STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of MEGAN LEE SMITH, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ALBERT LEE SMITH,

Respondent-Appellant,

and

TINA MORAY,

Respondent.

UNPUBLISHED
December 16, 2004

No. 254462
Ingham Circuit Court
Family Division
LC No. 00-509371-NA

Before: O'Connell, P.J., and Bandstra and Donofrio, 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)(g). We affirm.

Respondent-appellant first argues that the trial court improperly denied him parenting time with the minor child while he was in prison during the proceedings. We find that the trial court properly denied parenting time upon finding that it may be harmful to the minor child as required by MCL 712A.13a(11), MCR 3.965(C)(6), and former MCR 5.965(C)(7), which was applicable until May 1, 2003. There was evidence, including testimony and a report by the child's therapist, from which the trial court found that the minor child was afraid of the prison visits and that they would be harmful given her lack of a continued relationship after respondent-appellant entered prison. There was also evidence from which the trial court could determine, as it did, that the visits would be traumatic for a child with adjustment issues and harmful given the issues of behavior and stress the minor child was working through in foster care. A psychological evaluation or counseling was unnecessary given the therapist's evidence. The trial court's orders reflected findings of potential harm.

Respondent-appellant next argues that the trial court erred in interpreting the statute to require findings based on the circumstances existing when the petition was filed rather than at the time of the termination hearing. We agree with respondent-appellant's interpretation of the statute. Although there is no authority directly on point, this Court's language in both *In re Newman*, 189 Mich App 61, 70; 472 NW2d 38 (1991), and *In re CR*, 250 Mich App 185, 196; 646 NW2d 506 (2002), concerning evidence relating to the time of trial, suggests that the correct interpretation of the statute is the one requiring the trial court to address the circumstances existing at trial when it orders termination. An interpretation that considered only the circumstances at the petition filing would lead to an illogical result in a case in which both statutory prongs were satisfied when the petition was filed, but by trial the respondent had either finally provided proper care and custody or became able to provide it in a reasonable time. Termination would then be required despite the current fitness of the parent, and it would make no sense to require a consideration of best interests to remedy that unfortunate result. Our primary task in interpreting statutes is to give effect to the Legislature's intent, *In re Blackshear*, 262 Mich App 101, 107; 686 NW2d 280 (2004), and we must use common sense in our interpretation, *Frierson* v *West American Ins Co*, 261 Mich App 732, 734; 683 NW2d 695 (2004). We do not believe the Legislature intended such a result.

We find only harmless error in this case, however. While the trial court found that respondent-appellant was unable to provide proper care and custody at the time the petition was filed since he was in prison, clear and convincing evidence also showed that respondent-appellant was not able to provide proper care and custody at trial either, having no home or employment. The trial court also found, accepting the far range of respondent-appellant's own opinion as to how long it would take him to provide proper care and custody, that it would be approximately a year and a half from the time the petition was filed until he could do so. This was effectively no different from using respondent-appellant's estimate and saying it would be approximately a year from the time of trial before he would be ready. The date of significance was the actual date when respondent-appellant would be ready, which was the same under either analysis. We agree with the trial court that it was not a reasonable amount of time given the child's need for permanence, stability, and a sense of being able to depend on adults.

Based on this evidence, we find that the trial court did not err in finding that the statutory ground for termination was established by clear and convincing evidence. MCR 3.977(G); *In re Miller*, 433 Mich 331, 336-337; 445 NW2d 161 (1989). Although respondent-appellant did not raise the issue of the child's best interests in his Statement of Questions Presented, we find that, even ignoring any evidence about the lack of a parent/child bond, the evidence did not show that termination of respondent-appellant's parental rights was clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Thus, the trial court did not err in terminating respondent-appellant's parental rights.

Affirmed.

/s/ Peter D. O'Connell
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio