STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of DITANION LAROY ABLE,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

V

DARRYLE KENNETH ABLE,

Respondent-Appellant,

and

KATRINA BEATRICE GREEN,

Respondent.

UNPUBLISHED
January 13, 2004

No. 248152
Wayne Circuit Court
Family Division
LC No. 00-385619

Before: Donofrio, P.J., and Griffin and Jansen, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g), (i) and (j). Although we find that MCL 712A.19b(3)(c)(i) is unsupported by the record evidence and we can not ascertain from the record before us if respondent received adequate notice on the termination of parental rights of his other children, thereby negating the appropriate foundation for sub-part 19b(3)(i) termination, reversal is not warranted. Because termination of parental rights need be supported by only one statutory ground and that ground is supported by clear and convincing evidence, we affirm.

Respondent-appellant challenges the sufficiency of the evidence for termination of his parental rights to the minor child. In order to terminate parental rights, the court was required to find that at least one of the statutory grounds set forth in MCL 712A.19b(3) was met by clear and convincing evidence. *In re Terry*, 240 Mich App 14, 21-22; 610 NW2d 563 (2000). Once a ground for termination was established, the court was required to order termination of parental rights unless there was clear evidence, on the whole record, that termination would not be in the

child's best interests. *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). A decision terminating parental rights is reviewed for clear error. *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made. *Terry*, *supra* at 22.

The trial court did not clearly err by finding that respondent-appellant failed to provide proper care and custody for the minor child and would be unable to do so in the reasonable future considering the child's age. MCL 712A.19b(3)(g). While Ditanion was in temporary custody of the court, respondent-appellant visited him only three times. Respondent-appellant then knowingly took improper custody of Ditanion after respondent mother truanted from drug treatment with the child, and Ditanion's circumstances remained unknown and unmonitored while he was in respondent-appellant's care. Respondent-appellant testified that he was incarcerated for nine months while Ditanion was in his care and that respondent-appellant's mother took care of the child during that time. After Ditanion was located and removed from respondent-appellant's care, respondent-appellant made no effort to visit him. These facts amply support the trial court's finding that respondent-appellant failed to provide proper care and custody for the minor child. Further, we are left with no impression that the trial court erred in finding that there was no reasonable likelihood that respondent-appellant would be able to provide proper care and custody for Ditanion in the reasonable future. Respondent-appellant was incarcerated at the time of the termination trial. Even if respondent-appellant was released on parole, substantial time would be required before returning Ditanion to his custody could even be considered because respondent-appellant had not begun to comply with his treatment plan. We note that respondent-appellant's failure to carry out any element of his treatment plan is evidence of his failure to provide proper care and custody. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003).

The trial court also did not clearly err by finding a reasonable likelihood that Ditanion would be harmed if returned to respondent-appellant. MCL 712A.19b(3)(j). The evidence indicates that respondent-appellant is a seller and user of illegal drugs, has apparently been incarcerated twice since Ditanion's birth in December 2000, and failed to visit him during periods when he was not incarcerated. Respondent-appellant's blatant disregard of the court's authority by knowingly taking improper custody of Ditanion after the child went AWOL with respondent mother also bodes poorly for his future compliance with the law. Given the evidence that respondent-appellant is unable to provide a stable environment for the minor child, we are left with no conviction that the trial court erred by finding a reasonable likelihood that Ditanion would be harmed if returned to respondent-appellant.

We note that the order terminating respondent-appellant's parental rights was also based on MCL 712A.19b(3)(c)(i) and (i). We conclude that MCL 712A.19b(3)(i) was not an appropriate basis for the termination of respondent-appellant's parental rights, because the only condition of adjudication relating to him was that he knew respondent mother used cocaine during her pregnancy with Ditanion. There was no evidence at trial that respondent-appellant continued to enable respondent mother's drug use or associate with her in any way. Respondent-appellant also argues on appeal that the prior termination of his parental rights to other children was erroneously relied on because he did not receive notice of the prior termination trial and was not represented by counsel at that proceeding. Because respondent-appellant failed to contact his attorney and failed to appear for nine months during those proceedings, he relinquished his right

to appointed counsel. MCR 5.915(B)(1)(c); *In re Hall*, 188 Mich App 217, 222; 469 NW2d 56 (1991). However, the record currently before this Court is not sufficient to determine whether respondent-appellant received adequate notice of the prior termination proceedings as required by MCL 712A.12 and MCL 712A.13. Therefore, we also decline to rely on MCL 712A.19b(3)(i) as a ground for affirmance of the termination order now on appeal. Reversal is not warranted, however, because termination of parental rights need be supported by only one statutory ground. *In re SD*, 236 Mich App 240, 247; 599 NW2d 772 (1999).[1]

Respondent-appellant also contends on appeal that reasonable efforts at reconciliation were not made. In general, when a child is removed from the custody of the parents, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan. MCL 712A.18f(1), (2), (4). The evidence in this matter indicated that respondent-appellant was offered drug screens, bus tickets and visitation during the brief portion of these proceedings when his whereabouts were known. However, respondent-appellant did not communicate with the agency for more than one year, presumably deliberately because he retained improper custody of Ditanion for much of this time. After Ditanion was recovered from respondent-appellant, he never presented himself to the agency to indicate that he wished to plan for the child. Clearly, any failure of services was a consequence of respondent-appellant's decision to make himself unavailable. Under these circumstances, the trial court was amply justified in concluding that reasonable efforts at reunification were made and did not clearly err in so finding.

Finally, the trial court did not clearly err by finding that termination was not clearly contrary to the best interests of the child. There was no evidence that respondent-appellant could provide stability, and indeed the evidence of his repeated incarcerations, drug convictions and drug use, and his complete failure to comply with the parent agency agreement strongly indicate that respondent-appellant could not provide the stability that the minor child needs.

Affirmed.

/s/ Pat M. Donofrio
/s/ Richard A. Griffin
/s/ Kathleen Jansen

---

[1] Although respondent-appellant and the minor child both present arguments on appeal concerning the sufficiency of the evidence under MCL 712A.19b(3)(a)(ii), the bench opinion indicates that this ground was applied only to respondent mother. However, we note that the evidence clearly showed that respondent-appellant failed to visit, seek custody, or offer any plan for Ditanion for at least ninety-one days after the child was removed from respondent-appellant's care. This statutory subsection was alleged in the termination petition regarding both parents and supplies a further ground on which the decision of the trial court may be affirmed. See *In re Powers*, 208 Mich App 582, 591; 528 NW2d 799 (1995) (decision will not be reversed if right result is reached for wrong reason).