STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of SHARONDA AYISHA NICOLE CRAWLEY, JOHNNITA PRECIOUS THOMAS and KEONNIA LASHAWN CRAWLEY, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JOHN THOMAS,

Respondent-Appellant,

and

ABRAM HILL,

Respondent.

UNPUBLISHED
July 27, 2004

No. 253643
Wayne Circuit Court
Family Division
LC No. 03-422989

Before: Murphy, P.J., and Griffin and White, JJ.

PER CURIAM.

Respondent-appellant John Thomas (hereinafter respondent), the putative father of the minor child, Sharonda Ayisha Nicole Crawley (hereinafter SAC), and the legal father of the child, Johnnita Precious Thomas (hereinafter JPT), appeals by delayed leave granted from a circuit court order terminating his parental rights to the children, pursuant to MCL 712A.19b(3)(g), (h), and (j).[1] We affirm.

[1] Respondent Abram Hill is the father of Keonnia Lashawn Crawley (hereinafter KLC). The circuit court also terminated Hill's parental rights, but Hill is not a party to the instant appeal. The children's mother voluntarily released her parental rights to the three children.

I

Respondent first contends that the circuit court lacked clear and convincing nonhearsay evidence to terminate his parental rights at the initial dispositional hearing, pursuant to MCL 712A.19b(3)(g), (h) and (j).[2] This Court reviews for clear error a circuit court's decision that a ground for termination of parental rights has been proven by clear and convincing evidence. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The circuit court's findings of fact qualify as clearly erroneous when this Court's review of the record reveals some evidence to support the findings, but leaves this Court with the definite and firm conviction that the circuit court made a mistake. *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996).

Our review of the record leads us to conclude that the circuit court properly terminated respondent's parental rights pursuant to MCL 712A.19b(3)(g), which contemplates termination under the following circumstances:

> The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

To establish the applicability of subsection (g), a petitioner must introduce clear and convincing evidence of both the respondent's failure and his inability to provide his children proper care and custody. *In re Hulbert*, 186 Mich App 600, 601, 605; 465 NW2d 36 (1990).

By itself, respondent's own nonhearsay testimony clearly and convincingly proves, in multiple respects, his failure to provide SAC and JPT with proper care and custody, specifically, his failure to consistently provide them with support or even contact them, and his failure to take any action to protect SAC during the lengthy period of her sexual abuse by Abram Hill, the mother's boyfriend. Respondent explained that he remained incarcerated for armed robbery, assault, and possession of drugs between 1997 and his release on parole in March 2002. Respondent indicated that during this period of incarceration, he did not provide the children any monetary support. Respondent also apparently never spoke with the children during the five-year period of his incarceration, but may have had contact with the children through an

[2] While the parties argue on appeal regarding the propriety of terminating respondent's parental rights pursuant to MCL 712A.19b(3)(b), the circuit court did not specifically apply subsection (b) to respondent. The petition sought termination of the parental rights of respondent, the children's mother, and Hill under MCL 712A.19b(3)(a)(i), (a)(ii), (b)(i), (b)(ii), (b)(iii), (g), (h), (j), (k) and (n). At the conclusion of the hearing, the court referee expressed his determination that clear and convincing evidence supported termination of Hill's parental rights under subsections (b)(i), (j) and (k)(ii). With respect to respondent, the referee decided to "terminate the parental rights of . . . John Thomas, pursuant to section (g), section (h) and section (j)." Although the referee's report and recommendations mentions subsection (b)(ii) among one of many grounds for terminating both Hill's and respondent's parental rights, the report never explicitly found that respondent "had the opportunity to prevent [Sharonda's] . . . physical sexual abuse [and] failed to do so," as contemplated within subsection (b)(ii).

unspecified number of letters. Respondent never discovered the sexual abuse that SAC suffered and, thus, failed to protect her from Hill's extended and repeated abuses. After respondent's reincarceration for a parole violation in March 2003, he did not see or contact the children, and no indication exists that he provided for their support.

Respondent's testimony further clearly and convincingly illustrates his inability to provide the children with proper care and custody, within a reasonable time, given their ages. While out on parole, respondent allegedly held a job for some period of time, but "wasn't making that much because [he] was on disability." Respondent occasionally offered the children's mother $50 when she visited and requested money, but the mother "wouldn't come around that much," and respondent never mailed her any money. While out on parole, respondent also occasionally purchased clothes, birthday presents, and Christmas presents for the children. He visited approximately once each month, including some weekend visits, which apparently occurred when the children's mother found it convenient to arrange them.

Respondent's meager and irregular financial support of the children reflects his inability to provide proper care and custody for the children, even during his parole period. But respondent further violated the terms of his parole and returned to prison in March 2003, for at least a one-year term of incarceration. After respondent returned to prison, he failed to make any efforts to contact the children, and no indication exists that he provided the children with any financial support or gifts after his reincarceration. Even assuming the veracity of respondent's suggestions that he would be released from prison at the end of February 2004, and that he loved and planned to care for the children, respondent offered no information to substantiate that the home in which he proposed to live with the children would qualify as a suitable environment, or that the unspecified job he had lined up would enable him to properly provide for the children's needs. Respondent, who acknowledged that he had used illegal drugs for two years during the early 1990s, testified that, since his reincarceration in 2003, he had begun attending weekly Narcotics Anonymous and Alcoholics Anonymous meetings, and anger management classes that helped him "learn[] to deal with [his] anger." Respondent also had started working toward the completion of his GED but had not attended any parenting classes.

In light of respondent's past failure to provide the children proper care and custody, even during the brief period of his parole release, the lack of any indication that he ever assumed primary care of the children on his own, his reincarceration, his apparent substance abuse and anger management difficulties, and his lack of an appropriate and specific plan to care for the children even should his release occur in early 2004, we find clear and convincing evidence of his inability to care for the children within a reasonable time considering the children's ages. Consequently, the circuit court did not clearly err when it terminated respondent's parental rights under subsection (g).[3] MCR 3.977(J); *In re Trejo*, *supra* at 356-357.

[3] Because the evidence clearly and convincingly establishes subsection (g), we need not consider subsections (h) or (j), on which the circuit court also relied. *In re IEM*, 233 Mich App 438, 450; 592 NW2d 751 (1999).

II

Respondent next argues that his trial counsel provided ineffective assistance by failing to object to prejudicial hearsay testimony by Inez Cleveland, the children's maternal grandmother, and child protective services worker Roeiah Peeples. Because respondent neglected to raise this issue before the circuit court, our review of his claim is limited to mistakes apparent on the existing record. *In re AMB*, 248 Mich App 144, 231-232; 640 NW2d 262 (2001); *People v Stewart (On Remand)*, 219 Mich App 38, 42; 555 NW2d 715 (1996).

Respondent correctly observes that because the circuit court ordered termination of his parental rights at the initial dispositional hearing, the court must have premised its ruling on "clear and convincing legally admissible evidence that had been introduced at the trial . . . or . . . at the dispositional hearing." MCR 3.977(E)(3). Cleveland arguably offered three topics of hearsay testimony, specifically (1) the details of the armed robbery and stabbing that formed the basis of respondent's 1997 convictions, which she gleaned from the testimony during respondent's criminal trial, (2) respondent's history of hospitalizations for mental health problems, including after he attempted to burn down his mother's house, and (3) Cleveland's belief, on the basis of statements by her daughter, that respondent had not fathered SAC. Respondent's trial counsel failed to object to the introduction of this hearsay testimony by Cleveland.

Even assuming that counsel's failure to challenge Cleveland's testimony qualifies as objectively unreasonable, the error had no apparent effect on the circuit court's ruling to terminate respondent's parental rights. *People v Pickens*, 446 Mich 298, 302-303, 312, 326-327; 521 NW2d 797 (1994). The referee's report summarized Cleveland's testimony within its "findings of fact," and noted that respondent "did not dispute any of [Cleveland's] allegations." But within the report's conclusions of law, which the circuit court ultimately approved, the referee almost entirely ignored the hearsay testimony by Cleveland when reaching his conclusions regarding the existence of the statutory grounds warranting termination. The referee instead mentioned several facts in evidence from respondent's testimony, including the following: "[t]here is no significant parental bond between the father, John Thomas, and the children"; "[t]he father, John Thomas, has a chronic substance abuse history for which treatment has been unsuccessful"; "[t]he father, John Thomas, is imprisoned for such a period that the children will be deprived of a normal home for a period exceeding two years and have [sic] not provided a plan for the children's care"; and "[t]he father John Thomas has not visited or supported his children on a regular basis. His incarceration from 1997 to 2002, and now again at present, has prevented him from having any kind of meaningful relationship with the children, and he is not in a position to care for them even if he were released."[4]

The only reference to hearsay testimony within the report's conclusions of law constitutes the referee's mention of the fact that "[t]he father, John Thomas, has a chronic mental health

[4] The referee's brief conclusions on the record at the close of the adjudication and dispositional hearing similarly are premised on information provided by respondent, not the hearsay testimony by Cleveland.

history for which treatment has been unsuccessful." Respondent denied that he had a mental health history, and, therefore, the referee must have premised his remark on the presumed hearsay testimony of Cleveland, who did not clarify the basis of her knowledge of respondent's mental health hospitalizations, or the hearsay testimony by Peeples that the children's mother had disclosed that respondent "has a history of mental health issues." But in light of the fact that respondent's own testimony alone supplies clear and convincing evidence of the propriety of termination pursuant to subsection (g), we cannot conclude that the circuit court's consideration of the hearsay testimony concerning his mental health history affected the outcome of the proceedings or deprived him of a fair trial. *People v Rodgers*, 248 Mich App 702, 714; 645 NW2d 294 (2001).

With respect to respondent's contention that his counsel should have objected on the basis of MCR 3.972(C)(2) to Peeples' testimony concerning the children's accounts of physical abuse, even assuming the veracity of this proposition, counsel's failure to object once again did not affect the ultimate decision to terminate respondent's parental rights. At the close of the October 20, 2003, proceedings, the referee mentioned the abuse of SAC by stating that when respondent was incarcerated, "he did not provide for the children's proper care and custody as is evidenced by the fact that one of the children was sexually abused in the mother's home." But an objection by respondent's counsel to Peeples' description of her interview with SAC would not have prevented the court from considering the fact that SAC had suffered sexual abuse during respondent's incarceration; SAC herself plainly testified regarding the extended period of sexual abuse to which Hill subjected her, and respondent offers no suggestion on appeal that SAC's testimony qualifies as improper.[5]

Because the circuit court did not take into account most of the challenged hearsay testimony by Cleveland and Peeples in reaching its conclusion to terminate respondent's parental rights, and because nonhearsay evidence clearly and convincingly supported the termination of respondent's parental rights pursuant to subsection (g), respondent's counsel's failure to object to the alleged hearsay did not affect the outcome of the proceedings or deprive respondent of a fair trial. *Rodgers*, *supra* at 714.

III

Respondent lastly argues that the circuit court erred by finding no evidence that the termination of his parental rights clearly would contravene the children's best interests. We review for clear error a circuit court's determination whether termination of a parent's rights serves the child's best interests. *In re Trejo*, *supra* at 356-357.

The evidence in this case relevant to the children's best interests includes the following facts: (1) respondent spent the majority of the time since 1997 incarcerated, during which he provided the children no support and apparently did not contact them with regularity; (2) during the one-year period of respondent's release on parole, he (a) only infrequently bought the

[5] No indication exists that the circuit court relied on Peeples' testimony concerning her interview with Johnnita in reaching its conclusion to terminate respondent's parental rights.

children clothes and gifts or gave the children's mother small amounts of monetary support, and (b) visited the children approximately once a month, including some weekends, when the children's mother deemed it convenient; (3) respondent failed to ascertain Hill's extended sexual abuse of SAC and, thus, did nothing to ensure that the children had a safe home environment; (4) after being reincarcerated for a parole violation, respondent made no efforts to support or contact the children; (5) respondent conceded that he had an anger management problem, among others; (6) respondent did not describe a detailed and appropriate plan pursuant to which he might care for the children on his release from incarceration; (7) the children felt safe living with their maternal grandmother, and JPT had improved her performance at school; and (8) although SAC indicated to Peeples that she "wouldn't mind being able to talk to [respondent]," no evidence substantiates that the children felt bonded to respondent. In light of the abundant evidence of respondent's past failures to substantially participate as a father in the children's lives and the children's acquisition of a sense of security while living with their maternal grandmother, we cannot conclude that the circuit court clearly erred when it found no evidence "that termination of parental rights is clearly not in the children's best interest[s]." *In re Trejo, supra* at 356-357.

Affirmed.

/s/ William B. Murphy
/s/ Richard Allen Griffin
/s/ Helene N. White