

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JAISHON JAMES SMITH and
BLAINE LEE DONALD SMITH, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

GREGORY JAMES SMITH,

Respondent-Appellant

and

LINDA LEE GOW,

Respondent.

UNPUBLISHED

June 24, 2003

No. 241505

Wayne Circuit Court

Family Division

LC No. 97-362162

Before: Sawyer, P.J., and Meter and Schuette, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court's order terminating his parental rights to the minor children under MCL 712A.19b(3)(a)(ii), (c)(i), (g) and (j).¹ We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E)(1)(b).

I. FACTS

Respondent-appellant father Gregory James Smith appeals an order terminating parental rights to his children, Jaishon James Smith and Blaine Lee Donald Smith. Petitioner became involved with the family when Blaine was born with cocaine in his system. The family, including the mother, Linda Gow, lived in a one-bedroom apartment that was inappropriate for children. Respondent admitted that he was a drug user. The children entered foster care on March 17, 1998 while respondent agreed to a treatment plan that included weekly drug screens.

¹ Respondent mother Linda Gow is not a party to this appeal.

Over the next several months, respondent and Gow continued an unstable relationship. Respondent missed drug screens and remained unemployed.

On June 14, 1999, respondent attended an inpatient drug treatment program. Respondent was granted a continuance at his permanent custody hearing to find proper housing and maintain employment. The court concluded that respondent could provide some financial support to the children and did not terminate respondent's parental rights at that hearing.

However, at a review hearing on January 31, 2001, Gow testified that respondent had been in Chicago for approximately six months. The family's caseworker recommended termination of respondent's parental rights because respondent failed to address the housing and substance issues that plagued his family. Furthermore, respondent was unable to explain his lengthy visit to Chicago and provided only eight of the required fifty-two drug screens for the year 2001. At the termination hearing on March 14, 2002, respondent did not appear. Respondent remained unemployed and had not changed his housing situation. On March 25, 2002, respondent's parental rights were terminated.

II. TERMINATION OF PARENTAL RIGHTS

A. Standard of Review

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds has been established by clear and convincing evidence. *In re Hamlet (After Remand)*, 225 Mich App 505, 522; 571 NW2d 750 (1997). This Court reviews the finding of the trial court's decision to terminate parental rights under the clearly erroneous standard. MCR 5.974(I); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). 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. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

B. Analysis

Respondent's parental rights were terminated under MCL 712A.19b(3)(a)(ii), (c)(i), (g) and (j), which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

(a) The child has been deserted under either of the following circumstances:

* * *

(ii) The child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period.

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The evidence shows that the respondent deserted his children when he went to Chicago for over six months. During this time, respondent failed to contact his children. Respondent claims he was in Chicago caring for his adult son who was injured, however, respondent cannot verify this story. Moreover, upon return from Chicago, respondent did not contact his children. At the time of termination, it had been eighteen months since his last visit. Clearly, respondent abandoned his children for more than 91 days and did not seek custody of them during that period.

The conditions that led to adjudication were respondent's substance abuse and failure to provide suitable housing for his children. These conditions continued to exist at termination. Respondent had been through drug treatment without success and failed to comply with required drug screens. Housing was still unsuitable for children despite intensive services to help respondent find appropriate housing. Respondent was eligible for a two-bedroom apartment but failed to fill out the correct paperwork. The court did not err when it found that the conditions that led to adjudication continued to exist at the time of termination.

Respondent was unable to provide proper care and custody for his children because of his substance abuse issues and lack of housing. Furthermore, there was a risk that the children would be harmed if returned to respondent's care. Although there is no evidence of physical abuse, neglect due to substance abuse is equally harmful. Thus, the trial court did not err when it terminated respondent's parental rights pursuant to MCL 712A.19b(3)(g) and (j).

II. BEST INTERESTS OF THE CHILDREN

A. Standard of Review

Once a statutory ground for termination has been established by clear and convincing evidence, the trial court is required to order termination of parental rights unless the court finds from evidence that termination is clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000). The trial court's decision regarding the children's best interests is reviewed for clear error. *Id.*

B. Analysis

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I); *In re Miller, supra*, at 337. Respondent-appellant had a long-standing addiction to drugs. He was unable, over the period of four years, to address this addiction. Furthermore, respondent-appellant failed to secure and maintain suitable housing for his two sons. Respondent-appellant was provided a multitude of services yet failed to benefit from a single one. Moreover, respondent-appellant abandoned his sons for over six months during which time he failed to contact, provide for, or plan for the children. At the time of termination of parental rights, it had been eighteen months since respondent-appellant had seen his children. Based upon this evidence, we cannot conclude that the trial court erred.

Further, considered in its entirety, the evidence did not show that termination of respondent-appellant's parental rights was clearly not in the children's best interests. *In re Trejo, supra* at 356-357. The children had been in foster care for four years. The youngest had never lived with his parents. The children require a drug free living environment.

Affirmed.

/s/ David H. Sawyer
/s/ Patrick M. Meter
/s/ Bill Schuette