

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of KRISTIN MCCREADY and  
CHANCE MCCREADY, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

PATRICK MCCREADY,

Respondent-Appellant,

and

MICHELLE MCCREADY,

Respondent.

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UNPUBLISHED

February 6, 2007

No. 272052

Kalamazoo Circuit Court

Family Division

LC No. 04-000169-NA

Before: Sawyer, P.J., and Fitzgerald and Donofrio, JJ.

PER CURIAM.

Respondent Patrick McCready appeals as of right from the trial court order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(j). The court also terminated the parental rights of the children's mother, Michelle McCready, but she has not appealed.<sup>1</sup> We affirm.

Respondent was incarcerated in 1995 after being convicted of three counts of first-degree criminal sexual conduct ("CSC") and one count of second-degree CSC. The children resided with Michelle but were removed from her care in 2004 and placed with their maternal grandparents. A long-term guardianship with the maternal grandparents was explored but ultimately abandoned, and a supplemental petition was filed in 2005 that added respondent as a

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<sup>1</sup> Because Michelle McCready is not a party to this appeal, all references to "respondent" refer to Patrick McCready only.

party and sought the termination of both his and Michelle's parental rights in order to allow the maternal grandparents to pursue adoption.

Respondent argues that the trial court clearly erred when it failed in its best interests determination to consider the possibility of a guardianship with his parents, the children's paternal grandparents, whom respondent had offered as possible caretakers. A review of the trial court's findings shows that it apparently did not consider such an arrangement while evaluating the children's best interests. However, this omission was not clear error in light of the evidence that the paternal grandparents had intended to serve only as a backup if the maternal grandparents became unable to care for the children. In addition, the children were strongly attached to Michelle and would be best served by remaining with their maternal grandparents, who lived in close proximity to Michelle. There was no doubt that contact with Michelle would be ongoing in the event of either a termination or a guardianship. Lastly, the children's need for permanence was paramount in this case, and it was best to keep them in their current placement and familiar environment, even though this meant that respondent's parental rights had to be terminated for the sake of the children.

Respondent next argues that the trial court clearly erred in basing termination on MCL 712A.19b(3)(j) since he had proffered his parents' home for the children. This argument fails since subsection 19b(3)(j) must be construed reasonably, keeping in mind the objective and purpose of the juvenile code, which is to protect the child. See *In re Brock*, 442 Mich 101, 107; 499 NW2d 752 (1993). A reasonable construction requires that a parent be held accountable for his or her treatment of a child, and not evade responsibility for that treatment by simply securing an alternate caretaker for the child. While guardianships are often the best arrangement, they sometimes are not feasible, as this case demonstrated, and the trial court must then turn its attention to the parents' actions. Therefore, subsection 19b(3)(j) must be evaluated on whether the child would be at risk of harm if returned to *respondent's*, not someone else's, home.<sup>2</sup> In this case, there was a reasonable likelihood that the children would be harmed if returned to a home that also housed respondent, a convicted sexual molester of young children. The trial court did not clearly err in finding that MCL 712A.19b(3)(j) was clearly and convincingly established. MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

Lastly, respondent argues that the case should not have been remanded to the referee for a rehearing on the best interests issue since the referee had already ruled that termination was not in the children's best interests if a guardianship with the maternal grandparents was still a viable option. This argument is baseless since the referee clearly stated in her January 31, 2006, written recommendations that she was unclear about certain points concerning a guardianship and,

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<sup>2</sup> The fact that respondent was incarcerated and, therefore, without a "home" was not determinative since case law has applied subsection 19b(3)(j) to situations involving an incarcerated parent. See *In re NEGP*, 245 Mich App 126; 626 NW2d 921 (2001). In cases where a parent is incarcerated, the evaluation is whether the parent's conduct or capacity created a reasonable likelihood of harm to the child should the child be cared for by that parent in a home, as opposed to prison.

without that information, it was her decision that a guardianship was the best arrangement. However, she herself proposed a rehearing on the best interest issue if the parties so desired. Therefore, the trial court committed no error by remanding the case to the referee.

Affirmed.

/s/ David H. Sawyer  
/s/ E. Thomas Fitzgerald  
/s/ Pat M. Donofrio