

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BRANDON GOSS, SEAN GOSS,
and BREANNA CANNON, Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

UNPUBLISHED
April 27, 2006

Petitioner-Appellee,

v

SEAN GOSS,

Respondent-Appellant.

No. 265412
Wayne Circuit Court
Family Division
LC No. 04-433560-NA

Before: White, P.J., and Fitzgerald and Talbot, JJ.

MEMORANDUM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(i), (g), (h), (j), (k)(iii), (k)(iv), and (k)(v). We affirm.

The trial court did not clearly err by finding that statutory grounds to terminate respondent's parental rights were established by clear and convincing evidence. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). On appeal, respondent emphasizes that the trial court never specifically found that respondent was the perpetrator of the abuse of two-month-old Brandon. However, a review of the written report and recommendation of the referee shows that, while the trial court may have indirectly stated this finding, it clearly believed respondent had been the perpetrator of the abuse. Furthermore, there was clear and convincing evidence that respondent was the party responsible for injuring Brandon. Respondent's statements in his interview with the police indicated that he shook Brandon during the time frame in which Brandon's brain injury occurred. And, in this same interview, respondent referred to an abnormal bulge protruding from Brandon's head, which supported a conclusion that trauma had been inflicted to that site. In addition, the children's mother and the older children told various interviewers that Brandon had been in respondent's care at the time of the injury. Evidence was presented that Brandon's injuries occurred sometime during the mother's first two days back at work, which suggested that respondent may have been overwhelmed by his new responsibilities as the primary caretaker. There was also evidence that respondent had instigated a domestic violence episode about two weeks before Brandon's injuries, which supported the finding that respondent was capable of inflicting violence upon family members.

Further, based on the evidence of respondent's repeated incarcerations, violation of parole requirements, recent domestic violence episode, and continued use of drugs, the trial court did not clearly err in finding the prospect for respondent's improvement to be slim.¹

Finally, the trial court did not clearly err in its determination regarding the children's best interests. MCL 712A.19b(5); *Trejo, supra* at 353. A review of the record shows that, most significantly, the children were not safe around respondent since his treatment of Brandon was indicative of how he could treat the other children. *In re Powers*, 208 Mich App 582, 588-589; 528 NW2d 799 (1995). In addition, respondent had not been involved with the children's lives for any significant period of time, continued to use illegal drugs, and violated his parole.

Affirmed.

/s/ Helene N. White
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot

¹ Although the trial court erred in basing termination on MCL 712A.19b(3)(h), this error was harmless since termination was properly based on other statutory grounds. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).