

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CALLIE LYNN HUDACK,
DOUGLAS RANDALL HUDACK and
SAMANTHA RAE HUDACK, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

UNPUBLISHED
August 4, 2000

v

No. 220472
St. Clair Circuit Court
Family Division
LC No. 97-000246

JAN HUDACK,

Respondent-Appellant.

Before: Hoekstra, P.J., and Holbrook, Jr., and Zahra, JJ.

PER CURIAM.

Respondent appeals as of right from the order terminating her parental rights. We affirm.

The Family Independence Agency initiated proceedings to terminate respondent's parental rights to her children. Respondent received notice of the permanent custody hearing, but did not appear at the hearing because she had been arrested and incarcerated. She did not inform her counsel of this fact. The evidence produced at the hearing showed that respondent had failed to address her substance abuse problem, and had not fully complied with a treatment plan. The court found that clear and convincing evidence existed to terminate respondent's parental rights under MCL 712A.19b(3)(a)(ii), (c)(i), (c)(ii), (g), and (j); MSA 27.3178(598.19b)(3)(a)(ii), (c)(i), (c)(ii), (g), and (j), for desertion, continuation of conditions of adjudication, failure to provide proper care and custody, and risk of future harm.

To terminate parental rights, the family court must find that at least one of the statutory grounds for termination in MCL 712A.19b; MSA 27.3178(598.19b) has been met by clear and convincing evidence. *In re JS and SM*, 231 Mich App 92, 97; 585 NW2d 326 (1998). If a statutory ground is established, the court must terminate parental rights unless there exists clear evidence, on the whole

record, that termination is not in the children's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Trejos*, __ Mich __; __ NW2d __ (Docket No. 112528, issued 7/5/00), slip op p 14. We review the family court's findings of fact under the clearly erroneous standard. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

On appeal, respondent's sole argument is that the family court erred by proceeding with the permanent custody hearing in her absence. We disagree and affirm. A parent must be notified of a hearing to determine if his or her parental rights are to be terminated. MCL 712A.19b(2)(c); MSA 27.3178(598.19b)(2)(c). However, an incarcerated parent does not have an absolute right to be physically present at such a hearing. Whether a parent's physical presence must be secured is determined by application of a three-part balancing test: (1) the private interest at stake; (2) the risk of an erroneous deprivation of that interest through the proceedings actually employed; and (3) the government's interest in avoiding the burden of the procedure. *In re Vasquez*, 199 Mich App 44, 47-50; 501 NW2d 231 (1993). Respondent's interest in her parental rights was substantial; nevertheless, the risk of an erroneous deprivation of respondent's rights was not increased by her absence from the permanent custody hearing. Respondent was represented by counsel at the hearing; furthermore, she points to no evidence that she could have provided that would have changed the court's decision. The family court was unable to make arrangements for respondent to participate in the hearing because she failed to notify anyone that she was incarcerated. The family court's decision to proceed in respondent's absence did not deny respondent due process.

Finally, the family court did not err in finding that the statutory grounds for termination were met by clear and convincing evidence. Respondent left the children in the care of a neighbor, and then failed to determine if they had adequate adult supervision. She failed to address her substance abuse problem, and did not attend counseling or visitation sessions on a consistent basis. The evidence showed that respondent did not attempt to regain custody of her children, that the conditions of adjudication continued to exist, and that respondent would be unable to provide proper care for and custody of the children for the foreseeable future. MCL 712A.19b(3)(a)(ii), (c)(i), (c)(ii), (g), and (j); MSA 27.3178(598.19b)(3)(a)(ii), (c)(i), (c)(ii), (g), and (j). Furthermore, there is not clear evidence, on the whole record, that termination was not in the children's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Trejo*, *supra*.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Donald E. Holbrook, Jr.

/s/ Brian K. Zahra