

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TM and LM, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TIMOTHY MEDLEY,

Respondent-Appellant.

UNPUBLISHED

April 22, 2010

No. 294001

Jackson Circuit Court

Family Division

LC No. 01-005233-NA

Before: SAAD, P.J., and HOEKSTRA and MURRAY, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(g). We affirm.

The trial court did not clearly err in finding that the statutory ground for termination was established by clear and convincing evidence. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The children were removed from their parents' custody two times, first in 2006 and again in March 2008. Respondent was unavailable to care for the children most of this time because of his incarceration,¹ and the children's mother was not a suitable caregiver because of domestic violence and substance abuse. Although respondent was scheduled to be paroled from prison in the week following the termination hearing, the evidence showed that because of his criminal history and past problems with substance abuse and domestic violence, he would require extensive services before reunification could even be considered. According to the children's therapist, respondent would require at least two to three years of commitment to treatment to be able to demonstrate that he could provide a safe and secure home for the children. In addition, the children had been severely traumatized by their past experiences with respondent, and they too would require substantial additional treatment before they would be emotionally ready to be reunited with respondent.

¹ Respondent was incarcerated in October 2006 for his conviction of third-degree home invasion.

Although respondent argues that it was improper to terminate his parental rights without offering him services, petitioner need not provide services if it justifies its decision not to do so. See MCL 712A.18f(1)(b); *In re Terry*, 240 Mich App 14, 25 n 4; 610 NW2d 563 (2000). In this case, respondent was not available to participate in services because of his incarceration. Therefore, petitioner was not obligated to offer services. See *In re LE*, 278 Mich App 1, 21; 747 NW2d 883 (2008). Furthermore, even if services could have been offered after respondent was paroled, considering respondent's many problem issues and the extent of services that would be required before he could be in a position to be reunited with the children, and considering the children's ages and the length of time they had already been in care, the trial court did not clearly err in finding that there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time.

Respondent also argues that the trial court erred in finding that termination of his parental rights was in the children's best interests. We disagree. Once a statutory ground for termination is established by clear and convincing evidence, a trial court must affirmatively find that termination of parental rights is in the child's best interests before terminating parental rights. MCL 712A.19b(5); *In re Hansen*, 285 Mich App 158, 163-164; 774 NW2d 698 (2009), lv gtd 485 Mich 940 (2009). We review the trial court's best interests decision for clear error. *In re Trejo*, 462 Mich at 356-357.

The evidence supported the trial court's decision, as it showed that the children were severely traumatized by their past experiences with respondent, had no desire of being reunited with him, and were at risk of relapse if returned to his custody. Although respondent argues that there was no evidence of specific conduct by him that might have caused the children's fears, the evidence showed that the children's fears were very real and, given respondent's criminal history, admitted substance abuse history, and controlling relationship with the children's mother, that their fears were based in reality. Further, it was not improper for the trial court to consider the children's flourishing progress while in the care of their aunt in its evaluation of the children's best interests. *In re Foster*, 285 Mich App 630, 634-635; 776 NW2d 415 (2009).

We disagree with respondent's argument that the trial court should have entrusted the children to a relative in lieu of terminating his parental rights. A court may place a child with a relative instead of terminating a respondent's parental rights if it is in the child's best interests to do so. *In re IEM*, 233 Mich App 438, 453; 592 NW2d 751 (1999); *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991). See also MCL 712A.19a(6)(a) (proceedings to terminate parental rights need not be initiated if the child is being cared for by relatives). Although respondent initially requested that the children be placed with his mother, she was not offered as a placement option at the time of the termination hearing. The children were flourishing in the care of their aunt because of the safe and secure environment she provided, they had no desire to be reunited with respondent, and they were at risk of relapse if reunited with respondent. The trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Henry William Saad
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray