

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of PHILLIP A. FABER, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JEREMY FABER,

Respondent-Appellant.

UNPUBLISHED
November 9, 2004

No. 255760
Sanilac Circuit Court
Family Division
LC No. 03-034374-NA

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

MEMORANDUM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(j) and (k)(iii).

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 344, 357; 612 NW2d 407 (2000). Respondent pleaded guilty to felonious assault and third-degree child abuse of his then six-year-old stepdaughter and was sentenced to four years' imprisonment, he had a negative prison record, his psychological evaluation showed some risk for future child abuse, and there was no evidence that he had made progress in counseling. Respondent argues that the trial court erred in finding that section (j) was established by clear and convincing evidence, contending that this case is indistinguishable from *In re Boursaw*, 239 Mich App 161; 607 NW2d 408 (2000), overruled in part on other grounds *Trejo, supra* at 353-354. In *Boursaw*, this Court reversed the trial court's finding that the petitioner had established section (j) by clear and convincing evidence where the respondent's psychological prognosis was "guarded." *Id.* at 171-173. However, there was no evidence that the *Boursaw* respondent had ever struck her child, the issue was neglect and not actual abuse, and the respondent had made progress in several areas, including counseling and her relationship with her daughter. *Id.* at 173-174. In the present case, respondent's psychological evaluation also resulted in a "guarded" prognosis. However, respondent admitted to deliberately burning his stepdaughter's foot, and testimony established that he had hurt his stepdaughter in other ways and had written to her from prison threatening to kill her when he was released. The trial court did not err in finding a reasonable likelihood the minor child would be harmed if returned to respondent given respondent's conduct towards the child's sister.

Respondent also argues that the trial court erred in denying his motion to dismiss based on petitioner's violation of MCL 722.637. There is no dispute that petitioner erred in failing to file the petition for jurisdiction within twenty-four hours of its assessment that respondent had severely physically injured his stepdaughter, instead waiting four years until respondent's release from prison. However, the statute does not provide a sanction for this violation and this Court will not add sanctions for violations of procedural requirements in termination of parental rights cases. *In re Kirkwood*, 187 Mich App 542, 545-546; 468 NW2d 280 (1991). Moreover, refusing to reverse the trial court on this ground is not "inconsistent with substantial justice." MCR 2.613(A). Respondent benefited from the four-year waiting period because he had an opportunity to show that he had changed and made progress, although he did not take advantage of this opportunity. We also find that respondent's due process rights were not violated because the trial court had jurisdiction over respondent and the subject matter, he had ample notice of the proceedings and their nature, and was provided a full opportunity to be heard before his parental rights were terminated. *Kirkwood, supra* at 546.

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Michael R. Smolenski