

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JONATHAN PRESTON
WHEATON II, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JONATHAN P. WHEATON,

Respondent-Appellant.

UNPUBLISHED

October 4, 2005

No. 261272

Cass Circuit Court

Family Division

LC No. 03-000412-NA

Before: Saad, P.J., and Jansen and Markey, JJ.

MEMORANDUM.

Respondent appeals as of right from the trial court's order terminating his parental rights to the minor child under MCL 712A.19b(3)(g). We affirm.

The trial court did not clearly err in finding that the statutory ground had been established by clear and convincing evidence. MCR 3.977(J); *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993), citing *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). Respondent was intermittently absent from the child's life because of repeated incarcerations for parole violations, which impacted his ability to establish stability or permanency for the child. Although respondent appeared to address his substance abuse issue by completing treatment and remaining drug-free, and he maintained housing and employment during the proceedings, respondent remained unable to demonstrate an ability to provide the child with the stability he needed. Most notably, during the proceedings, respondent stopped visiting the child, absconded from his parole, and was incarcerated for over two months. Based on respondent's continued pattern of instability, the trial court did not clearly err in finding that respondent was unable to make the necessary changes to provide proper care and custody for the child and that there was no expectation that he would be able to do so within a reasonable time, considering the child's age, thereby warranting termination of his parental rights under MCL 712A.19b(3)(g). Although respondent's recent progress towards completion of his parent/agency agreement is commendable, his efforts came too late in the proceedings, especially given the young age of the child and the child's need for permanency. The child was removed from his parents' care and custody in August 2003 and the court ordered compliance with his case service plan in April 2004, yet respondent did not start working on the terms of that plan until November 2004, while the termination petition was pending. The failure to comply with the terms of his parent/agency

agreement provided further evidence of respondent's failure to provide proper care and custody for the child. *In re Trejo*, 462 Mich 341, 360-363; 612 NW2d 407 (2000).

Further, although there was testimony indicating that respondent had a bond with the child, cared for him and loved him, given the testimony concerning the child's current need for permanency and respondent's past inability to provide stability for the child, we find no clear error in the trial court's best interests determination. MCL 712A.19b(5); *Trejo, supra* at 354, 356-357. Notably, the experts who testified in this case agreed that a continued lack of permanency and/or stability would be detrimental to the child.

Affirmed.

/s/ Henry William Saad

/s/ Kathleen Jansen

/s/ Jane E. Markey