

STATE OF MICHIGAN
COURT OF APPEALS

In re JENNIFER WHITCOMB and KALA
WHITCOMB, Minors.

UNPUBLISHED
August 30, 1996

DEPARTMENT OF SOCIAL SERVICES,

Petitioner-Appellee,

v

No. 182732
LC No. 92-032023

DENNIS WHITCOMB,

Respondent-Appellant.

Before: Sawyer, P.J., Bandstra and M.J. Talbot,* JJ.

PER CURIAM.

Respondent appeals as of right the trial court order terminating his parental rights to his children, Jennifer and Kala. We affirm.

Respondent argues that the trial court abused its discretion in denying his request to adjourn the dispositional hearing until his appeal of his criminal convictions was completed. We disagree. Although the trial court did not specifically deny respondent's request for a continuance, it did so implicitly by terminating respondent's parental rights. We conclude that the trial court did not abuse its discretion in denying the request for a continuance and moving the proceeding forward so that the children might have some permanence in their lives. *In re Jackson*, 199 Mich App 22, 28; 501 NW2d 182 (1993). At the time of the hearing, the children had already been in foster care for more than two years. One adjournment had already been granted for a lengthy period pending the outcome of respondent's criminal trial, which ultimately ended in respondent being convicted of criminal sexual conduct. Furthermore, the record shows that respondent failed to meet the conditions that were necessary for reunification with the children and that defendant had little contact with the children prior to the children being placed in foster care. We also note that respondent's criminal convictions were affirmed by this

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

Court in July 1996. If a continuance had been granted, the children would have remained in foster care for another nineteen months waiting for the resolution of respondent's appeal.

Respondent next argues that the trial court abused its discretion in failing to appoint new counsel for him. We disagree. Respondent was entitled to substitute counsel only upon a showing of good cause and where the substitution of counsel would not unreasonably disrupt the judicial process. *People v Mack*, 190 Mich App 7, 14; 475 NW2d 830 (1991). Good cause exists "where a legitimate difference of opinion develops between a defendant and his appointed counsel with regard to a fundamental trial tactic." *Id.* After reviewing the lower court record and respondent's arguments on appeal, we conclude that respondent has not demonstrated good cause for receiving substitute counsel. It appears from the record that respondent misunderstood his attorney's letter in which the attorney was asking for guidance as to the position respondent wanted to take with regard to his children. Respondent mistakenly thought that the attorney wanted him to voluntarily terminate his parental rights. Furthermore, although respondent asserts that the trial court should have recognized his discharge of his attorney in his letter to the trial court, respondent makes no reference to MCR 5.915(E), which specifically states that an appointed counsel serves until discharged by the court. Thus, respondent's "discharge" had no effect.

Respondent also argues that the trial court erred in terminating his parental rights because it failed to place specific findings of fact and conclusions of law on the record or in a written opinion and failed to specify the statutory basis for the termination pursuant to MCR 5.974(G). We disagree that the trial court erred in terminating respondent's rights. The trial court's findings of fact were brief, but these were sufficient. MCR 5.974(G)(1). Although the trial court failed to specifically identify the statutory basis under which it was terminating respondent's parental rights, the trial court did refer to respondent's incarceration when it was terminating his rights. In light of the overwhelming evidence in this case, it would be a waste of judicial resources at this point to remand this matter to the trial court so that it could state which statutory basis it used to terminate respondent's parental rights. See *People v Spangler*, 442 Mich 861; 500 NW2d 469 (1993); *People v Kreger*, 214 Mich App 549, 555; 543 NW2d 55 (1995).

We have reviewed the record and believe that termination of respondent's parental rights was warranted under MCL 712A.19b(3)(h); MSA 27.3178(598.19b)(3)(h), which provides:

The 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.

The record reveals that at the time of the termination hearing, respondent had recently been convicted of first-degree criminal sexual conduct and sentenced to thirty to fifty years' imprisonment. Therefore, he will definitely be imprisoned for more than two years following the termination hearing. *In re Neal*, 163 Mich App 522, 527; 414 NW2d 916 (1987). Furthermore, respondent has never provided proper

care and custody of the two children, and there is no evidence that he could do so within a reasonable time given their present ages. Thus, the trial court did not err in terminating respondent's parental rights as clear and convincing evidence existed to terminate respondent's rights pursuant to MCL 712A.19b(3)(h); MSA 27.3178(598.19b)(3)(h).

We affirm.

/s/ David H. Sawyer

/s/ Richard A. Bandstra

/s/ Michael J. Talbot