

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED  
September 18, 2012

In the Matter of OUTLEY, Minors.

No. 308988  
Macomb Circuit Court  
Family Division  
LC No. 2010-000576-NA;  
2010-000577-NA

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Before: CAVANAGH, P.J., and SAAD and DONOFRIO, JJ.

PER CURIAM.

Respondent appeals as of right an order terminating his parental rights to the minor children under MCL 712A.19b(3)(g) and (h). We affirm.

Respondent first argues that the trial court's decision to terminate his parental rights pursuant to MCL 712A.19b(3)(g) and (h) was not supported by clear and convincing evidence. We disagree.

We review for clear error the trial court's finding that a ground for termination has been established. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A finding is clearly erroneous if, although there is evidence to support it, the reviewing 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) (citations omitted).

"To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been proved by clear and convincing evidence." *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). If a statutory ground for termination is established, and the trial court finds that termination of parental rights is in the child's best interests, the court must order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made. *Id.* at 32-33.

In this case, the court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(g) and (h). MCL 712A.19b(3)(g) states that a court must find by clear and convincing evidence that "[1] the parent, without regard to intent, fails to provide proper care or

custody for the child and [2] there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." MCL 712A.19b(3)(h) sets forth similar elements related to the provision of care and custody, but also includes the following element related to the parent's incarceration: "The parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years[.]" Incarceration alone, however, does not justify termination of a respondent's parental rights. *In re Mason*, 486 Mich 142, 160; 782 NW2d 747 (2010).

The trial court's conclusion that MCL 712A.19b(3)(g) and (h) were established by clear and convincing evidence was not erroneous. It is undisputed that in 2006 respondent was convicted of assault with intent to murder, first-degree home invasion, interference with a crime report, and assaulting a pregnant individual with intent to cause miscarriage. The victim was the mother of his two children and the children were present during the crime. Respondent has been in prison since 2006 and his earliest possible release date is 2017. His latest possible release date is 2035. He has had no contact with the children since they were infants. As respondent admitted, he had not provided for the children's proper care and custody. The children had been living with their mother and her relatives. Further, respondent would not be able to provide care and custody for the children within a reasonable time. Although respondent claimed that his relatives were willing to care for his children while he was in prison, he did not present any evidence in support of his claim. That is, respondent did not present the testimony of any such relative and he had taken no legal steps in that regard. And defendant's argument that his compliance with the parent/agency treatment plan was ignored before his rights were terminated is unavailing. His rights were terminated at initial disposition; thus, the provision of services and reunification efforts were not required before termination could occur. See MCL 712A.19b(4); *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009). In summary, statutory grounds for termination were proved by clear and convincing evidence; thus, the trial court's decision in this regard is affirmed. See *In re Ellis*, 294 Mich App at 32.

Respondent next argues that termination was not in his children's best interests; thus, the trial court erred in terminating his parental rights. We disagree.

Once a statutory ground for termination has been proved, the trial court must order termination of parental rights if it finds "that termination of parental rights is in the child's best interests." MCL 712A.19b(5). We review the trial court's best interests finding for clear error. *In re Trejo*, 462 Mich at 356-357.

When determining the best interest of a child in a termination case, a trial court can consider the respondent's history, psychological evaluation, parenting techniques during parenting time, family bonding, and participation in counseling, among other factors. *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009); *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004); *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001). In this case, the record evidence indicated that respondent has made laudable efforts to better himself while incarcerated. But several significant considerations support the trial court's decision, including

the certain and potential length of respondent's sentence, as well as respondent's lack of relationship and bond with the children. Based on the record evidence, we cannot conclude that the trial court clearly erred when it held that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Henry William Saad  
/s/ Pat M. Donofrio