STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of LEO PAUL THEISEN and CASSIE ELEANOR THEISEN-CRAMER, Minors.

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

Petitioner-Appellee,

v

KENNETH ROY CRAMER,

Respondent-Appellant,

and

BARBARA THEISEN,

Respondent.

UNPUBLISHED
November 14, 2006

No. 269067
Oakland Circuit Court
Family Division
LC No. 03-684907-NA

Before: Fort Hood, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (h). Because petitioner established by clear and convincing evidence at least one statutory ground for termination of parental rights and the record as a whole fails to establish by clear evidence that termination is not in the children's best interests, we affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

The initial petition sought the temporary custody of the children, alleged the children's mother had physically abused the oldest child, and that respondent-appellant was on parole. When respondent-appellant later violated his parole, he was returned to prison, where he was provided a parent-agency agreement and where he participated in an anger management-domestic violence class, a substance abuse group program, Alcoholics Anonymous meetings, and a drama video workshop group (he had also completed several other programs while incarcerated before his parole). At the time of the trial on the supplemental termination petition respondent-appellant remained incarcerated. He also had an extensive criminal history, which

included a felony conviction for third-degree criminal sexual conduct with a child aged between 13 and 15 years.

The trial court did not clearly err in determining that at least one statutory ground had been established by clear and convincing evidence. *In re CR*, 250 Mich App 185, 194-195; 646 NW2d 506 (2002). This Court reviews that finding under the clearly erroneous standard. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Respondent-appellant admitted that he had failed in the past to provide proper care and custody for the children. Because of his incarceration, he had not rectified the adjudicating condition of being unavailable to provide care for the children.[1] There was no reasonable likelihood that respondent-appellant would be released soon since he was not eligible for parole until the year 2007, and had already been continued three times. Also, he apparently had not benefited from his participation in the various prison programs since he had violated his parole in numerous ways after the completion of many of those programs. However well meaning and sincere respondent-appellant was when he spoke of his new outlook, his actions belied his claims. By the time of the termination trial, Leo was six years old and had spent much of his life in a guardianship or under petitioner's care, while four-year-old Cassie did not know respondent-appellant at all. It was not reasonable to require the children to wait nearly two more years on the chance that respondent may be paroled in 2007. Therefore, the trial court did not clearly err when it found that statutory grounds for the termination of respondent-appellant's parental rights had been established by clear and convincing evidence.

Finally, the trial court did not clearly err in its determination regarding the children's best interests. MCL 712A.19b(5); *Trejo, supra* at 353. A review of the entire record showed that the children and respondent-appellant were not bonded. In addition, a psychological evaluation concluded that respondent-appellant was a highly antisocial person, who did not appear bothered by his behavior or motivated to change.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Christopher M. Murray
/s/ Pat M. Donofrio

[1] Contrary to respondent-appellant's argument on appeal, the mere presence of respondent-appellant at the hearings did not mean he had been available to provide care and custody.