

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DAVID JON WHELPLEY, JR.,
CALEB MATHEW WHELPLEY, and ANA
MARIE BYLER, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DAVID JON WHELPLEY, SR.,

Respondent-Appellant,

and

SARAH JEAN BYLER,

Respondent.

UNPUBLISHED

July 14, 2009

No. 288832

Kent Circuit Court

Family Division

LC No. 07-051582-NA

07-051583-NA

07-051584-NA

Before: Owens, P.J., and Servitto and Gleicher, JJ.

PER CURIAM.

Respondent David Jon Whelpley, Sr. 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 (h). We affirm.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been established by clear and convincing evidence. MCR 3.977; *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). This Court reviews that finding under the clearly erroneous standard. MCR 3.977(J); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). 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 Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). In order to be clearly erroneous, the finding must strike this Court as more than just maybe or probably wrong. *In re Sours, Minors, supra* at 633.

Respondent first argues that, because the evidence relating to the length of his incarceration was conflicting, the trial court had insufficient evidence to conclude that he would be imprisoned in excess of two years. Therefore, respondent reasons, the court erred when it terminated his parental rights pursuant to MCL 712A.19b(3)(h). We agree.

In 2002, respondent was sentenced to three months to twenty years' imprisonment. He was released on parole after three months. He was re-incarcerated in 2003 for parole violation, was again paroled in 2004, and was re-incarcerated in 2006. Respondent testified that when he appeared before the parole board in August of 2008, he was told that he would not be paroled for at least another 12 months. Because respondent has served his minimum sentence, has been paroled twice, and testified that he was told that it would be at least twelve months before he would be again paroled, there was insufficient evidence for the trial court to conclude in October of 2008 that he would not be paroled for at least twenty-four months.

Although the trial court erred when concluding that the children would be deprived of a normal home in excess of two years due to imprisonment, termination of respondent's parental rights was appropriate on the other statutory grounds considered by the court. There was sufficient evidence for the court to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i) and (g). The children were removed from their mother's care while respondent was incarcerated and, thus, unavailable to meet his children's needs. Respondent's status remained unchanged at the time of the termination hearing. During the entire time the children were in foster care, respondent failed to provide for their care and custody. Moreover, there was no indication that respondent's circumstances would be changing any time in the near future. Even accepting respondent's representation that he could be released immediately, a different result is not warranted. The caseworker opined that respondent would require services for at least six to nine months after his release. However, the court could have concluded that a lengthier treatment plan was more realistic. Respondent had absolutely no bond with his children. Indeed, he had never met Caleb and Ana. Further, respondent had never cared for a child, let alone three, independently. Moreover, respondent had only participated in one substance abuse class while incarcerated. He had not addressed issues of domestic violence, housing, employment, parenting skills, or individual counseling. Indeed, respondent denied having any domestic violence or substance abuses issues that would require treatment. It is axiomatic that not only would respondent be required to participate in services, he would also need to benefit from the services offered. Respondent's own denial and lack of insight would be a significant hurdle in his efforts toward reunification. Based upon this evidence, the trial court could have easily concluded that it would take well over a year of intensive services before respondent demonstrated adequate parenting skills. This was not a reasonable amount of time to require the children to wait for permanency in their lives. Indeed, the caseworker testified that the children were out of time; they required permanency immediately. Considering the foregoing, there existed clear and convincing evidence to support termination of respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i) and (g).

Affirmed.

/s/ Donald S. Owens
/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher