

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of WILLIE CLNNEXX GANTT, IV,  
Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

YOLANDA SANTANA,

Respondent,

and

WILLIE LEON GANTT, III,

Respondent-Appellant.

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UNPUBLISHED

January 20, 2009

No. 285738

Wayne Circuit Court

Family Division

LC No. 06-461513-NA

Before: Talbot, P.J., and Bandstra and Gleicher, 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)(a)(ii), (c)(i), (g), (j) (k)(i).<sup>1</sup> 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

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<sup>1</sup> The parental rights of the child's mother, Yolanda Santana, were also terminated but she is not a party to this appeal. Therefore, references to "respondent" throughout this opinion are to respondent father only.

712A.19b(5);<sup>2</sup> *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). "[R]egard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *Miller, supra* at 337; MCR 2.613(C).

The trial court did not clearly err when it terminated respondent's parental rights under MCL 712A.19b(3)(a)(ii) and (k)(i) because respondent deserted Willie and failed to seek custody of him. When Willie was born on November 2, 2006, respondent's whereabouts were unknown. Respondent did not have contact or see Willie until July 2007, which exceeded the 91-day statutory period required for desertion. Although respondent subsequently began visiting Willie regularly, this contact was only temporary. Respondent again abandoned Willie for a period exceeding 91 days beginning on October 5, 2007, when he last visited him. Respondent did not make an appearance or seek custody of Willie until the permanent custody hearing on March 18, 2008, thereby abandoning him again for over five months. A parent's failure to make any substantial effort to visit or communicate with a child for a period of time in excess of the 91-day statutory period establishes abandonment. *In re Webster*, 170 Mich App 100, 109; 427 NW2d 596 (1988). Thus, because respondent had abandoned Willie, termination of his parental rights was proper under MCL 712A.19b(3)(a)(ii) and (k)(i).

The trial court also did not err when it terminated respondent's parental rights under MCL 712A.19b(3)(c)(i) because the conditions that led to the adjudication continued to exist at the time of the permanent custody hearing. At the time of the adjudication, respondent's whereabouts were unknown. He abused drugs and was homeless. Although respondent temporarily obtained housing and attended inpatient substance abuse treatment, he was evicted from his house in October 2007, became depressed, and began using drugs again. Respondent's admission of recent marijuana use showed that he had not overcome his drug addiction. As petitioner correctly points out, mere compliance with a treatment plan is not sufficient. A parent must benefit from services to enable the court to find that he can provide a suitable, safe home for his child. *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005). Further, respondent failed to maintain contact with the caseworker and never presented his home for assessment of suitability. Also, because respondent was unemployed, it is questionable whether he would be able maintain suitable housing.

Termination of respondent's parental rights under MCL 712A.19b(3)(g) was also not clearly erroneous because he was unable to provide proper care and custody of Willie. Respondent last worked at a nightclub in December 2007 and was unemployed at the time of the permanent custody hearing. Although respondent claimed to have been renting a home, that

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<sup>2</sup> MCL 712A.19b(5) has been amended, effective July 11, 2008, to require that the trial court make an affirmative finding that termination of a parent's parental rights is in the best interest of the child. 2008 PA 199. The amended statute does not affect the instant case because the termination order was entered on March 20, 2008.

home had never been assessed for suitability and he was relying on his family to help him pay his rent. Respondent did not maintain regular contact with the caseworker and, while he may have completed parenting classes and attended counseling, this was not enough to demonstrate that he could provide proper care and custody for Willie.

Moreover, respondent admitted that after he became depressed and relapsed in October 2007, he did not seek help. This relapse would have undermined any progress or benefit he made in previous substance abuse treatment. Because sufficient benefit from services is a necessary prerequisite for reunification to ensure a child's safety, respondent's limited compliance with his treatment plan was insufficient. See *In re Gazella, supra* at 676. Respondent's continued drug use would also interfere with his ability to provide proper care and custody of an infant. There was no evidence that respondent ever provided any care or custody for Willie, and the fact that he abandoned Willie for two distinct periods of time demonstrated his inability to properly care for the child.

Next, the trial court did not err in terminating respondent's parental rights under MCL 712A.19b(3)(j). Willie would likely be harmed in respondent's care because respondent continued using drugs and never demonstrated that he had overcome his substance abuse issues. Respondent's repeated history of deserting Willie put the child at risk of harm of abandonment. In the year-and-a-half since Willie had been placed in foster care, respondent failed to demonstrate a consistent commitment to caring for and raising his son by maintaining a substance free, stable lifestyle, without which Willie would be subject to risk of harm.

Finally, the trial court did not clearly err in its best interests determination. There was no evidence that a bond was maintained after respondent abandoned Willie in October 2007 and abruptly stopped visiting him. Because respondent was unable to show he could provide a stable home and proper care for Willie, it was not clearly contrary to the child's best interests to terminate his parental rights.

Affirmed.

/s/ Michael J. Talbot  
/s/ Richard A. Bandstra  
/s/ Elizabeth L. Gleicher