

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of RC and SC, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DERRDRUNCE CRIDER,

Respondent-Appellant,

and

DORIS WILSON,

Respondent.

UNPUBLISHED

July 22, 2003

No. 245675

Washtenaw Circuit Court

Family Division

LC No. 00-025009-NA

Before: Neff, P.J., and Fort Hood and Borrello, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court order terminating his parental rights to the minor children, "R" and "S," under MCL 712A.19b(3)(a)(ii), (c)(i), and (g). We reverse and remand on the basis that termination at this time is clearly not in the children's best interests.

I

The trial court clearly erred in finding that statutory grounds for termination under MCL 712A.19b(3)(a)(ii) and (c)(i) were established by clear and convincing evidence. The evidence was not sufficient to establish that respondent-appellant had abandoned his children during a four-month jail sentence where defendant attempted to comply with court orders and maintain contact with respect to the children. Furthermore, the only allegation to which respondent-appellant pleaded at the adjudication concerned domestic violence, and therefore the trial court erred in stating that defendant's substance abuse was one of the conditions that led to the adjudication because his substance abuse was not established at the adjudication. Regarding the domestic violence, evidence established that respondent-appellant had quit drinking, gone to

counseling, and begun domestic violence/anger management classes and a twelve-step moral recognition therapy program, thereby taking significant steps to rectifying the condition.

However, only one statutory ground for termination is required to terminate parental rights. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000). The trial court did not clearly err in finding that termination under MCL 712A.19b(3)(g) was established by clear and convincing evidence. MCR 5.974(I);¹ *In re Powers*, *supra* at 117. It was undisputed that respondent-appellant had failed to comply with his services plan for a period of time and that he was incarcerated for more than four months during the course of these proceedings because of a domestic assault incident concerning a girlfriend. He had since completed parenting classes and had taken steps to comply with his services plan, but he admitted that he had not supported his children financially and did not have adequate housing for them at the time of the termination hearing. He obtained full-time employment two weeks before the hearing, and hoped to have suitable housing and to provide financial support in the near future; however, it was questionable whether he could do so within a reasonable time. Although this is a close case, we cannot find that the court clearly erred in finding that termination was warranted on this basis.

II

We decline to review respondent-appellant's argument that termination of his parental rights violates the state's public policy. This argument was not raised below and is not supported on appeal.

III

Under MCL 712A.19b(5), even though a statutory ground for termination has been established by clear and convincing evidence, termination may nevertheless be improper if, from evidence on the whole record, it is clear that termination of parental rights is contrary to the child's best interests. *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000). We review for clear error, a court's decision regarding a child's best interests. *In re JK*, *supra* at slip op pp 8-9.

Nearly everyone involved in this case agreed that respondent-appellant interacted well and lovingly with eight-year-old R, his visits were very important to the child, and ending that interaction would have a negative effect on R. Indeed, the court ordered that respondent-appellant's visitation with R continue even after the termination petition was filed. The caseworker, petitioner's only witness at the termination hearing, made an equivocal statement concerning best interests, stating first that termination was not in the child's best interests because R has a relationship with his father and if respondent-appellant's rights are terminated, R would not be able to see his father, but then stating that because R had been in care over a year

¹ Although MCR 5.974(I) governed at the time of the lower court's decision, the rules concerning juvenile proceedings were recently amended and moved to new MCR subchapter 3.900, effective May 1, 2003. *In re JK*, ___ Mich ___; 661 NW2d 216 (2003).

and respondent-appellant had not complied with his services plan until recently, termination was in the child's best interests. In closing argument, the prosecutor acknowledged that respondent-appellant loved his children, that his visitation was consistent, and that termination would have a detrimental effect on them:

[T]here's no doubt that he loves his children and that he is, at least bonded with R. It's unclear about S since she is so young and [] he was out of her life for a period of time. It's clear that he wants to continue to parent the children and it's a statement that in fact (sic) if his rights were terminated, it would adversely affect R and most definitely, probably S also.

The trial court found that termination was in the children's best interests because respondent-appellant's compliance with the treatment plan was so recent that the children remained at risk. Reviewing the whole record, we are left with a firm and definite conviction that a mistake was made regarding the children's best interests. The evidence clearly showed that termination of respondent-appellant's parental rights to R would have a detrimental effect on the child. The caseworker testified that there was a bond between father and son and that R was very excited and happy to have visits from his father. Respondent-appellant testified that he had a strong bond with R, that he helped R with school and problems in his life, played with him, and encouraged his interests, such as drawing. At the May 29, 2002 review hearing, one week before respondent's termination hearing, the mother stated that R loved his dad and that the issue of R's relationship with his dad was critical—that R gets “destructive” in his thinking if he cannot see his dad, but as soon as he knows he is going to see his dad, R is a more mild-mannered child.

While the evidence is less clear concerning S because of her young age, the record convinces us that the same reasoning applies to conclude that termination is not in her best interests. At the May 29, 2002 hearing, the mother expressed concern that no visitation had been established for S: “S needs visits with her dad. There were no visitations established for S and she's almost two.” It was the mother's view that respondent-appellant needed to know who S is and S needed to know who he is. At the termination hearing, respondent-appellant testified that he wanted to parent his children, that he missed S, and wanted visitation with both of his children.

Given this record, we agree with respondent-appellant's contention that termination was premature. *In re Boursaw*, 239 Mich App 161, 177; 607 NW2d 408 (1999), overruled in part on other grounds *In re Trejo, supra* at 353-354. While the trial court is correct that respondent-appellant's compliance is recent, the record does not warrant complete termination of the familial bond. *In re Boursaw, supra* at 177. For this reason, we reverse the trial court's order terminating respondent-appellant's parental rights to the children and remand this case for continued services. *In re JK, supra* at slip op pp 8-9; *In re Trejo, supra* at 356-357. Determined efforts should be made in furtherance of reunification, given the time that has passed since

respondent-appellant's rights were terminated and the presumed hardship on the children, as well as respondent-appellant.² *In re Boursau, supra* at 177.

The statutory best interests provisions attempt to strike the difficult balance between the policy favoring the preservation of the family unit and that of protecting a child's right to and need for security and permanency. *In re Trejo, supra* at 354. In this case, as in many cases of this nature, the choices are based on uncertainties. However, here, there is at least a chance of achieving both policy goals because the children live with their mother, and by all indications, having respondent-appellant regularly involved with the children would be beneficial.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Janet T. Neff

/s/ Karen M. Fort Hood

/s/ Stephen L. Borrello

² The record indicates that respondent-appellant's noncompliance may have resulted in part from a lack of communication. For example, at the termination hearing, the caseworker acknowledged that she had not told defendant what was required of him when he initially called her and that she had not requested verification of the services he had completed because parents know they have to provide the proof. Respondent-appellant testified, however, that he was not aware of these specific requirements. On remand, respondent's obligations and the means of compliance should be made clear to him and services should be provided accordingly.