

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ETHAN DEVAULT and
AUTUMN DEVAULT, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CAREY DEVAULT,

Respondent-Appellant.

UNPUBLISHED

April 13, 2010

No. 292925

Crawford Circuit Court

Family Division

LC No. 07-003544-NA

Before: DAVIS, P.J., and DONOFRIO and STEPHENS, 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)(g), and (j).¹ 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 and that termination is in the best interest of the child(ren). MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 355-357; 612 NW2d 407 (2000); *Sours*, 459 Mich 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).

Termination of respondent's parental rights was proper under MCL 712A.19b(3)(g). Because respondent was incarcerated the entire duration of Ethan's and Autumn's temporary court wardship, there is no evidence that he was able to provide proper care and custody of the children. Respondent's involvement in criminal activity undermines his assertions that he would

¹ The parental rights of the children's mother, Sara King, were not terminated, and she is not a party to this appeal.

be able to adequately care for two young children. He made himself unavailable to his children by way of his criminal actions for an indeterminable amount of time. Respondent's incarceration left Ethan and Autumn without the stability of a normal home and made it impossible for him to provide proper care and custody of the children within a reasonable time.

Furthermore, upon respondent's release from prison he still needed to complete a parent-agency agreement and demonstrate parental fitness while complying with conditions of parole and readjusting to life in society at large. At the time of the permanent custody hearing, respondent's parole date was not certain. Although respondent planned to live in his brother's house and believed that he had several job options after his release from prison, the quick establishment of a normal home for Ethan and Autumn is hardly assured given the circumstances of parole and its requirements.

Moreover, despite respondent's assertions that he successfully completed the assaultive offender's program and counseling, there is no evidence that he benefited from the services he received in prison. Respondent's propensity for criminal activity and inability to control his anger became evident when he committed a home invasion in August 2007. He committed this offense only one week before the date he was scheduled to be discharged from probation for a domestic violence conviction against the children's mother, and after he had already completed counseling. His continuing difficulty controlling his anger was evident when he was denied early parole because of his inability to complete anger management. Respondent never demonstrated that he addressed the anger issues that caused him to be incarcerated.

In addition to problems with anger management, respondent's untreated alcoholism would likely prevent him from being able to provide proper care and custody of the children. Respondent admitted that, following his second domestic violence conviction in June 2006, he did not benefit from rehabilitation programs because he continued to drink and prioritize alcohol. He did not take services seriously and only went through the motions to complete the minimum requirements of his probation. Respondent also admitted that stress contributed to his alcohol abuse. Although respondent insisted that he stayed sober while incarcerated, he also stated that he felt less stress in prison. Because respondent was incarcerated the entire duration of this case, there is no evidence that he changed his ways or would be able to maintain sobriety upon his release from prison.

Respondent argues that petitioner did not make reasonable efforts toward reunification to prevent termination of his parental rights. After a child has been removed, petitioner must make reasonable efforts to reunite a respondent and his child through a treatment plan and referrals. *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). Additionally, if reasonable efforts are not made, petitioner can be prevented from establishing statutory grounds to terminate a respondent's parental rights. See *In re Newman*, 189 Mich App 61, 67-68, 70; 472 NW2d 38 (1991). Petitioner's failure to make reasonable efforts alone does not establish a basis for relief. MCL 712A.18f(4). Rather, the absence of reasonable efforts by petitioner has only been relevant to assessing whether the statutory grounds for termination were established. See, e.g., *Newman*, 189 Mich App at 65-68. The trial court did not clearly err in terminating respondent's parental rights under two statutory bases because he was unable to take advantage of services and not because petitioner failed to make efforts.

Respondent also argues that he was never given an opportunity to follow a treatment plan. Respondent was incarcerated because of his own actions, and because of his incarceration petitioner's ability to provide him services was limited. Further, there is no evidence indicating that respondent made efforts to contact the caseworker to find out what more he could do from prison. He never made specific requests for services or informed the caseworker about prison services in which he participated. Where it is unreasonable to offer services, petitioner may decline to do so, but must justify that decision. MCL 712A.18f(1)(b). Caseworker Davis explained that she was not able to offer respondent services while he was in prison. Given that Ethan and Autumn would have been court wards for over two years at the time of respondent's earliest release from prison, and considering respondent's extensive criminal history and the uncertainty about his ability to properly care for minor children, the trial court did not clearly err by finding that respondent would be unable to provide Ethan and Autumn with proper care or custody under MCL 712A.19b(3)(g).

The trial court also did not err in its findings under MCL 712A.19b(3)(j). Although respondent argues that he never physically abused his children, he exposed them to emotional harm by perpetrating domestic violence in front of them. The domestic violence profoundly impacted Ethan, causing him to become mute and need therapy for two years. Respondent has repeatedly demonstrated difficulty controlling his anger and has not maintained sobriety when outside of prison and subject to real life stress. Ethan and Autumn would be at risk of harm if exposed to respondent's uncontrolled anger or intoxication. Thus, the trial court did not err in terminating respondent's parental rights under MCL 712A.19b(3)(j).

Finally, the evidence showed that termination of respondent's parental rights was clearly in the best interests of the children. MCL 712A.19b(5). There was no evidence of a strong bond between respondent and his children because respondent was incarcerated for such a long period of time. Other than to indicate that he was in jail, neither Autumn nor Ethan spoke or asked about respondent.

Moreover, it is in the children's best interest to be raised in an alcohol free home, without domestic violence. There is no evidence respondent has addressed his issues or that he is able to provide them with a safe home environment. It is also in Ethan's and Autumn's best interest to be cared for by someone who can provide for their basic needs. There is no evidence that respondent can now provide a suitable home or maintain stable employment so that he can financially support Ethan and Autumn. Thus, the trial court did not err in its best interest determination.

Affirmed.

/s/ Alton T. Davis
/s/ Pat M. Donofrio
/s/ Cynthia Diane Stephens