

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
October 18, 2011

In the Matter of THOMAS Minors.

No. 303384
Wayne Circuit Court
Family Division
LC No. 09-491088

Before: OWENS, P.J., and JANSEN and O'CONNELL, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating his parental rights to the two children under MCL 712A.19b(3)(b)(i), (b)(ii), (g), and (j). We affirm.

This Court reviews the trial court's finding that a ground for termination was established by clear and convincing evidence for clear error. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). 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." *Mason*, 486 Mich at 152 (internal quotation omitted).

Petitioner concedes, and we agree, that the ground for termination set forth in MCL 712A.19b(3)(b)(i) was not proven by clear and convincing evidence where there was no evidence that respondent caused physical injury or physical abuse to a child. We note, however, that only one ground for termination must be proven before a court may terminate parental rights. MCL 712A.19b(3).

We find that the grounds for termination set forth in MCL 712A.19b(3)(b)(ii) and (j) were proven by clear and convincing evidence with respect to both children. With respect to § 19b(3)(b)(ii), there was evidence that respondent knew of burns that his son had sustained, but respondent failed to seek medical treatment. This evidence constituted sufficient proof that respondent had the opportunity to prevent physical injury to the child yet failed to do so. With respect to § 19b(3)(j), there was evidence that respondent had a history of neglecting his children, that two of respondent's children suffered physical abuse by others while they were in his care, and that respondent had cognitive limitations that were barriers to his parenting abilities. This evidence provided sufficient proof of a reasonable likelihood that the children would suffer from injury or abuse in the foreseeable future if placed in respondent's home.

We also conclude that the ground for termination set forth in MCL 712A.19b(3)(g) was proven by clear and convincing evidence with respect to respondent's son, where there was

evidence that the son was physically abused by his mother on two occasions while living with respondent and evidence that respondent failed to seek medical treatment for burns suffered by the son. Again, the evidence of the abuse and neglect suffered by respondent's other children, considered with respondent's cognitive limitations, clearly and convincingly proved that there was a reasonable likelihood that the child would be harmed if returned to respondent's care.

However, we find that the court clearly erred in finding that there was clear and convincing evidence to terminate respondent's parental rights to his daughter under § 19b(3)(g), where there was no evidence that the daughter was ever in respondent's care and custody before she was removed from the home.

Finally, we find no clear error in the trial court's determination that termination of respondent's parental rights was in the children's best interests. MCL 712A.19b(5). The evidence that respondent consistently visited the children and was bonded to them was clearly outweighed by the evidence that he was unable to provide the children with the safe and stable environment they required.

We therefore affirm the trial court's order terminating respondent's parental rights to the children.

Affirmed.

/s/ Donald S. Owens
/s/ Kathleen Jansen
/s/ Peter D. O'Connell