

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of A.L.M. and N.J.M., Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JERRY JOSEPH MARTIN, JR.,

Respondent-Appellant.

UNPUBLISHED
February 19, 2002

No. 233244
Wayne Circuit Court
Family Division
LC No. 99-381217

Before: Neff, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

Respondent appeals as of right the termination of his parental rights to the minor children, A.L.M. (DOB 5/8/93) and N.J.M. (10/9/96), pursuant to MCL 712A.19b(3)(c)(i) [conditions that led to adjudication continue to exist and are not likely to be rectified within a reasonable time], (g) [parent, without regard to intent, fails to provide proper care or custody for the children], and (j) [reasonable likelihood of harm if returned to the parent].¹ We affirm.

On appeal respondent argues that not one of the statutory grounds for termination was met by clear and convincing evidence. We disagree.

A family court may not terminate a respondent's parental rights unless at least one of the statutory grounds for termination is established by clear and convincing evidence. MCR 5.974(F)(3); *In re Trejo*, 462 Mich 341, 360; 612 NW2d 407 (2000). This Court reviews the findings of fact under the clearly erroneous standard. MCR 5.974(I); *In re Ramsey*, 229 Mich App 310, 314; 581 NW2d 291 (1998). Once a statutory basis for termination is established, the trial court shall terminate parental rights unless it finds that doing so is clearly not in the child's best interests. *Trejo, supra* at 344; see, also, MCL 712A.19b(5). The trial court's ultimate decision regarding termination is reviewed in its entirety for clear error. *Trejo, supra* at 356-357.

¹ The children's mother voluntarily relinquished her parental rights during these proceedings and she is not a party to this appeal.

The minor children became temporary court wards in December 1999 following a complaint under the Child Protection Act. At that time a treatment plan was adopted and respondent was ordered to complete parenting classes, participate in a Clinic for Child Study (Clinic) evaluation, undergo a psychological evaluation, and maintain suitable housing and employment. Visitation was to be supervised.

At a dispositional review hearing in March 2000, the FIA foster care worker indicated that respondent was not in compliance with the treatment plan. Respondent had failed to attend a scheduled Clinic evaluation, missed two appointments for psychological evaluation, and supervised visitation at the FIA agency was not going well as a consequence of respondent's "acting out" behavior. Respondent's visitation rights were suspended until he appeared for both the Clinic and psychological evaluation.

At a review hearing in June 2000, respondent's psychological evaluation and a P.A.C.T. report, regarding parenting instruction and counseling, were admitted into evidence. Respondent did not have independent housing and did not appear at the Clinic evaluation. It was noted at the hearing that respondent had an outstanding bench warrant for his arrest. Respondent failed to appear at a pretrial hearing in October 2000 because he was afraid of being arrested on two outstanding warrants.

A trial regarding the termination of respondent's parental rights was conducted in November 2000. The court admitted several exhibits into evidence, including records from Downriver Guidance, P.A.C.T. reports, caregiver reports, a psychiatric evaluation, a psychological evaluation, a bench warrant for child support arrearages, and a bench warrant from the 25th District Court regarding ordinance violations. Respondent did not attend the hearing because he did not have transportation and because he was afraid of being arrested on two outstanding bench warrants. However, the court contacted him by telephone for his testimony.

Respondent testified that he was ordered to receive individual counseling following a psychological evaluation and subsequently received counseling at his home and then at Downriver Guidance. He testified that he was supposed to receive counseling once a week but that he was not attending. He testified that his diagnoses included "deep" depression and a bipolar disorder for which he was prescribed two medications. He testified that he was still seeing the mother of the children, would like to reconcile with her, and was living with her at his grandmother's house. He denied that the children were afraid of their mother despite receiving reports of the same. Respondent testified that he was not employed and had not been since September 2000 when he worked as a handyman for wages paid "under-the-table." He was in the process of applying for SSI benefits because of his mental conditions and was being financially supported by his grandmother and the children's mother. Respondent did not have a vehicle and had not had a vehicle for about a year and one-half. Respondent admitted that he did not attend two hearings regarding his child support arrearages and did not attend court regarding the four or five tickets he received for keeping too many animals.

On January 25, 2001, the court rendered its written opinion, detailing its findings of fact, and terminated respondent's parental rights after finding that the statutory grounds for termination were established. After review of the record evidence, we conclude that the trial court's findings of fact were not clearly erroneous and the court properly concluded that the

asserted statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence.

Affirmed.

/s/ Janet T. Neff

/s/ Mark J. Cavanagh

/s/ Henry William Saad