

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of PAIGE RENEE HANSON and
JESSE LARS HANSON, Minors.

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

UNPUBLISHED
December 19, 2006

Petitioner-Appellee,

v

MARK HANSON,

Respondent-Appellant.

No. 271110
Oakland Circuit Court
Family Division
LC No. 2004-694210-NA

Before: Meter, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor children under MCL 712A.19b(3)(b)(i), (g), (j) and (k)(ii). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court did not clearly err in finding that at least one of the statutory grounds for termination of respondent's parental rights was established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). This is the second appeal in this proceeding. In May 2004, the children's half-sister, Kerri, accused respondent of having sexually abused her over a period of time several years previously while she and her mother resided with respondent, and petitioner requested termination of respondent's parental rights to his children, Paige and Jesse, for whom respondent had provided sole custody for the past four years. At the November 9, 2004 adjudication trial, the trial court found that respondent's plea of no contest to the allegation that he had pleaded guilty to five counts of second-degree criminal sexual conduct and one count of accosting a minor for immoral purposes, along with his stipulation to the police report as a factual basis for that no contest plea, provided the basis for permanent wardship. The trial court did not specify which statutory grounds it relied on, but subsections 19b(3)(b)(i), (g), (j), and (k)(ii) were alleged in the supplemental petition.

One month following the adjudication trial, respondent was sentenced to 5 to 15 years in prison, with an earliest release date of July 21, 2009, and a maximum release date in 2019. The evidence did not show that respondent could provide alternate care for the children with a

relative during the period of incarceration, yet the trial court determined that termination of his parental rights was not in the children's best interests. Petitioner appealed, and this Court reversed, finding that the trial court made erroneous findings with respect to respondent's psychological evaluation and failed to consider the consequences of retaining the children under the court's care while respondent completed his prison sentence. This Court then remanded for entry of an order terminating respondent's parental rights. *In re Hanson*, unpublished opinion per curiam of the Court of Appeals, issued April 27, 2006 (Docket No. 264984). On remand, the trial court entered an order terminating respondent's parental right without making additional findings of fact with regard to the statutory grounds relied upon, and respondent filed the instant appeal.

At the time of both the May 2005 best interests hearing and the June 5, 2006 termination, clear and convincing evidence supported termination of respondent's parental rights under subsection 19b(3)(g), and would also have under subsection 19b(3)(h) had petitioner amended the supplemental petition to allege that additional ground. Respondent failed to provide proper care and custody for Paige and Jesse by being unable to arrange alternate care for them during the three years remaining on his prison sentence. The evidence did not show that his sister was willing and able to care for the children. Due to the length of respondent's sentence, there was no reasonable likelihood that he would be able to provide the children with proper care or custody within a reasonable time, and the children would be deprived of a normal home for more than two years following termination.

Likewise, subsection 19b(3)(k)(ii) supported termination of respondent's parental rights. Respondent's no contest plea and stipulation to the police report allowed the trial court to assume that the facts in the police report were true. Kerri's statements to the police established fellatio, which constitutes penetration under MCL 750.520a(p), and established this subsection.

Subsections 19b(3)(b)(i) and (j) presume the possibility of the children return to respondent's home. While return was possible at the time of the November 9, 2004 adjudication trial, it was not by the time of the June 5, 2006 termination because of respondent's incarceration. These subsections were not applicable to respondent's circumstances at the time the termination order was entered, and could not serve as grounds for termination of his parental rights.

Further, the evidence did not show that termination of respondent's parental rights was clearly contrary to the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). In order to maintain consistency and avoid reconsideration of matters already decided during the course of a continuing proceeding, the law of the case doctrine provides that if an appellate court has passed on a legal question and remanded the case for further proceedings, the legal question thus determined by the appellate court will not be differently determined on a subsequent appeal in the same case where the facts remain materially the same. *CAF Investment Co v Saginaw Twp*, 410 Mich 428, 454; 302 NW2d 164 (1981).

This Court's prior ruling on the question of best interests is law of the case. Material facts have not changed since this Court's decision that termination was not clearly contrary to the children's best interests, and therefore that ruling will not be disturbed.

Affirmed.

/s/ Patrick M. Meter
/s/ Peter D. O'Connell
/s/ Alton T. Davis