# STATE OF MICHIGAN

# COURT OF APPEALS

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In the Matter of MELVIN JALEN STEWART, KVON NORELLE STEWART, KRON MORELLE STEWART, and RAHEIM MACEO STEWART, Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MELVIN LEWIS,

Respondent-Appellant,

and

BETTY JOYCE STEWART,

Respondent.

UNPUBLISHED
May 25, 2001

No. 227923
Wayne Circuit Court
Family Division
LC No. 94-321337

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Before: Gage, P.J., and Cavanagh and Wilder, JJ.

PER CURIAM.

Respondent, Melvin Lewis, appeals as of right the termination of his parental rights to the minor child, Melvin Jalen Stewart (DOB 8/16/94), pursuant to MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g) [parent, without regard to intent, fails to provide proper care or custody for the child], and (h) [incarceration for two or more years/inability to provide a normal home life].[1] We affirm.

Respondent argues that the family court erred in terminating his parental rights. A two-prong test applies to a family court's decision to terminate parental rights. First, the court must

[1] The court also terminated the parental rights of the child's mother, Betty Joyce Stewart. She has not appealed the court's decision.

find that at least one of the statutory grounds for termination set forth in MCL 712A.19b; MSA 27.3178(598.19b) has been met by clear and convincing evidence. *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). This Court reviews the findings of fact under the clearly erroneous standard. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding of fact is clearly erroneous where the reviewing court is left with a definite and firm conviction that a mistake has been made. *Jackson, supra*.

Once a statutory ground for termination has been met by clear and convincing evidence, the court must terminate parental rights unless "there exists clear evidence, on the whole record, that termination is not in the child's best interest." *In re Trejo*, 462 Mich 341, 356, 364-365; 612 NW2d 407 (2000); see also MCL 712A.19b(5); MSA 27.3178(598.19b)(5). The trial court's ultimate decision regarding termination is reviewed in its entirety for clear error. *Trejo, supra* at 356-357.

Respondent concedes that at least one statutory ground for termination, MCL 712A.19b(3)(h); MSA 27.3178(598.19b)(3)(h),[2] was met by clear and convincing evidence.[3] However, respondent argues that the trial court clearly erred in finding that termination was in the best interest of the child as required by MCL 712A.19(b)(5); MSA 27.3178(598.19b)(5). We disagree.

During the termination proceedings, the foster care worker for the Family Independence Agency (FIA), Monica Hutchinson, testified that the minor child became a temporary ward of the court in May 1999 after the child's mother, Betty Joyce Stewart, was arrested for driving under the influence of liquor while the child was an unrestrained, front seat passenger in her vehicle. The child was placed in an FIA foster home and, in October 1999, was placed in the home of his paternal grandmother, Daisy Lewis. Hutchinson's first contact with respondent occurred after respondent's incarceration and after the child was placed with Daisy Lewis. Hutchinson testified that, according to respondent, prior to his incarceration, respondent saw his son on a regular basis and, after his imprisonment, respondent maintained telephone contact with the child and wrote the child letters. Hutchinson further testified that both Stewart and respondent indicated that respondent financially supported the child at one point but had no information regarding the duration or amount of support. Hutchinson further testified that respondent wanted his son to remain in the custody of Daisy Lewis.

During the termination proceedings, respondent testified by telephone that he was incarcerated at Ryan Correctional Facility after a March 1995 conviction on a charge of criminal sexual conduct for which he was sentenced to seventeen to thirty years' imprisonment. We note that the child was approximately seven months old when respondent began serving his prison

[2] In his brief on appeal, respondent mistakenly cites to MCL 712A.19b(3)(n); MSA 27.3178(598.19b)(3)(n), as the statutory ground involving imprisonment for a period in excess of two years. See MCL 712A.19b(3)(h); MSA 27.3178(598.19b)(3)(h).

[3] Because only one statutory basis is required to terminate parental rights, we need not decide whether termination was also proper under the additional ground cited by the court. See *Trejo, supra* at 360.

sentence. Respondent testified that he was present at the child's birth and that the child lived with him for a week. Respondent testified that he provided support for the child, had contact with the child since his birth, and felt he and his son had a "very close bond" and "a beautiful relationship." Respondent further testified that he had no objection to Daisy Lewis adopting his son.

Upon review of the record evidence, including but not limited to the age of the child, respondent's lengthy prison sentence, respondent's inability to care and provide for the child, and considering the child's need for permanency, we cannot conclude that the court's assessment of the child's best interest was clearly erroneous. Accordingly, we hold that the trial court did not clearly err in terminating respondent's parental rights.

Affirmed.

/s/ Hilda R. Gage
/s/ Mark J. Cavanagh
/s/ Kurtis T. Wilder