

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED  
May 23, 2013

In the Matter of D R Gierzak, Minor.

No. 313145  
Muskegon Circuit Court  
Family Division  
LC No. 11-041399-NA

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Before: STEPHENS, P.J., and SAWYER and METER, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to the minor child under MCL 712A.19b(3)(g), (h), and (n), and MCL 712A.19b(5).<sup>1</sup> Because we conclude the trial court did not clearly err by determining termination was in the child's best interest, we affirm.

On October 11, 2011, respondent was convicted for assault and rape of the child's mother, and was subsequently sentenced as a fourth habitual offender to 40 to 75 years of imprisonment. On appeal, respondent concedes that statutory grounds for termination were met pursuant to MCL 712A.19b(3)(h); therefore, the focus of our analysis is whether termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5). The trial court's determination that termination of parental rights is in the child's best interest is reviewed under the clearly erroneous standard. MCR 3.977(K); *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). A trial court clearly errs if the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

We conclude the trial court did not clearly err by determining that termination of respondent's parental rights was in the child's best interest. "In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). Further, the child's age and specific needs are important

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<sup>1</sup> The mother retained her parental rights and custody of the child and is not a party in this appeal.

factors when considering the child's need for permanence and the timeframe for which a child must wait for the parent to rectify conditions. *In re McIntyre*, 192 Mich App 47, 52–53; 480 NW2d 293 (1991).

Respondent has been incarcerated for most of the child's life because the child was 5 months old when he was jailed in 2011. Whatever bond existed at the time of incarceration has likely faded from the toddler's perspective. Despite respondent's testimony that prior to going to prison he assisted in basic parenting tasks such as changing diapers and feeding the child, parenting involves more than rudimentary tasks. Indeed, effective parenting also requires the ability to cooperate with the other parent on major life issues such as medical care and education. However, given that his offense was against the child's mother the likelihood that he could be an effective co-parent is negligible.

The court did not clearly err in finding that the respondent's presence in the child's life would impede stability. The court found respondent's history of violence against the child's mother would present a constant source of conflict for the child, where the child would be unreasonably required to choose allegiances between his mother and her abuser. Respondent failed to contemplate how his child would react to learning of respondent's violence toward the child's mother or how he would manage that reaction. Although respondent claimed to have abandoned his lifestyle of illegal activity and violence, he continued to participate in illegal activities and violence during his incarceration. It is quite reasonable to conclude that respondent is likely to resume his illegal activity after his release from prison and that his misconduct would extend any favorable parole determination, thus extending the time when he could engage in active parenting. The lower court rejected respondent's assertions that his life example could serve as teaching tools for his son, concluding that respondent's presence in the child's life would not serve to promote stability and that the child could learn from his example even better without respondent's destabilizing influence. We reach the same conclusion.

In sum, because the lower court appropriately considered the *Olive/Metts* factors, the trial court did not clearly err by finding termination was in the child's best interest.

We affirm.

/s/ Cynthia Diane Stephens

/s/ David H. Sawyer

/s/ Patrick M. Meter