

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MACKENZIE RENE DUTCHER
and KENNEDY ANN DUTCHER, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CASSANDRA DUTCHER,

Respondent,

and

DOMINIC DUTCHER,

Respondent-Appellant.

UNPUBLISHED

November 13, 2008

No. 284949

Wayne Circuit Court

Family Division

LC No. 06-457605-NA

Before: Beckering, P.J., and Borrello and Davis, JJ.

PER CURIAM.

Respondent father 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). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). If a statutory ground for termination is established, the trial court must terminate parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(J); *Trejo, supra* at 355-357; *Sours, supra* at 632-633. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989). Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *Miller, supra* at 337.

There was clear and convincing evidence to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i). Respondent's drug use and criminal history led to Mackenzie's and Kennedy's adjudication. By the time of the permanent custody hearing, respondent had not demonstrated that he could maintain a drug-free lifestyle. During the permanent custody hearing he was, once again, and for the second time during the case, attending residential substance abuse rehabilitation. Respondent was court ordered to repeat the same rehabilitation program he completed in February 2007 following a breaking and entering conviction that arose from an attempt to support his heroin habit. Because criminality and drug use continued to be an unresolved issue at the time of the permanent custody hearing, termination of parental rights under MCL 712A.19b(3)(c)(i) was proper.

Termination of respondent's parental rights was also appropriate pursuant to MCL 712A.19b(3)(g) and MCL 712A.19b(3)(j). Respondent was unable to provide proper care and custody of his children because he had not demonstrated that he could maintain a drug- and crime-free lifestyle, and because he did not have housing or employment. Although respondent was two weeks shy of completing drug treatment at the time of the permanent custody hearing, given his extensive substance abuse history and multiple relapses, the trial court could not consider respondent rehabilitated. Mackenzie and Kennedy would be at risk of harm if returned to respondent's care because there is no evidence that respondent has completely overcome his drug problem. Also, respondent's criminal history and tendency toward criminality would expose the children to an additional risk of harm if returned to his care.

Finally, the trial court did not clearly err in its best interests determination. No evidence was put forth on the record by any party that it was not in Mackenzie's or Kennedy's best interests to terminate respondent's parental rights. To the contrary, the evidence established that respondent was using drugs and could not provide a safe, suitable home for the children. Respondent's decisions to use drugs while the children were temporary court wards, and to involve himself in criminal activity to support his drug use demonstrates that the children were not his priority. It is not in Mackenzie or Kennedy's best interest to be reunified with a parent who cannot properly care for them and who does not prioritize them. The children's safety and overall well-being are needs that must be prioritized over the relationship to a parent who has not demonstrated parental fitness. "If a parent cannot or will not meet her irreducible minimum parental responsibilities, the needs of the child must prevail over the needs of the parent." *In re Terry* 240 Mich App 14, 28; 610 NW2d 563 (2000), quoting *In re AP*, 728 A2d 375, 379 (Pa Super, 1999).

Affirmed.

/s/ Jane M. Beckering
/s/ Stephen L. Borrello
/s/ Alton T. Davis