

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of HOWELL JAMES McCULLUM
and ROBERT THOMAS McCULLUM, Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

HOWELL JAMES McCULLUM, SR.,

Respondent,

and

DAVONNA LANISE MULLEN,

Respondent-Appellant.

In the Matter of HOWELL JAMES McCULLUM
and ROBERT THOMAS McCULLUM, Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

HOWELL JAMES McCULLUM, SR.,

Respondent-Appellant,

and

UNPUBLISHED
November 16, 2006

No. 269326
Oakland Circuit Court
Family Division
LC No. 04-693120-NA

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DAVONNA LANISE MULLEN,

Respondent.

Before: Whitbeck, C.J., and Saad and Schuette, JJ.

PER CURIAM.

Respondents appeal as of right from the trial court order terminating their parental rights to the children under MCL 712A.19b(3)(a)(ii), (c)(i), (g), and (j). We affirm. These appeals are being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

On May 3, 2004, petitioner filed a temporary custody petition alleging that respondent-mother was incarcerated and that respondent-father had left the children with a babysitter, indicating that he would return after two hours but had failed to return after three days. Following no-contest pleas to the petition by both parties, the court took the children into its temporary custody.

Both respondents were required to complete parent-agency agreements. Respondent-mother, who was released from prison on June 23, 2004, relapsed into drug use in November 2004. During the course of the proceeding, she was incarcerated for retail fraud and sentenced to 17 months' incarceration, with the earliest release date of April 9, 2007. While respondent-father was initially complying with his agreement, he was arrested and incarcerated in November 2004. He did not inform petitioner of his arrest and did not have any contact with petitioner or the children between November 2004 and June 2005. According to respondent-father, the charges were dropped, and he was released on June 3, 2004. He reinitiated contact with the children but visitation was suspended when the termination petition was filed in July 2005.

On September 22, 2005, the Pontiac Police Department received information that respondent-father was selling drugs from his home at 467 Raeburn. During an investigation, police observed respondent-father making a drug sale in a parking lot. Respondent-father was approached and searched. After several packages of heroin were found in his pockets, police secured a search warrant for the Raeburn address. During a drug raid on the home, the officers found the children, as well as paraphernalia associated with the manufacture and sale of drugs and a loaded handgun, in the home. Respondent-father pleaded guilty to possession of narcotics in connection with the incident and was sentenced to one to forty years' incarceration, with his earliest release date being March 2, 2007.

Respondent-mother pleaded no contest to the permanent custody petition. The case against respondent-father proceeded to trial. The court found that clear and convincing evidence established the statutory grounds for termination of respondent-father's parental rights. Following a best interests hearing, the court terminated both respondents' parental rights.

II. NO CONSENT PLEA OF RESPONDENT-MOTHER

On appeal, respondent-mother first argues that the court improperly accepted her no-contest plea on the temporary custody petition because it was not accurate. We disagree.

A. Standard of Review

The determination of whether proper procedure was followed in a child protective proceeding presents a question of law subject to de novo review. *In re CR*, 250 Mich App 185, 200; 646 NW2d 506 (2001).

B. Analysis

Respondent-mother alleges she was erroneously advised by both the court and her counsel that she had failed to properly plan for the children when she left them, during her incarceration, in the care of respondent-father who had failed to perfect his paternity by filing an affidavit of paternity. Under MCR 3.971(C), the court may not accept a plea of no contest unless there is support for a finding that one or more of the statutory grounds alleged in the petition are true. Regardless of the paternity issue, the court could properly rely on respondent-mother's criminality and the fact that respondent-father, who was caring for the children, had provided an unfit custodial environment, as supported by respondent-father's plea, in establishing its jurisdiction. See *Matter of Curry*, 113 Mich App 821; 318 NW2d 567 (1982). Furthermore, once the court accepted respondent-father's plea and established its jurisdiction over the children, it was authorized to order respondent-mother to participate in the proceedings and, if necessary, terminate her parental rights. *In re CR*, *supra* at 202-203. Since there was support to establish the statutory grounds for jurisdiction, the court did not erroneously accept respondent-mother's plea of no contest to the temporary custody petition under MCR 3.971(C)(2).

III. EFFECTIVE ASSISTANCE OF COUNSEL

A. Standard of Review

The determination of whether a party received ineffective assistance of counsel is subject to de novo review. *In re CR*, *supra* at 197.

B. Analysis

Respondent-mother also argues that she was denied the effective assistance of counsel when counsel improperly advised her in connection with her plea to the temporary custody petition. A lawyer does not render ineffective assistance of counsel by failing to advocate a meritless position. *Id.* at 209. Since the court, once it established its jurisdiction over the children, could have made respondent-mother a party to the instant proceedings regardless of her plea on the temporary custody petition, respondent-mother's claim of ineffective assistance of counsel must fail.

IV. TERMINATION OF PARENTAL RIGHTS

Respondent-father argues on appeal that the court failed to articulate the statutory grounds for termination of his parental rights and that, assuming that the court relied upon § 19b(3)(j), the court clearly erred. We disagree.

A. Standard of Review

Termination of parental rights is appropriate where petitioner proves by clear and convincing evidence at least one ground for termination. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). Once this has occurred, the court shall terminate parental rights unless it finds that the termination is clearly not in the best interests of the children. *Id.* at 364-365. This Court reviews the lower court's findings under the clearly erroneous standard. MCR 3.977(J); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000).

B. Analysis

Contrary to respondent-father's argument, the court, at the best interests hearing, cited four statutory grounds, §§ 19b(3)(a)(ii), (c)(i), (g), and (j), in support of termination of his parental rights. The court complied with its obligation under MCR 3.977(H)(3) to specify the statutory basis for the order of termination before entering the order because it articulated the statutory grounds for termination before entry of the termination order. Further, only a single statutory ground is required to justify termination. *In re Trejo, supra* at 353. As such, respondent-father's failure to challenge termination under three of the four grounds cited by the court renders his challenge ineffectual. Nonetheless, the foregoing evidence shows that the trial court did not clearly err in finding termination was appropriate under §§19b(3)(a)(ii), (c)(i), and (g). MCR 3.977(G)(3); *In re Miller, supra* at 337.

V. BEST INTERESTS OF CHILDREN

A. Standard of Review

The court's finding regarding whether termination is clearly not in the child's best interests is reviewed for clear error. *In re Trejo, supra* at 356-357.

B. Analysis

The evidence did not show that termination of respondent-appellant's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo, supra* at 356-357. Thus, the trial court did not err in terminating both respondents' parental rights to the children.

Affirmed.

/s/ William C. Whitbeck
/s/ Henry William Saad
/s/ Bill Schuette