

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CHRISTIAN ALEXANDER
JOHNSON, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ROBERT LEE PHILLIPS, JR.,

Respondent-Appellant.

UNPUBLISHED

April 4, 2006

No. 266052

Cass Circuit Court

Family Division

LC No. 04-000259-NA

Before: Smolenski, PJ., and Owens and Donofrio, JJ.

MEMORANDUM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(g). We affirm.

Respondent first argues that the trial court erred in admitting into evidence Dr. Schirado's written psychological evaluation of respondent because it was inadmissible hearsay. Respondent did not preserve this issue for review by specifically objecting to the admission of the written evaluation on the ground that it was hearsay. Therefore, we review this issue only for plain error that affected respondent's substantial rights. MRE 103(d); *In re Snyder*, 223 Mich App 85, 92; 566 NW2d 18 (1997). Respondent was not subject to adjudication in his case and, therefore, the trial court could consider only legally admissible evidence when determining whether the statutory ground for termination was proven by clear and convincing evidence. MCR 3.977(F)(1)(b); *In re CR*, 250 Mich App 185, 205-206; 646 NW2d 506 (2002). We conclude that the trial court erred in considering the evaluation to establish the statutory ground for termination. Nevertheless, we conclude that the error was harmless and did not affect respondent's substantial rights because petitioner presented other, legally admissible, evidence that clearly and convincingly established the statutory ground. There was evidence that respondent had no contact with his son since his son's birth, did not provide for him financially, and did not contact the caseworker to work on the case treatment plan. Therefore, the trial court did not clearly err in finding that the statutory ground for termination was established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Furthermore, the evidence did not show that termination of respondent'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).

Respondent next argues that the trial court erred in finding that petitioner made reasonable efforts to reunite him with his son. This Court reviews a trial court's findings of fact under the clearly erroneous standard. MCR 3.977(J); *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). Petitioner presented evidence that the caseworker scheduled a psychological evaluation for respondent and developed a case service plan. There was further evidence that respondent failed to maintain contact with the caseworker and made no progress on the plan. After having reviewed the record, we find no clear error in the trial court's findings regarding petitioner's reasonable efforts.

Finally, we need not address respondent's argument that the trial court wrongly denied him parenting time with his son. In light of our conclusion that the trial court did not err in terminating respondent's parental rights, this issue is moot. *In re Forfeiture of \$53.00*, 178 Mich App 480, 485; 444 NW2d 182 (1989).

Affirmed.

/s/ Michael R. Smolenski

/s/ Donald S. Owens

/s/ Pat M. Donofrio