

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TL and EL, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JEFFREY LAMOUREUX,

Respondent-Appellant,

and

BETH DE LOS SANTOS,

Respondent.

UNPUBLISHED

November 27, 2001

No. 233121

Arenac Circuit Court

Family Division

LC No. 98-005990-NA

Before: Whitbeck, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

Respondent-appellant Jeffrey Lamoureux appeals as of right from an order terminating his parental rights to the minor children.¹ We affirm.

I. Basic Facts And Procedural History

In mid-July 1998, the Family Independence Agency (FIA) filed a petition for temporary custody of the minor children. The petition alleged that Lamoureux, while under the influence of alcohol, became involved in a physical altercation with another adult in TL's presence and threatened to kill that other adult's child. That same night, Lamoureux attempted to ride his bicycle home while carrying TL; he appeared too intoxicated to make reasonable judgments on behalf of TL. Further, the petition alleged, earlier, in June 1998, an Arenac County law enforcement officer observed Lamoureux, who was intoxicated, staggering down the side of the

¹ See MCL 712A.19b(3)(c)(i) and (c)(ii).

highway while carrying TL. In sum, the petition alleged that Lamoureux habitually abused alcohol, limiting his ability to provide proper care for his two children.

In mid-January 2001, the FIA filed a petition seeking permanent custody of the children because Lamoureux had not complied with the parent-agency agreements. This amended petition sought to terminate his parental rights under MCL 712A.19b(3)(c)(i) and (c)(ii). Lamoureux had received two citations for operating an automobile under the influence of alcohol (OUIL) and was sentenced to fifty-five days in jail. Also, Lamoureux had been highly intoxicated while visiting the children. In one instance, while Alice Lamoureux, his mother, was supervising a visit, Lamoureux became argumentative and kicked Alice Lamoureux out of his house. The police became involved and removed the girls from his home by court order. Lamoureux also had two positive drug screens. Further, the petition claimed, Lamoureux had appeared intoxicated when he returned the children to their foster home with his half-sister. In one incident, Lamoureux reportedly took a bottle of whiskey from his half-sister's kitchen and proceeded to drink from the bottle. Despite the FIA's efforts to help Lamoureux with his substance abuse, he had made no progress. Additionally, Lamoureux was unemployed and homeless.

At the hearing on the termination petition, Matt Engster, a social services specialist for the FIA, testified that Lamoureux's parent-agency agreements focused on substance abuse evaluations, requiring him to attend Alcoholics Anonymous (AA) meetings, submit to urinalysis, and obtain adequate housing and employment. Lamoureux initially attended counseling for his drinking when the children were first placed in foster care in July 1998; however, he subsequently demonstrated an inability to deal with his alcoholism, receiving the two OUIL citations and the jail sentence. Lamoureux had attended counseling sporadically since September 2000 and had never provided proof that he had attended AA meetings. Engster had been told that Lamoureux appeared drunk at a family reunion. Lamoureux had also tested positive for marijuana and barbiturates in the Fall of 2000. Engster added that Lamoureux had failed to find suitable housing as the parent-agency agreement required. Lamoureux had moved five times in two-and-a-half years, demonstrating his instability. Overall, Engster indicated, Lamoureux had failed to benefit from the services offered to him, and the same conditions that brought the children under the court's jurisdiction continued to exist.

Engster believed that it was in the children's best interests to terminate Lamoureux's parental rights. The children had been in foster care since July 1998 when TL was five and EL was three. In his opinion, the children were doing well and deserved permanency.

Sandra Pierson, Lamoureux's half-sister and the children's foster mother, testified that the children had lived with her since July 1998. In late September 2000, Lamoureux returned the girls to her home after visitation, at which time Lamoureux went to the refrigerator and drank from a whiskey bottle. He had obviously been drinking and was slurring his speech. TL told Pierson that Lamoureux had used money that their grandmother had given the children that night for dinner to buy a big beer in a brown bag and a package of cigarettes.

Testifying on his own behalf, Lamoureux indicated that he had been living with his mother for three months. He was collecting unemployment and was attending counseling at Turning Point. Lamoureux admitted that he had five residences in the past two years, that he previously had a drinking problem, and that he had committed OUIL. However, he claimed, he

had been sober since November 1999. Lamoureux remembered the last day he was drunk because it was the day that his mother was supervising his visitation when they argued, ultimately requiring the police to become involved and take the children. Despite the testimony concerning Lamoureux's positive drug screens, Lamoureux claimed that the tests were generally inaccurate and had generated erroneous results for him.

Alice Lamoureux testified that she purchased the house where Lamoureux was currently living and that it was suitable for the children. However, she also confirmed that Lamoureux was drunk during their altercation in November 1999.

Having heard the testimony, the family court found in relevant part:

Jeffrey Lamoureux, with minimal efforts, has tried but failed to provide for his children. He has been unable to maintain a stable and safe home. He has not been able to maintain employment or other legal sources of income. He has put forth little effort to address his severe alcohol abuse problem.

Therefore, the family court entered an order terminating Lamoureux's parental rights on March 5, 2001.

On appeal, Lamoureux contends that the family court erred in considering hearsay testimony that he had failed two drug tests to support terminating his parental rights under MCL 712A.19b(c)(ii). He also contends that the family court lacked clear and convincing evidence to terminate his parental rights under MCL 712A.19b(c)(i).

II. Grounds For Termination

A. Standard Of Review

We review for clear error the family court's determination that there was adequate evidence to terminate Lamoureux's parental rights.²

B. Clear And Convincing Evidence

As Lamoureux suggests, the court rules establish two different evidentiary standards for terminating parental rights. When the petitioner relies on evidence related to the allegations in the original petition, the family court may consider "all relevant and material evidence" "to the extent of its probative value," even if the evidence would otherwise be inadmissible.³ However, when the petitioner alleges that "of one or more circumstances new or different from the offense that led the court to take jurisdiction" provide a basis for terminating a respondent's parental rights,⁴ the petitioner must use "[l]egally admissible evidence."⁵ In this case, the allegations that

² See MCR 5.974(I).

³ MCR 5.974(F)(2).

⁴ MCR 5.974(E).

⁵ MCR 5.974(E)(1).

Lamoureux had begun to use drugs other than alcohol were different than his alcohol abuse, which was alleged in the original petition and was a basis for the family court's decision to assume jurisdiction in the first place. Thus, the FIA as petitioner had an obligation to provide legally admissible evidence to prove this allegation that Lamoureux was now using other drugs. The family court erroneously considered hearsay testimony, which is not ordinarily legally admissible under the court rules,⁶ as sufficient evidence of this drug use.

Nevertheless, a family court needs evidence of only one statutory ground to terminate parental rights.⁷ In this case, there was ample evidence that Lamoureux had a longstanding alcohol abuse problem that affected his children. While Lamoureux claimed that he had been sober for some time, his testimony was the only evidence of his sobriety. There was no testimony that corroborated his statement or documentary evidence of his efforts to control his alcoholism, such as proof that he had attended AA. Given the conflict between the evidence of his alcoholism and his testimony, the family court was certainly entitled to consider Lamoureux's unsupported testimony less credible.⁸ While Lamoureux had made short-term progress with his housing situation, his historic inability to maintain housing suitable for his children was an important factor supporting the family court's implicit determination that he had not yet established that he could provide a home for the children. Further, though Lamoureux claims that he was receiving unemployment benefits, we have no reason to believe that that income should outweigh the evidence suggesting that he had failed to comply with the parent-agency agreement and had yet to make adequate progress with his sobriety and housing. More than two years had elapsed since the adjudication, which was far in excess of the period required in MCL 712A.19b(3)(c)(i). As Engster testified, the children needed permanence. Thus, we cannot conclude that the family court clearly erred in terminating his parental rights under this statute.

Affirmed.

/s/ William C. Whitbeck

/s/ Joel P. Hoekstra

I concur in result only.

/s/ Janet T. Neff

⁶ See MRE 802.

⁷ MCL 712A.19b(3).

⁸ See *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991).