

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of NELLINE ANN BROWN, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KEVIN WESLEY BROWN,

Respondent-Appellant,

and

THERESA ANN BROWN, f/k/a THERESA ANN
TOMES,

Respondent.

UNPUBLISHED

May 5, 2009

No. 288181

Wayne Circuit Court

Family Division

LC No. 06-457080-NA

Before: Borrello, P.J., and Murphy and M.J. Kelly, JJ.

PER CURIAM.

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

Although clear and convincing evidence did not exist to support termination pursuant to MCL 712A.19b(3)(c)(i), this error was harmless in light of the evidence supporting terminating of respondent-appellant's parental rights under MCL 712A.19b(3)(a)(ii), (g), and (j). *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). The trial court did not clearly err in finding that statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Further, there was clear and convincing evidence that termination of respondent-appellant's parental rights was in the child's best interests. MCL 712A.19b(5).

First, respondent-appellant argues that the trial court erred in terminating his parental rights because petitioner severely delayed his progress by delaying referrals and changing workers every reporting period. When the petitioner removes a child from her parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that led to the child's removal by adopting a service plan. *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d

192 (2005). The reasonableness of the petitioner's services is relevant to the sufficiency of evidence for termination of a respondent's parental rights. *Id.*

Respondent-appellant's argument ignores his own responsibility for the delay of services between the adjudication trial in September 2006 and March 2007. Respondent-appellant took six months to obtain the child's birth certificate to prove paternity in order for petitioner to pay for his services. Although there was some delay in petitioner's referrals, respondent-appellant participated in counseling and parenting classes from October 2007 through April 2008. There was no evidence that respondent-appellant required more services than were being offered. There was also no evidence that more services would have prevented respondent-appellant from completely abandoning the case service plan after April 17, 2008, considering that his abandonment followed a period of complete compliance. Thus, there was clear and convincing evidence that petitioner made reasonable efforts to assist respondent-appellant in reunification with his child.

There was clear and convincing evidence that respondent-appellant deserted his child for 91 or more days. Respondent-appellant attended a hearing on April 16, 2008, and visited with his child on April 17, 2008. After that visit with the child, respondent-appellant had no contact with anyone involved with the case until the termination hearing on September 18, 2008. This evidence supported the trial court's conclusion that respondent-appellant failed to make any effort to visit or communicate with the child for five months. *In re Mayfield*, 198 Mich App 226; 497 NW2d 578 (1993); *In re Hall*, 188 Mich App 217; 469 NW2d 56 (1991). Accordingly, termination pursuant to MCL 712A.19b(3)(a)(ii) was proper.

There was also clear and convincing evidence to support termination pursuant to MCL 712A.19b(3)(g) and (j). The child had been out of respondent-appellant's custody for two years. The evidence established that respondent-appellant fully complied with the parent/agency agreement from September 2007 through April 16, 2008. Before September 2007, respondent-appellant's compliance was inconsistent, and Nelline had to confront respondent-appellant regarding visitation in order for him to begin attending all of the visits. After April 16, 2008, respondent-appellant's participation was non-existent. Respondent-appellant did not have suitable housing for Nelline as he was living in a hotel. Respondent-appellant failed to provide verification of his completion of parenting classes and of employment. Considering this evidence, the trial court did not err in concluding that termination of respondent-appellant's parental rights pursuant to MCL 712A.19b(3)(g) and (j) was supported by clear and convincing evidence.

There was also clear and convincing evidence that termination was in the child's best interests. Although Nelline had been out of respondent-appellant's care for over two years at the time of the termination hearing, respondent-appellant was still not ready to regain custody. He had only been employed for one month and was living in a hotel, which did not constitute an appropriate housing situation for a child. Respondent-appellant only meaningfully participated in the case for about six months between September 2007 and April 2008. After which time, he cut off all contact with Nelline and petitioner. Respondent-appellant was aware of how negatively affected Nelline was by his failure to visit because she had confronted him earlier in the case. Yet, he cut off all contact with her without explanation. Respondent-appellant's behavior, combined with his lack of income and housing, provided clear and convincing

evidence that termination was in Nelline's best interests. The trial court properly terminated respondent-appellant's parental rights.

Affirmed.

/s/ Stephen L. Borrello

/s/ William B. Murphy

/s/ Michael J. Kelly