, his limited cognitive ability made problem solving difficult and he often did not know what to do in new situations. Although respondent made some progress, he continued to need therapy and redirection to improve his focus.

Respondent never demonstrated that he fully benefited from services because he continued to need ongoing help. A parent must benefit from services so that he can improve his parenting skills to the point where the children would no longer be at risk in his custody. It is not sufficient to physically comply with the terms of the treatment plan. *In re Gazella*, 264 Mich App 688, 676; 692 NW2d 708 (2005). And, while therapy was helpful for respondent, he was not making progress at an appropriate pace given that Sidney and Sierra had been in a relative's care for nearly two years. Moreover, Sidney's autism and developmental disabilities makes parenting her more difficult. She needs exceptional patience, medical treatment, and ongoing therapy. Respondent's therapist and foster care worker were uncertain whether respondent could meet Sidney's special needs, especially because she had only made significant gains in her speech once she was removed from respondent's care.

Termination of respondent's parental rights under MCL 712A.19b(3)(j) was also proper because Sidney and Sierra would likely be at risk of harm if returned to his care. Respondent's cognitive limitations impaired his ability to safely parent his children. For example, when Sierra was choking on a cookie, respondent did not know what to do. At the time the cookie got lodged in Sierra's throat, instead of removing it, respondent squeezed her cheeks, which shoved the food further down her windpipe. Also, he overdressed Sierra when it was 86 degrees outside so that she could "sweat out a cold," and left her unsupervised on a futon. Because respondent only thought in concrete terms, if someone gave him wrong information, he continued to carry out mistaken actions. Respondent needed redirection during visits on issues of safety when Sidney was getting out of control or when Sierra was getting into something. And, there was concern that respondent would not ask for help because he might not recognize that he needed it. Respondent's therapist was not certain whether respondent could provide his children with a safe environment without someone constantly assisting to redirect his focus.

The evidence did not show that termination of respondent's parental rights was clearly not in Sidney's and Sierra's best interests. The evidence did not show that it was against Sidney's and Sierra's best interests to terminate respondent's parental rights. To the contrary, the evidence established that it was not in their best interests to be with a caregiver who could not meet their needs. Respondent had limited cognitive ability, Sidney is autistic, and Sierra is showing signs of having special needs. The significant strides Sidney made in her speech development once she was placed in a relative's care evidenced respondent's inability to meet her needs. Although respondent loved his children, his commitment to them was not sufficient to show that termination of parental rights was contrary to their best interests. Further, although

the evidence showed that the children reacted favorably to respondent, there is no evidence of a strong bond. Sidney's autism made the need for a consistent, capable caregiver a priority over her relationship with respondent. Sierra did not have a strong bond with respondent because, although he participated in visitations, she had been removed from his care at birth and he had never provided care for her. Thus, the court did not err in its best interests determination. Finally, we take judicial notice of the fact that respondent was convicted of multiple felonies after entry of the termination order and is currently incarcerated with the Department of Corrections. MRE 210. His earliest release date is May 10, 2013. This provides yet another reason for upholding the trial court's decision that termination of his parental rights was not contrary to the best interests of the children.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood
/s/ Alton T. Davis