

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DAVID YUSUPH MHARAGI,
JR., Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DAVID YUSUPH MHARAGI, SR.,

Respondent-Appellant.

UNPUBLISHED

September 26, 2006

No. 269039

Kalamazoo Circuit Court

Family Division

LC No. 00-000188-NA

Before: Borrello, P.J., and Jansen and Cooper, JJ.

MEMORANDUM.

Respondent appeals as of right from the trial court order terminating his parental rights under MCL 712A.19b(3)(a)(ii), (c)(i), and (c)(ii). We affirm.

Respondent father was convicted of domestic violence against the minor child's mother¹ on November 2, 2004 and November 23, 2004; respondent was incarcerated until the end of March, 2005. Petitioner filed for temporary custody on November 2, 2004, and filed the petition underlying this appeal in December of 2004, alleging domestic violence and alleging that the home lacked baby supplies, including a crib. Jurisdiction over the minor child was established at an initial adjudication on April 27, 2005. Respondent father was ordered to comply with a treatment plan that included a psychological evaluation, counseling, parenting time, random urinalysis screens, attendance at AA meetings, anger management courses, and maintaining employment and housing. Respondent complied partially with each element of the plan: he attended supervised parenting time from April through August, 2005; he participated in drug screens from June through August, 2005; he attended several parenting classes but failed to complete an entire session; he made appointments to begin anger management classes but did not follow up on them; he stated that he was employed and had housing, but failed to deliver documentation of both to the foster care worker, as required. Respondent's parental rights were terminated on March 1, 2006 after a termination hearing held on February 23, 2006.

¹ The parental rights of the child's mother have been terminated but she does not appeal.

Respondent first challenges the trial court's finding that MCL 712A.19b(3)(a)(ii), 91 or more days had passed without respondent seeking custody of his minor child, had been satisfied by clear and convincing evidence. We review a trial court's decision terminating parental rights for clear error. MCR 3.977(J).

Respondent's last visit with his child was on August 16, 2005. On October 25, 2005, he called the foster care worker to request parenting time, indicating he had moved to Battle Creek, Michigan². Parenting time was denied because respondent failed to provide the required documentation of housing, employment, and a clean drug screen. Respondent next left a phone message with the foster care worker on January 11, 2006. We note that respondent is correct that 91 days did not pass without any attempt on his part to contact the foster care worker. However, we note that the trial court may have discounted the October call and January message, given respondent's overall failure to comply with the terms of his treatment plan. Given that clear and convincing evidence is required to establish the statutory ground of abandonment, we must find that the trial court erred in concluding MCL 712A.19b(3)(a)(ii) was satisfied. However, we also find that this error was harmless because another statutory ground for termination was established by clear and convincing evidence.

The trial court stated "you never did address the issues of domestic violence . . . you did not fully cooperate with the Court or with the caseworker, and did not follow through on addressing that issue and, so, I have no choice at this point but to terminate parental rights." We agree. The condition that led to adjudication, domestic violence, was not resolved. Respondent failed to comply with the conditions of the treatment plan directly related to that issue, anger management courses, counseling, random drug screens, and parenting classes. We find no clear error in the trial court's determination that this condition of adjudication continued to exist. We agree that MCL 712A.19b(3)(c)(i), and (c)(ii) were satisfied.

Given the amount of time respondent father had to address this problem and his testimony that he could not both work and complete classes, there was no reasonable likelihood that the condition could be rectified within a reasonable time. During the proceeding, respondent's substance abuse also became an issue. Respondent did not provide all court-ordered screens, came to parenting time intoxicated once, and tested positive for alcohol at two screens. Although he was told that visitation would resume if he provided clean screens, he did not do so.

We further note with concern that one of the original issues identified by petitioner, the lack of proper baby supplies, including a crib in the home, was not addressed by the trial court, so we have no indication of whether that issue was ever resolved.

Respondent also argues that the trial court failed to make a best interests determination, as required. However, our reading of the trial court's conclusions of law includes a best interests determination. The trial court stated: "The law says a Court has to terminate parental rights

² Respondent had in August, 2005 told the foster care worker that he was leaving Michigan to join the army.

unless it's been shown that it's not in the best interest . . . by clear and convincing evidence that it's not in the best interest of the minor child, and the Court cannot make that finding.” Termination of parental rights is mandatory if the trial court finds that the petitioner established a statutory ground for termination, unless the court finds that termination is clearly not in the child’s best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 344; 612 NW2d 407 (2000). We find that the trial court did not clearly err in its best interests determination. Respondent had not seen his son in over seven months, respondent could have seen his son if he had submitted drug screens and he did not, and respondent had not fully completed any elements of his treatment plan, although he had ample time to do so.

Affirmed.

/s/ Stephen L. Borrello

/s/ Kathleen Jansen

/s/ Jessica R. Cooper