

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TRAVIS LEE BERNARD and
TYLER JAMES BERNARD, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JEFFREY SCOTT BERNARD,

Respondent-Appellant,

and

JODY LYNN VANETTEN,

Respondent.

UNPUBLISHED

March 26, 2009

No. 287579

Muskegon Circuit Court

Family Division

LC No. 07-036209-NA

Before: Cavanagh, P.J., and Fort Hood and Davis, JJ.

PER CURIAM.

Respondent father appeals as of right from an order that terminated his parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i),¹ (g), and (j). We affirm.

Contrary to his argument on appeal, respondent father was not wrongfully denied the right to counsel. There was a nine-month lapse in time between respondent father's request for counsel and counsel's appearance with respondent father at court proceedings. However, the record indicates that respondent father did not complete the paperwork requesting counsel in a timely fashion. Once respondent father finally completed the paperwork, he failed to turn it in to the proper person. The problem was soon remedied, and respondent father appeared with counsel at the next review hearing and at the termination hearing. Deprivation of counsel,

¹ Although the trial court also referenced MCL 712A.19b(3)(c)(ii), it appears that the subsection was applicable only to the children's mother.

particularly at earlier proceedings, can be harmless error. *In re Hall*, 188 Mich App 217, 222-223; 469 NW2d 56 (1991).

We conclude that the results of the proceeding would not have been different if respondent father had counsel throughout the proceedings, and therefore, any deprivation of counsel was harmless error. He claims that competent counsel would have advised him to distance himself from the children's mother. This claim is incredible in light of the fact that workers had given respondent father that same warning, and he did nothing. Respondent father contends that if he had counsel during the review hearings, more of an effort would have been made to provide him with services. While it is true that the emphasis seemed to be on the children's mother, respondent father did not substantially comply with his service agreement. He failed to attend substance abuse treatment until the termination petition was filed, and he never obtained employment. It is unclear what an attorney could have done to assist respondent father when respondent father was not willing to assist himself.

The trial court did not clearly err in finding that the statutory grounds for termination were proven by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The children were made temporary wards based on the mother's plea. The allegations were that both parents suffered from substance abuse problems; the children's mother abused crack cocaine while respondent father abused alcohol. The mother would leave the children for days at a time and simply disappear. Respondent father had been warned that he needed to increase his involvement with the children because the mother was not providing a safe environment. Respondent father also failed to provide financial support for the family.

Unfortunately when the termination hearing occurred in July and August 2008, respondent father had made no progress. Although respondent father complied with some aspects of the parent-agency agreement, the original problems still lingered. He steadfastly refused to participate in a substance abuse treatment program until termination was imminent. In fact, he completed the program the same month the trial commenced. Even assuming he successfully completed the program, it was clear that he did not benefit from it. He continued to deny that he had a problem. The mother testified that she witnessed him drink "a little too much" just weeks before trial. In fact, the mother reported that respondent father drank regularly and that his drinking made it difficult to maintain her sobriety. He would even drink before the children were brought for a visit.

In addition to the continued substance abuse problem, respondent father was simply not in a position to care for the children. He did not separate himself from the mother, even after being advised that he would need to do so if he was interested in maintaining his parental rights. Respondent father told the worker that he was not sure he would want to care for the boys if the mother's parental rights were terminated and that he did not believe he could independently care for them. Respondent father testified that he did not attend classes at Love Incorporated because he thought the referral was merely a suggestion. This is further evidence of his lack of commitment to the children. Respondent father did not contribute to the financial support of the family. Instead, it was the mother's disability payments that paid for the house and utilities. Respondent father earned only an average of \$400 a month, and even he admitted that this was inadequate to support a family. He could not provide proof of income, and it appears that he made no attempt whatsoever at finding regular employment. Respondent father had lost his driving license following a drunken driving conviction. He did not have any means of

transportation. Therefore, the conditions leading to adjudication continued to exist, respondent father could not provide proper care or custody, and the children would likely be harmed if returned to respondent father's care.

Having found the statutory grounds for termination proven by clear and convincing evidence, the trial court was obligated to terminate respondent father's parental rights if it was in the children's best interests to do so. MCL 712A.19b(5). Although respondent father consistently visited with the children and the visits were appropriate, he did not take the necessary steps toward reunification. He did not demonstrate a desire to parent the children, as evidenced by his refusal to complete drug treatment and opting out of the Love Incorporated classes. The children had been in care for a year and were entitled to permanence and stability.

Affirmed.

/s/ Michael J. Cavanagh

/s/ Karen M. Fort Hood

/s/ Alton T. Davis