

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ZACK ANTHONY STAGGER,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ZENO ANTHONY STAGGER,

Respondent-Appellant.

UNPUBLISHED

March 19, 2009

No. 287433

Oakland Circuit Court

Family Division

LC No. 07-733391-NA

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

PER CURIAM.

Respondent father appeals as of right the trial court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(g), (h), 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) has been amended, effective July 11, 2008, to require that a 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 July 2, 2008.

There was clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(g) because he was incarcerated after having been convicted of five counts of first-degree criminal sexual conduct which prevented him from being able to provide proper care of Zack. Given that respondent was sentenced to a minimum of thirty years in prison, there is no reasonable expectation that he will be able to provide proper care or custody within a reasonable time considering Zack's age. Although respondent suggested that Zack could be raised by his parents in Georgia during his incarceration, he never presented a detailed or viable plan for Zack's care to the court. Moreover, given that Zack's mother was readily available to parent him, sending him to Georgia would separate him from her and likely cause him additional distress.

Termination of respondent's parental rights was also proper under MCL 712A.19b(3)(h) because although he was the physical custodian of Zack prior to the child's removal, he has not provided for Zack's care and custody since he became incarcerated on November 9, 2007. Because respondent's earliest possible release date is in October 2037, Zack will be deprived of a normal home for a period exceeding two years. Also, although respondent argues that his pension could be used to financially support Zack, there is no evidence that respondent had been providing financial support during his incarceration in effort to demonstrate his ability to provide care for Zack.

Further, the court did not err when it terminated respondent's parental rights under MCL 712A.19b(3)(j). Respondent has a lengthy criminal history that includes convictions for kidnapping, armed robbery, domestic violence, indecent exposure, and criminal sexual conduct. The sexual assaults for which respondent was convicted and sentenced occurred during the time Zack lived in his home. Repeated exposure to such violence and criminality would put Zack at risk of physical harm. Also, as a result of respondent's choices to engage in criminal behavior, Zack has been deprived of his father, which has caused him emotional harm. Respondent has not demonstrated an ability to change his criminal ways. Thus, there was a reasonable likelihood that Zack will be subjected to harm if returned to respondent's care.

Finally, the evidence did not show that termination of respondent's parental rights was clearly not in Zack's best interests. Respondent's failure to acknowledge Zack's special needs demonstrated that he would have difficulty caring for and providing for those needs. It is not in Zack's best interests to be exposed to criminality and violence, and to maintain a connection with someone who causes him emotional harm. Moreover, it is not in Zack's best interests to maintain a relationship with a parent who acts impulsively and prioritizes criminality over his son's care. Despite respondent's assertions to the contrary, any emotional pain and sadness that Zack has to endure is the result of choices respondent made. Committing Zack to visit respondent in prison for his entire childhood, or separating him from his mother and sending him to live with his grandparents out of state as respondent suggests, will not resolve the sadness Zack feels about the loss of respondent in his life. It is in Zack's best interests to live in a nurturing, stable, and safe environment, which respondent is unable to provide.

Affirmed.

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