

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JASON DANIEL CONTRERAS
and NATHAN LEE CONTRERAS, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ROBERT CONTRERAS,

Respondent-Appellant.

UNPUBLISHED

April 15, 2008

No. 279335

Macomb Circuit Court

Family Division

LC No. 2005-5856411-NA

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

PER CURIAM.

Respondent 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 (j).¹ We affirm.

One of the grounds for termination was that clear and convincing evidence supported a finding that the condition leading to adjudication continued to exist. In particular, MCL 712A.19b(3)(c), (g) and (i) provide that:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

¹ The children's mother voluntarily relinquished her parental rights to the minor children and is not a party in this appeal.

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is not reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The trial court did not clearly err in determining that the statutory grounds had been established by clear and convincing evidence. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). There is no dispute that 182 days had elapsed since the issuance of the initial dispositional order. Additionally, the following evidence adequately supported the trial court's conclusion that these statutory findings were satisfied. For example, respondent's history with Children's Protective Services dated back to 1989 when he was substantiated for sexually abusing an older child. He was also substantiated for neglect in 2002. This proceeding started in April of 2005 after the family home was deemed environmentally unsuitable, there were problems with rent and utility payments, and respondent failed to protect the minor children and neglected their emotional, physical, and medical needs. By the time of the termination trial in May of 2007, respondent's housing remained unstable in that he had just recently moved back in with his wife after being without a permanent home for a period of time, but the status of their relationship was unclear and his wife had recently had her own parental rights terminated to her children. In addition, respondent's continued failure to understand the children's emotional needs had caused them to stop seeking respondent's support.

Clear and convincing evidence also supported the trial court's finding that respondent's prognosis for change was not favorable. Although he participated in numerous services, he failed to substantially comply with the parent/agency agreement ("PAA")² and also failed to demonstrate improved parenting skills during visitations, which were often chaotic and where respondent sometimes resorted to bribery in an attempt to manage the children. Although respondent's therapist felt respondent made progress in therapy, a Department of Human Services employee reported that respondent failed to address many issues and preferred to blame others for the problems. Given this evidence, the trial court did not clearly err when it based termination upon MCL 712A.19b(3)(c) and (g).

² On appeal, respondent asserts that some of the PAA terms were vague. However, he does not identify the complaining terms and, in any event, the proper time to raise that issue would have been before the termination trial, when the PAA was in effect.

The trial court also did not clearly err in finding that clear and convincing evidence established that the children would be at risk of harm if returned to respondent's care. MCL 712A.19b(3)(j). In addition to the mental health problems inflicted upon the children by respondent's conduct, there was also sufficient evidence that the children were at risk of sexual abuse. A sexual offender assessment conducted on respondent found he was a preferential pedophile and a direct risk to any children in his care. Although respondent's therapist disagreed with this assessment and instead opined respondent suffered from boundary issues and/or a sexual addiction, the trial court was free to give more credence to one assessment over the other.³

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. This proceeding lasted two years and there was little to no progress made by respondent. By the time of the termination trial, neither child wanted to be reunited with respondent, and further delay would not have been in these children's best interests.

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Mark J. Cavanagh

³ Respondent additionally argues that the trial court improperly considered the advantages of the foster home when making its ruling on respondent's parental rights. However, a review of the evidence relied upon by the court shows that none of it referred to the children's foster home and was, instead, based entirely upon respondent's conduct or capacity.