

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of NITIKA ROSE ALLEN and
DREW WILLIAM ALLEN, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

HOLLIS R. ALLEN, JR.,

Respondent-Appellant.

UNPUBLISHED

April 13, 2010

No. 294336

Arenac Circuit Court

Family Division

LC No. 07-010255-NA

Before: DAVIS, P.J., and DONOFRIO and STEPHENS, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (m). We affirm.

The trial court did not err when it concluded that there was clear and convincing evidence to support termination of respondent's parental rights pursuant to §§ 19b(3)(c)(i), (c)(ii), (g), and (m). MCR 3.977; *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). When the formal proceedings began in this matter in 2007, respondent was living with his wife, Rebecca Allen, their two children, both under the age of two, and respondent's nine-year old son, "Hollis III," from his previous marriage. After, many procedural and factual turns, including the voluntary relinquishment of parental rights to Nitika and Drew by Rebecca Allen and respondent's relinquishment of his rights to Hollis III, the only remaining concern before the court was the issue of respondent's parental rights to Nitika and Drew. With that brief factual backdrop in place, we turn to respondent's claims of error.

Initially, respondent begins with the premise that the condition that led to adjudication was simply his inability to care for his emotionally disturbed nine-year old son, Hollis III. He then reasons that, because he voluntarily relinquished his parental rights with this child on June 11, 2009, the condition that led to adjudication had been rectified. Respondent starts with an overly simplistic interpretation of the facts. His inability to care for his son was not the sole reason the children came into care. It is clear from the language of the original petition, that the parents' inability to provide proper care and custody for all their children was a condition that led to adjudication.

In October of 2007, the family was living in a trailer in a friend's yard where the electricity was provided by an extension cord leading to the house on the property. Neither parent had a source of income, and the caseworkers were concerned about the family's living conditions and the parents' ability to care for the children, especially the newborn.

At the time the termination hearing began in earnest in April of 2009, respondent lacked suitable housing having been evicted from his apartment in January of 2009 for non-payment of rent. He also had outstanding utility payments. To further compound the matter, respondent was serving a 45-day incarceration for failing to pay back child support arising out of the removal of the older child. Respondent testified that, upon his impending release, he was to live with a friend, a housing arrangement he admitted would not be suitable for his children. Further, respondent failed to provide any proof that he had obtained or was maintaining a source of income. During the entire time the children were in care, respondent was, for all practical purposes, unemployed.

With respect to his relationship with the children, there was ample evidence to conclude that respondent simply was not that vested in their welfare. Although respondent's parental rights to his older son are not at issue, respondent's actions toward this child are relevant. During the entire time that child was in care, respondent made little to no effort to visit or communicate with him. Although not as flagrant as with Hollis III, his efforts toward maintaining contact with Nitika and Drew were similarly insufficient. Respondent missed visits and arrived late; when encouraged to initiate extended visits with his children, respondent failed to take advantage of this opportunity. The evidence, taken as a whole, would make it difficult to conclude that the trial court erred when it found clear and convincing evidence that respondent was unable to provide proper care and custody of his children.

Similarly, the trial court did not err when it held that the circumstances were unlikely to change within a reasonable time. Early on, respondent was provided several services to improve his parenting skills. He also was assisted during and after his visitation with parenting concerns. He was encouraged to spend more time with his children, but he neglected to make the effort. Respondent was provided substance abuse counseling; however, he failed to attend the last class during which aftercare planning was to occur. Respondent was provided assistance in obtaining housing and financial assistance with his utilities. Despite these services, respondent was evicted from suitable housing and owed utility payments. Respondent did not make any progress toward reunification the entire time the children were in care; respondent's past performance suggested that any future progress was unlikely.

Although his testimony was inconsistent, respondent ultimately and candidly admitted that it would take him at least a year to be in a position to parent his children. The foster care workers testified that at least six months of stability would be required before reunification could even be contemplated, a stability respondent had yet to achieve, let alone maintain. All the workers concluded that the children, both under the age of two and a half, had been in care too long and it would be unreasonable to expect them to wait any longer for permanency. Because respondent had not demonstrated the ability to parent his children, now or in the future, the trial court did not err when it found clear and convincing evidence to support termination of respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), and (g).

The trial court also terminated respondent's parental rights pursuant to MCL 712A.19b(3)(m). This statutory provision simply provides that a court may terminate a parent's parental rights if that parent's rights to another child were voluntarily terminated following the initiation of proceedings under § (2)(b) of the Michigan Juvenile Code. It is undisputed that respondent voluntarily relinquished his parental rights to Hollis III on June 11, 2009, nearly a year and a half after the initiation of proceedings. Therefore, this ground was established by clear and convincing evidence.

We also find that the trial court did not err when it concluded that termination of respondent's parental rights was in the children's best interests. The legislature amended MCL 712A.19b(5), effective July 11, 2008, to provide as follows: "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights" The trial court's decision regarding a child's best interests is reviewed for clear error. *In re Trejo Minors*, 462 Mich at 353.

The record supports the trial court's conclusion that termination of respondent's parental rights was in the children's best interests. There was clear and convincing evidence that respondent was not able to provide proper care and custody of his children at the time of the hearing and that he would not be in a position to do so within a reasonable time. Respondent lacked stability in his life and had made no progress toward this endeavor. The children had been in care for over a year. Moreover, it would have been unreasonable for the children to wait the amount of time that was realistically necessary for respondent to be in a position to parent his own children. Further, there existed no bond between respondent and his children.

With respect to this last element, respondent blames petitioner for the lack of a bond with his children. Respondent suggest that, when Rebecca relinquished her parental rights, the children should have simply been returned to his care. Respondent argues that, because they were not, the children developed a strong attachment to their foster family, which created an insurmountable barrier for him. However, respondent ignores the fact that petitioner could not simply return the children to his care when he did not have the skills to care for two children, both under the age of two. Rebecca had been the primary care giver, not respondent, at the time Nitika and Drew were removed. Moreover, there was evidence that respondent was continuing to have contact with Rebecca despite being ordered not to and that he failed to take the opportunity to enjoy extended visitation with his children when it was offered to him. Based upon the record, we conclude that the trial court did not err when it found that termination of respondent's parental rights was in the children's best interest. Indeed, termination of parental rights was essential if the children were to achieve the stability and permanency necessary to foster a child's continued growth and development.

Affirmed.

/s/ Alton T. Davis
/s/ Pat M. Donofrio
/s/ Cynthia Diane Stephens