

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MELISSA JO BILLSEN and
SHANE ANDREW BILLSEN, Minors.

DEPARTMENT OF SOCIAL SERVICES,

Petitioner-Appellee,

v

GEORGE ANDREW BILLSEN,

Respondent-Appellant.

UNPUBLISHED

June 11, 1996

No. 183353

LC No. 003922-NA

Before: Marilyn Kelly, P.J., and Wahls and M.R. Knoblock,* JJ.

PER CURIAM.

Respondent appeals as of right from the probate court's order terminating his parental rights to his two minor children pursuant to MCL 712A.19b(3)(h); MSA 27.3178(598.19b)(3)(h) (imprisonment for greater than two years), and MCL 712A.19b(3)(g); MSA 27.3178(598.19b) (3)(g) (failure to provide proper care and custody). We affirm.

Respondent was the subject of a police investigation following the unexplained death of his infant grandson. Shortly after the infant's death, petitioner Ingham County Department of Social Services (DSS) began probate proceedings against respondent and his wife. Respondent was later convicted of second-degree murder. Respondent's wife voluntarily released her parental rights to the children in December, 1994.

Respondent argues that the probate court erred in terminating his parental rights while he was actively appealing his criminal conviction. We disagree. This issue presents a question of law which we review de novo. *People v Connor*, 209 Mich App 419, 423; 531 NW2d 734 (1995).

* Circuit judge, sitting on the Court of Appeals by assignment.

In order for the probate court to terminate a person's parental rights, it must find that at least one of the statutory grounds of MCL 712A.19b; MSA 27.3178(598.19b), has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). Here, the court relied, in part, on the statutory ground that "[t]he parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child." MCL 712A.19b(3)(h); MSA 27.3178(598.19b)(3)(h).

Nothing in the statute allowing for the termination of parental rights requires the probate court to "wait for the parent convicted of a crime to exhaust all avenues of appeal before the court may proceed with a severance hearing." *In re Appeal of Pima Co Juvenile Severance Action*, 162 Ariz 536, 538; 785 P2d 56, 58 (Ariz Ct App, 1989). We agree with the Arizona appellate court that waiting for the appellate process would "indefinitely delay determinations regarding children whose best interests are at risk and require expedient consideration." *Id.* Here, as in Arizona, the best interests of the minor children must be considered. *McIntyre*, *supra*, p 50. Moreover, the success of an appeal, like release from prison, is of a "speculative nature," and would only delay permanent placement of the children. *Travis v State Dep't of Human Resources*, 547 So 2d 571, 574 (Ala Civ App, 1989). Finally, the interests of justice and judicial economy, as well as the best interests of the minor children, favor proceeding to terminate parental rights prior to exhaustion of all appellate rights. *In re Marriage of T.H.*, 255 Ill App 3d 247; 626 NE2d 403, 411 (1993). Accordingly, the probate court did not err in terminating respondent's parental rights before resolution of his criminal appeal. *McIntyre*, *supra*, p 50.

Respondent also argues that the probate court improperly determined that terminating his parental rights was in the best interest of his minor children. We disagree. Once the probate court finds statutory grounds for termination by clear and convincing evidence, the decision whether to terminate is within the court's discretion, and the best interests of the child are to be considered. *Id.* Therefore, because the ultimate decision whether to terminate parental rights is discretionary, it is reviewed for an abuse of discretion. *Id.*

Here, DSS caseworker Sandra Ranville testified that respondent spoke to his minor children on the telephone at least once between the children's removal from his home in April, 1993, and his conviction in December, 1993. At that time, respondent pressured his minor son to admit that he (the son) had killed the infant. After this incident, telephone calls between respondent and his son were cut off. During 1994, the son did not wish to have contact with respondent, and did not write to him at all. At the time of the hearing on the petition to terminate respondent's parental rights on January 19, 1995, respondent had not seen his children since they were taken from him in April, 1993. The children's foster parents allegedly expressed an interest in adopting them. Ranville testified that she believed this to be in the children's best interests. Although other testimony favored respondent's view of the matter, the trial court did not abuse its discretion in determining that terminating respondent's parental rights was in the best interests of the children. *Id.*

Affirmed.

/s/ Marilyn Kelly
/s/ Myron H. Wahls
/s/ M. Richard Knoblock