

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SHELBY LOUISE EDWARDS,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

HAROLD ERNEST EDWARDS III,

Respondent-Appellant,

and

SUMMER LOUISE EDWARDS,

Respondent.

UNPUBLISHED

June 24, 2003

No. 243062

Wayne Circuit Court

Family Division

LC No. 00-388433

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

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(g) and (h). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E)(1)(b).

I. FACTS

In April 2000, the Family Independence Agency (FIA) filed a petition alleging that it received a referral regarding the neglect of Shelby by respondent father and Summer Edwards, Shelby's mother. The petition alleged that respondent and Summer Edwards were heroin addicts, left the child at her maternal grandmother's house and had not returned or supported her by the time the petition was filed. According to relatives, respondent and Summer Edwards were on the run from drug dealers and their whereabouts was unknown. Summer Edwards was on probation for passing bad checks.

Subsequently the FIA filed an amended petition, which added an allegation that respondent was on probation for negligent homicide and breaking and entering. The trial court

made Shelby a temporary court ward in June 2000. The court ordered respondent to comply with a treatment plan, which required, but was not limited to weekly random drug screens, counseling, psychological evaluation, substance abuse treatment, parenting classes and visitation with the child.

In July 2000, approximately one month after Shelby became a temporary court ward, respondent was arrested and jailed on a charge of carjacking. Respondent was sentenced to five to ten years in prison for the conviction that resulted from the carjacking charge. The earliest release date is February 2006.

In August 2000, petitioner filed a supplemental petition seeking the termination of respondent's parental rights under MCL 712A.19b(3)(a)(ii) (desertion), (g) (failure to provide proper care and custody) and (j) (child will be harmed if returned to parent). The petition included further allegations that respondent failed to comply with the treatment plan and had not contacted the FIA since Shelby was made a temporary court ward.

At the permanent custody hearing, petitioner presented evidence that respondent's prison sentence (until February 2006 and possibly until 2011) would prevent him from providing care for Shelby. Debi Silver, a foster care worker, testified that respondent made no attempt to comply with the treatment plan before he was incarcerated. Furthermore, Judith Ledford, a foster care worker, testified that respondent made no attempt to contact Shelby neither since she was taken into care nor while he was incarcerated.

Respondent testified that he wanted to visit Shelby before he was incarcerated, but that his wife told him that his parental rights had been terminated and that he could not visit Shelby. Respondent said that he was never made aware of the treatment plan, but that he was enrolled in a behavioral program in prison and was on the waiting list for a substance abuse program. Respondent's plan for Shelby during his incarceration was that Shelby live with his mother, Bonnie Edwards, until his release.

Bonnie Edwards testified that she was willing to have Shelby live with her, but that she knew nothing of this option until the day of the trial. Edwards acknowledged that Shelby's maternal aunt and uncle were providing good care for Shelby. The foster care worker testified that Bonnie Edwards had told her that she did not want to plan for Shelby because of her health problems and because she did not want to remove Shelby from the home of Shelby's maternal aunt and uncle, whom she described as "wonderful parents."

II. TERMINATION OF PARENTAL RIGHTS

A. Standard of Review

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993). This Court reviews the trial court's findings of fact for clear error. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has

been made. *Id.* Regard is given to the special ability of the trial court to judge the credibility of the witnesses who appeared before it. *Id.*

B. Analysis

Respondent's parental rights were terminated under MCL 712A.19b(3)(g) and (h), which provide for termination of parental rights where clear and convincing evidence establishes the following:

(g) The parent, without regard to intent, fails to provide proper care of 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 age of the child.

(h) The parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding two years, and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child.

There is clear and convincing evidence that respondent failed to provide proper care and custody for the child. First, the child was taken into foster care because respondent left the child at his mother-in law's house and never returned to pick her up. Second, respondent has a criminal history that includes convictions for negligent homicide, drunk driving and breaking and entering. Third, respondent has a history of drug abuse and made no attempts to contact the child from the time she was taken into care through the date that his parental rights were terminated.

Furthermore, respondent was incarcerated at the time of the trial and, at the earliest, will not be released until February 2006. The maximum sentence would end in 2011. It is clear that respondent will not be able to provide proper care and custody within a reasonable time. Although respondent argues that he provided for the child's care and custody by arranging for his mother to care for Shelby, there was evidence that the mother never indicated willingness to care for the child until the permanent custody hearing. In fact, Judith Ledford testified that respondent's mother had told her that, although she wanted to remain in the child's life, she did not want to be the primary caretaker.

Based on the foregoing evidence, 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*, 433 Mich 331, 337; 445 NW2d 161 (1989).

III. BEST INTEREST OF THE CHILD

A. Standard of Review

Once petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court is required to order termination of parental rights unless the court finds from evidence on the whole record 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 found that termination of respondent's parental rights was in the child's best interests because the child deserved permanency and consistency that respondent could not provide. Moreover, the record demonstrated that respondent, who has a criminal and substance abuse history, would be incarcerated for the next five to ten years.

Therefore, the evidence did not show that termination of respondent-appellant's parental rights was clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Thus, the trial court did not err in terminating respondent-appellant's parental rights to the child.

Affirmed.

/s/ David H. Sawyer

/s/ Patrick M. Meter

/s/ Bill Schuette