

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TRENTON DOUGLAS PRALL,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RAYMOND DESMYTHER,

Respondent-Appellant.

UNPUBLISHED
December 22, 2009

No. 293118
St. Clair Circuit Court
Family Division
LC No. 08-000063NA

Before: Murphy, C.J., and Jansen and Zahra, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), and (g).¹ Respondent raises two issues. First, respondent maintains that the statutory grounds for termination were not established by clear and convincing evidence.² Second, respondent maintains the trial court erred when it concluded that termination of respondent's parental rights was in the best interest of the child, pursuant to MCL 712A.19b(5). For the reasons set forth below, we conclude there is no merit to either issue raised by respondent. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

I. Standard of Review

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 and that termination is in the best interest of the child(ren). MCL 712A.19b(5); *In re*

¹ The parental rights of the child's mother, Anjelica Prall, were also terminated but she is not a party to this appeal.

² In the first issue presented in respondent's brief on appeal, she also argues that termination was not in the best interest of the child. We address the merits of this argument while addressing respondent's second issue on appeal.

Sours, 459 Mich 624, 632-633; 593 NW2d 520 (1999). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 355-357; 612 NW2d 407 (2000); *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.

II. The Evidence Supporting the Statutory Grounds for Termination

Termination of respondent's parental rights was proper under MCL 712A.19b(3)(c)(i) and (g). Trenton was adjudicated a temporary court ward based on respondent's unavailability to care for the child due to his incarceration. By the time of the permanent custody hearing, respondent continued to be incarcerated and did not yet have a definitive date set for parole. Respondent's incarceration left Trenton without the stability of a normal home and made it impossible for him to provide proper care and custody for the child within a reasonable time.

Respondent participated in some aspects of his treatment plan while incarcerated, but he had not fully completed services. Respondent's ability to comply with a parent-agency agreement was limited because he could only participate in the services that were offered by his correctional facility. Although respondent was granted parole shortly after the court entered the order terminating his parental rights, he still needed to comply with the conditions of parole, participate and benefit from a parent-agency agreement, and demonstrate parental fitness. The quick establishment of a normal home for Trenton was hardly assured under those circumstances.

Moreover, because respondent was incarcerated the entire duration of Trenton's temporary court wardship, there is no evidence on the record that respondent was able to provide proper care and custody of the child. Given that Trenton would have been a court ward for over two years at the time of respondent's release from prison, and considering respondent's extensive criminal history and the uncertainty about his ability to properly care for a minor child on his release from prison, the trial court did not clearly err by finding that respondent would be unable to provide Trenton with proper care or custody.³

³ The trial court's findings under MCL 712A.19b(3)(c)(ii), were erroneous. In its findings, the trial court did not distinguish between MCL 712A.19b(3)(c)(i) and (c)(ii), listing them together as if they are one. Unlike MCL 712A.19b(3)(c)(i), MCL 712A.19b(3)(c)(ii) indicates that other conditions have become known since the initial adjudication. It applies only when these new conditions have not yet been used as a basis for jurisdiction and when the new conditions independently support the court's assertion of jurisdiction. In this case, there was no new information or condition that would have independently supported assertion of jurisdiction over Trenton. Thus, the court's findings under CL 712A.19b(3)(c)(ii) were erroneous. Nevertheless, the erroneous termination of respondent's parental rights under that statutory basis was harmless error because the court properly found by clear and convincing evidence on the other grounds for termination under MCL 712A.19b(3)(c)(i) and (g). MCL 712A.19b(3); *In re Powers Minors*,
(continued...)

III. Best Interest Finding

Finally, the evidence showed that termination of respondent's parental rights was clearly in the best interests of the child. MCL 712A.19b(5). Respondent has been in prison since Trenton's birth and has been unable to establish any kind of bond with the child. Because of respondent's imprisonment, he has been unable to have any visitation or meaningful contact with Trenton. Respondent argues that he was never given a full opportunity to prove his parenting ability. However, respondent deprived himself of the opportunity to demonstrate his parenting potential when he participated in criminal conduct. Although respondent may have improved himself during the time he spent in prison, he failed to demonstrate that he is capable of parenting a young child. Respondent did not have housing or employment and has not shown that he had the necessary parenting skills to care for Trenton. Thus, the trial court did not clearly err in its best interest determination.

Affirmed.

/s/ William B. Murphy

/s/ Kathleen Jansen

/s/ Brian K. Zahra

(...continued)

244 Mich App 111, 118; 624 NW2d 472 (2000).