

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of RICHARD J. FISK, Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

UNPUBLISHED
January 3, 2006

Petitioner-Appellee,

v

SHERIDAN FISK,

Respondent-Appellant.

No. 263079
Gogebic Circuit Court
Family Division
LC No. 03-200043-NA

Before: Owens, P.J., and Saad and Fort Hood, JJ.

PER CURIAM.

Respondent 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), (h), (j), and (n)(i). We affirm.

The trial court did not clearly err in finding the statutory grounds for termination established by clear and convincing evidence. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 352-353; 612 NW2d 407 (2000). The primary conditions leading to adjudication were a filthy home, criminality, substance abuse, and domestic violence. Richard had asthma and was not allowed to be around cigarette smoke. However, ashtrays filled with cigarette butts were found in respondent's home. Less than one month after Richard's removal, respondent committed a felony, third-degree criminal sexual conduct, MCL 750.520d, involving sexual intercourse with a girl 13 to 15 years of age. Respondent was convicted of this offense and his sentence enhanced as a habitual offender, second offense, MCL 769.10, on January 7, 2004. He was sentenced on February 9, 2004 to four to 22½ years in prison, with an early release date of July 30, 2007.

Respondent first contends that he was not given proper notice of the conditions that needed to be rectified under MCL 712A.19b(3)(c)(i). We disagree. The caseworker testified that she attempted to contact respondent at least 11 times in July 2003 and did provide a copy of the case service plan (CSP) to respondent's attorney. Respondent was unable to work on programs and services aimed at reunification, because he was jailed before the CSP was typed. He did not comply with terms of his probation to attend a batterer's program and provide drug tests. In July 2003, he used morphine. The caseworker did speak to him in July 2003 regarding the conditions of the CSP. Clear and convincing evidence supported termination of respondent's parental rights under subsection (c)(i).

Clear and convincing evidence also supported termination under subsections (g), (h), (j), and (n)(i). Respondent failed to provide proper care and custody for Richard and endangered his well-being by permitting the filthy and unsanitary home conditions, including moldy food, piles of dog feces, and smoking or permitting smoking around a child known to have severe asthma. When the caseworker saw Richard on July 1, his breathing was a high-pitched bark; he had to be hospitalized on July 2, and the situation was described as "life and death." While respondent did show concern for the child in sitting by his hospital bed, respondent's part in causing the conditions that led to the hospitalization cannot be ignored. Other behaviors by respondent that were potentially harmful to the child's mental or physical well-being included drug abuse and domestic violence against the child's mother that caused the mother's older children to become afraid. Respondent has not seen Richard since early July 2003. His incarceration has ensured that he will be unavailable to begin reunification with Richard until at least July 2007. The elements of subsection (g), (h), (j), and (n)(i) were satisfied.

Further, the evidence did not establish that termination of respondent's parental rights was clearly not in the child's best interests. MCL 712A.19b(5); *Trejo, supra* at 356-357. Richard needs a permanent, safe, stable home, which respondent cannot provide. We have examined the record and find no clear error in the trial court's conclusions.

Affirmed.

/s/ Donald S. Owens
/s/ Henry William Saad
/s/ Karen M. Fort Hood