

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CS, Minor.

DENISE DUTKIEWICZ,

Petitioner-Appellee,

UNPUBLISHED
May 29, 2003

v

ANTHONY SKELTON,

Respondent-Appellant.

No. 245286
Kent Circuit Court
Family Division
LC No. 02-259701-NA

Before: Whitbeck, C.J., and White and Donofrio, JJ.

PER CURIAM.

Petitioner Anthony Skelton appeals as of right from a circuit court order terminating his parental rights to the minor child CS pursuant to MCL 712A.19b(3)(f), (g) and (l). We affirm. We decide this case without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

CS is the daughter of Billie Jo Watson and Skelton. Watson was murdered in late 1997. Petitioner Denise Dutkiewicz, Watson's mother, obtained custody of the child from Skelton shortly thereafter and was appointed the child's guardian in March of 1998. Dutkiewicz wanted to adopt the child and filed this termination petition because Skelton had not been involved in the child's life for several years and had not paid child support. In addition, Skelton had a criminal history and was serving a sentence for assault with intent to commit great bodily harm less than murder (assault GBH). Dutkiewicz sought termination pursuant to §§ 19b(3)(e), (f), (g), (j) and (l). The trial court held hearings in August and September of 2002.

Dutkiewicz testified that she took custody of CS on December 1, 1997, after Skelton had called to tell her that Watson had not come home from work the night before. Dutkiewicz went to their apartment "and I told Anthony that while you were looking for Bill[ie] Jo, I would take [CA]." Skelton was unemployed and was unable to care for the child. A month or two later, Dutkiewicz was appointed the child's guardian. Prior to Dutkiewicz's appointment, Skelton often called and asked to see CA and Dutkiewicz would take the child to visit him because he did not have a car.

According to Dutkiewicz, at the hearing for permanent guardianship in March of 1998, “Anthony got angry and stormed out of the courtroom. And that was really the last time I ever seen him.” Dutkiewicz stated that since she became CA’s guardian in 1998, Skelton had not visited the child or provided financial support for her care, but admitted that no support orders had been entered by the court. Dutkiewicz admitted that after Skelton was incarcerated, he sent seven or eight letters a year; a couple of those were addressed to Dutkiewicz herself and the rest were addressed directly to the child. Those to CA were beyond her comprehension, so Dutkiewicz paraphrased them for her. Skelton also sent “a couple” of holiday or birthday cards, but never sent any gifts, monetary or otherwise. He had not made any contact by telephone. Dutkiewicz admitted that she responded to only a few of Skelton’s letters and discouraged collect calls from jail.

According to Dutkiewicz, during one of the guardianship hearings, the court ruled that “there was to be no visitation by him until he went to Friend of the Court and they set up an arrangement.” An FOC hearing was scheduled for sometime in 1998, but had to be canceled because Skelton was in jail. Dutkiewicz stated that she had no way of getting in contact with Skelton; he never provided her with his address or phone number. She did have contact information for Skelton’s brother, but he “disappeared. I don’t know what happened to him.”

Dutkiewicz stated that she hadn’t known of Skelton’s criminal problems until she “received letters from the prison from him.” She looked him up on the Department of Corrections website. She learned he was convicted of assault GBH in 1999. She thought he was “up for parole sometime the end of this year maybe.”

Dutkiewicz stated that Skelton had other children besides CA, although she believed his parental rights to those children had been terminated. While going through her daughter’s effects, Dutkiewicz found some “letters to Anthony saying that he needed to get a hold of the Court if he didn’t want to lose his children permanently. Then I found some other papers stating that they had been adopted out.”

Dutkiewicz expressed doubt about Skelton’s ability to care for a child. “He doesn’t know the first thing about childrearing. He doesn’t hold jobs. He doesn’t have a home. There’s nothing in his background that would prepare him to raise a child.” She did not believe Skelton would intentionally harm CA, but noted that he had failed to exercise good judgment in the past. Dutkiewicz stated that Skelton cared for the child while Watson was at work and that one day, he sat CA on an oil-burning stove to get warm. “And it was just really too hot, and she suffered second degree burns on her buttocks. And she has permanent scars from it.”

Pamela Gurd, Dutkiewicz’s aunt, was employed at Spectrum Health in the human resources department. She testified that Skelton once approached her about employment sometime in 1995. They discussed his employment history. “And he told me the different jobs he had. He had only worked for temporary agencies, and he never worked any place more than a couple weeks at a time.”

Gurd said she hadn’t seen Skelton since February of 1998 when he showed up at Gurd’s mother’s house to visit CA. “She was real little and he sat in the chair and played with her a little bit and promised that he’d come back with some Nike shoes, and that was the last we ever heard from him.” Gurd stated that Skelton interacted appropriately with CA during the visit.

Skelton testified that after Watson was killed, he was too emotionally distraught to care for CA. In February of 1998, he was jailed for four months on charges of assault and resisting and obstructing.¹ After he was released, he worked as a welder for 5½ months. He held another job assembling office furniture, but left after only a couple weeks because of depression over Watson's death. He admitted that he did not pay any child support out of his earnings. He explained that he was initially considered a suspect in Watson's death and "that caused a biasness [sic] towards me and really prevented me from going any further into doing what I should be able to do as a father for my child." Skelton added that Dutkiewicz was able to provide for CA and had never asked him for money for her.

Skelton stated that on January 11, 1999, he was arrested on the assault GBH charge and remained incarcerated pending trial. He pleaded guilty to assault GBH or attempted assault GBH in May 1999 and was sentenced to a prison term of one to ten years. He was incarcerated at the Cotton Correctional Facility in Jackson. Skelton admitted that he worked periodically in prison, but never earned more than \$50 or \$60 a month. However, there were deductions for victim's rights fees and the like which "really left me nothing much to go on with," so he never paid any child support. He used what little funds he had for personal items and correspondence materials so he could write to CA. Skelton said he had already been considered for and denied parole twice because he hadn't participated in recommended services at prison, but he had since completed them. His next parole hearing was in October of 2002. According to Skelton, if granted parole, he would be released anywhere from one to six months after the hearing. If released, he planned to get a job. If he wasn't granted parole in October, he felt certain he would be paroled the following June. Skelton said he never intended to assume custody of CA upon his release, but did want to maintain a relationship with her. He was concerned that Dutkiewicz would not facilitate such a relationship.

Skelton said he bought Christmas presents for CA in 1998 but that he failed to show up for the planned visit and thus she did not receive them; he later gave them to a friend's children instead. He said he had written to CA and sent her birthday cards every year and other cards as well. Skelton said that while he was living with Watson, he was CA's primary caretaker. He admitted that he had accidentally caused CA to be burned on her buttocks as Dutkiewicz testified, but that he had sought immediate medical attention for her.

Skelton admitted that he had two other children who were the subject of a termination proceeding in Calhoun County about a year before CA was born. He believed the children's maternal grandmother brought the case because she did not like him and the mother was unfit. A treatment plan was established for Skelton and the mother. Skelton complied and was awarded temporary custody of the children. Six months later, the children were removed from his care; he was not sure why but speculated that people were upset because he was flirting with a FOC employee. Eventually his parental rights were terminated and the children were adopted. He believed the proceedings were unfair, but he did not appeal the decision. He admitted that while the termination proceedings were pending, he left the area and moved in with Watson. A copy of the termination order was admitted into evidence.

¹ Skelton admitted he also had a 1991 conviction for breaking and entering.

The trial court found that Skelton's parental rights to his two other children had been terminated in 1995. It further found that Skelton had been "incarcerated for almost all of CA's life," he had made himself unavailable to parent her due to his violent behavior which led to that incarceration, and he had failed to provide support for her. The trial court found that termination was warranted under § 19b(3)(f) because Skelton had the ability to provide some financial support and failed to do so. In addition, although he wrote to the child eight times a year, that "does not constitute substantial and regular communication." The trial court found that termination was warranted under § 19b(3)(g) because Skelton's criminal activity and resulting incarceration left him unable to provide proper care and custody. Given that he had no experience parenting a six-year-old child and that he abandoned his other children rather than planning for their care, the trial court found it unlikely that Skelton would be able to provide proper care and custody. The trial court further found that termination was warranted under § 19b(3)(l). The trial court found that termination was not warranted under § 19b(3)(j). Finally, the trial court found that termination was in the child's best interest because she had "been in somewhat of a state of limbo, although with Grandmother, since 1997" and needed permanence. Skelton appeals of right.

II. Standard Of Review

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence.² This Court reviews the trial court's findings of fact for clear error.³ A finding is clearly erroneous when the reviewing court is left with the firm and definite conviction that a mistake was made.⁴ Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order the termination of parental rights unless it finds from evidence on the whole record that termination is clearly not in the child's best interests.⁵ The trial court's decision regarding the child's best interests is reviewed for clear error.⁶

III. The Trial Court's Decision

Skelton argues that the trial court erred in terminating his parental rights under §§ 19b(3)(f) and (l). He has not taken issue with respect to the trial court's finding as to § 19b(3)(g). Because Skelton has failed to address an issue which must necessarily be reached to reverse the family court, he is not entitled to relief.⁷

Assuming without deciding that the trial court erred in terminating Skelton's parental rights under § 19b(3)(f), we conclude that it did not clearly err in concluding that statutory

² *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993).

³ MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

⁴ *Jackson*, *supra* at 25.

⁵ MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000).

⁶ *Trejo*, *supra* at 356-357.

⁷ *Sargent v Browning-Ferris Indus*, 167 Mich App 29, 37; 421 NW2d 563 (1988); *Roberts & Son Contracting, Inc v North Oakland Dev Corp*, 163 Mich App 109, 113; 413 NW2d 744 (1987).

ground § 19b(3)(l) had been proved by clear and convincing evidence.⁸ Skelton admitted that his parental rights to two other children had been terminated as a result of proceedings instituted under MCL 712A.2(b). Skelton claims that termination under § 19b(3)(l) is improper absent evidence that he abused or neglected the child or that he failed to comply with a court-structured reunification plan. Because Skelton has failed to cite any applicable authority in support of this interpretation of the statute, we deem the claim abandoned.⁹

Affirmed.

/s/ William C. Whitbeck
/s/ Helene N. White
/s/ Pat M. Donofrio

⁸ *In re IEM*, 233 Mich App 438, 450; 592 NW2d 751 (1999).

⁹ *Central Cartage Co v Fewless*, 232 Mich App 517, 529; 591 NW2d 422 (1998).