STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of WILLIE CHOATE, WHITNEY CHOATE, WESTON CHOATE, WYLICA CHOATE and WYLQUINTA CHOATE, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

WILLIE CHOATE,

Respondent-Appellant,

and

JERRY BROOKS,

Respondent.

UNPUBLISHED
May 12, 1998

No. 203722
Genesee Juvenile Court
LC No. 96-106005 NA

Before: Corrigan, C.J., and Hoekstra and Young, Jr., JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the juvenile court's order terminating his parental rights to the minor children under MCL 712A.19b(3)(b)(ii), (c)(ii), (g) and (j); MSA 27.3178(598.19b)(3)(b)(ii), (c)(ii), (g) and (j). We affirm.

Respondent's sole argument on appeal is that the juvenile court erred in finding that a statutory ground for termination was proved by clear and convincing evidence. We review a trial court's decision regarding termination in its entirety for clear error. *In re Hall-Smith*, 222 Mich App 470, 473; 564 NW2d 156 (1997). Findings of fact are clearly erroneous when the reviewing court has a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161

(1989); MCR 5.974(I). Once a statutory ground for termination has been met by clear and convincing evidence, a parent has the burden of going forward with some

evidence that termination is clearly not in the child's best interests. *In re Hall-Smith, supra* at 473; MCL 712A.19b(5); MSA 27.3178(598.19b)(5). Absent any evidence addressing this issue by the parent, termination of parental rights is mandatory. *Hall-Smith, supra*.

We conclude that the trial court did not clearly err in terminating respondent's parental rights. Termination was justified under subsections (3)(b)(ii) and (3)(j) in view of the ample evidence that two of the children were sexually abused while in respondent's care and that respondent failed to protect them. The children, who had lived with respondent for over a year, both showed physical and behavioral signs of sexual abuse (the other three children who did not live with respondent showed no signs of sexual abuse). One of the children was so traumatized that she had to be placed under anesthesia in order for a physical examination to be performed. Moreover, she testified that four male cousins had "messed with her" in the bedroom while the cousins were living with respondent. There was also evidence that one of the cousins was a sex offender. While respondent and Katrina Choate, respondent's niece, both denied that respondent's nephews lived with him at the same time as the children, we give deference to the trial court's assessment of the credibility of the witnesses before it. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991).

Defendant takes issue with the trial court's finding that termination was also warranted under subsection (3)(g). The court found that, in light of the prior circuit court order restricting visitation, respondent would be unable to provide proper care or custody for the children. Respondent claims that he attempted to have the order changed but that petitioner did not provide necessary services to assist in that effort. We find no error. Moreover, we note that the evidence of sexual abuse alone was sufficient to terminate respondent's parental rights. MCL 712A.19b(3); MSA 27.3178(598.198(3). There was also evidence that respondent failed to take any action to rectify the conditions that caused the children to be placed and remain in foster care. See MCL 712A.19b(3)(c)(ii); MSA 27.3178(598.19b)(3)(c)(ii). In sum, we find no clear error in the trial court's determination that clear and convincing evidence supported the termination of respondent's parental rights.

Finally, respondent failed to put forth evidence from which the trial court could conclude that termination was clearly not in the children's best interests. Accordingly, the trial court's decision to terminate respondent's parental rights complied with the requirements of MCL 712A.19b(5); MSA 27.3178(598.19b)(5), and we find no clear error in that decision. *In re Hall-Smith, supra* at 473.

Affirmed.

/s/ Maura D. Corrigan
/s/ Joel P. Hoekstra
/s/ Robert P. Young, Jr.