

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JADEN C. MASON and
CAMERON A. MASON, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RICHARD MASON,

Respondent-Appellant,

and

CLARISSA SMITH,

Respondent.

UNPUBLISHED

September 15, 2009

No. 290637

Macomb Circuit Court

Family Division

LC Nos. 2007-000409-NA

2007-000410-NA

Before: M. J. Kelly, P.J., and K. F. Kelly and Shapiro, JJ.

MEMORANDUM.

Respondent Richard Mason appeals as of right the circuit court order terminating his parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), (h), and (j). Because we conclude that there were no errors warranting relief, we affirm.

The trial court did not clearly err in finding that §§ 19b(3)(g), (h), and (j) were each established by clear and convincing evidence. MCR 3.977(G)(3); *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). Respondent was serving a jail sentence at the time the children came into care. He was later sentenced to prison for three to ten years and his maximum discharge date is not until July 2016. While it was possible that respondent could be paroled as early as July 2009, there was no evidence that he was likely to be paroled at that time. Even if he were paroled, the evidence showed that it would take at least six months to demonstrate an ability to maintain a stable lifestyle. Because termination was appropriate under §§ 19b(3)(g), (h), and (j), any error in relying on § 19b(3)(c)(i) as an additional basis for termination was harmless. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Respondent's claim that the trial court erred in failing to hold a separate "best interests" hearing is without merit. In child protective proceedings, the court must hold an adjudicatory

hearing to determine whether it has jurisdiction over the child. If it has jurisdiction, it must then hold a dispositional hearing to determine what measures to take with respect to the child. *In re AMAC*, 269 Mich App 533, 536-537; 711 NW2d 426 (2006). A dispositional hearing is required even when termination is sought in an original petition.¹ *Id.* at 538. Where, as here, termination is requested pursuant to a supplemental petition filed after the initial dispositional hearing, the court need only conduct a single hearing at which both the statutory grounds for termination and the child's best interests are considered. MCR 3.977(G)(1)(b) and (3). Therefore, respondent was not entitled to a separate "best interests" hearing.

Affirmed.

/s/ Michael J. Kelly
/s/ Kirsten Frank Kelly
/s/ Douglas B. Shapiro

¹ Because the court must consider the child's best interests in determining whether to order termination, MCL 712A.19b(5), the initial dispositional hearing on a petition for permanent custody is sometimes referred to as a "best interests" hearing.