STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ANTHONY LEE WALKER, ALANTE DAYTONE WALKER, and TANECIA' LATIA WALKER, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ANTHONY LEE WALKER,

Respondent-Appellant.

UNPUBLISHED
June 3, 2004

No. 251765
Wayne Circuit Court
Family Division
LC No. 95-328669

Before: Markey, P.J., and Wilder and Meter, JJ.

PER CURIAM.

Respondent Anthony Lee Walker appeals as of right from the order of the trial court terminating his parental rights to his minor children pursuant to MCL 712A.19b(3)(g), (h), and (j). We affirm.

Respondent contends that the trial court erred in finding that termination was not contrary to the best interests of the children because no evidence was presented on this question. We disagree. To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been demonstrated by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993). Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court is required to order termination unless the court finds from evidence on the whole record that termination is clearly not in the best interests of the children. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000). When determining the best interests of the child, the trial court may base its decision upon evidence introduced by any party or upon the whole record presented in establishing a ground for termination. *Id*. at 356.

In this case, the trial court found that clear and convincing evidence established the statutory grounds for termination pursuant to MCL 712A. 19b(3)(g), (h), and (j), which respondent does not appeal. The trial court was, therefore, obligated to terminate respondent's parental rights unless to do so was contrary to the best interests of the children. If, as respondent contends, there was no evidence bearing on the best interests of the children, then the trial court

would have been obligated to terminate respondent's parental rights. Only if evidence existed to the contrary could termination be precluded.

In making this determination, the trial court was permitted to look to the whole record and was not limited, as respondent suggests, to evidence specifically introduced on the issue of the best interests of the children. See *Trejo, supra* at 356. In this case, the record demonstrated that respondent is a long-term drug user and has had a series of criminal convictions making him an unavailable, as well as an unsafe, custodian for the children. At the time of termination, respondent was serving a lengthy prison sentence with an earliest expected release date of 2011. His choice of caretaker for his children during his incarceration was a girlfriend who later decided that she did not want the children and in whose care the children were placed at risk. Moreover, although respondent mentioned a relative who might take care of Tanacia', no viable alternative placement was suggested for the other two children. Based on respondent's situation and a review of the record as a whole, it cannot be said that the trial court clearly erred in determining that termination was not contrary to the best interests of the children.

Affirmed.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter