

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ADRIAN RAY, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

UNPUBLISHED
September 18, 2003

v

ANTHONY LEE RAY,

Respondent-Appellant,

No. 245783
Washtenaw Circuit Court
Family Division
LC No. 02-000082-NA

and

SHARON WIMBERLY,

Respondent.

Before: Smolenski, P.J., and Murphy and Wilder, JJ.

MEMORANDUM.

Respondent-appellant Anthony Lee Ray appeals as of right from the trial court's order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(g), (h), (i), (j), and (l). Respondent appeals as of right. We affirm.

Respondent's only argument on appeal is that the trial court erred in its determination of the child's best interests. We disagree.

First, contrary to what respondent suggests, the court was not required to affirmatively find that termination of his parental rights was in the child's best interests. Rather, under MCL 712A.19b(5), "[o]nce a ground for termination is established, the court must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests." *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000).

Second, § 19b(5) does not impose an additional burden of proof on petitioner. *In re Trejo*, *supra* at 352. Instead, the court must determine from evidence on the whole record, regardless of which party introduced the evidence, whether termination is clearly not in the child's best interests. *Id.* at 353.

Third, the evidence here factually supports the trial court's best interest determination. Although, as respondent urges, there was evidence of a father-son relationship between respondent and the child, the evidence also showed that the child, who was thirteen, was principally bonded to his grandparents, with whom he had lived for most of his life since the age of four, and with whom he had recently resumed residing at the time of the termination hearing. Further, any suggestion that respondent could be a positive influence in the child's life is undercut by evidence that respondent's parental rights to another child were terminated in 2001 for failure to comply with his case service plan, that respondent has a criminal history involving cocaine possession and was presently serving a term of six months to four years' imprisonment, and, notwithstanding respondent's intention to secure a job and obtain his own housing after his release from prison, evidence that respondent has essentially been unemployed since 1990 and was living with his mother immediately before he was incarcerated.

In sum, the trial court's statement that it "does not find that termination of [respondent's] parental rights to the minor child is clearly not in the best interests of the minor child" is supported by the record and, therefore, not clearly erroneous.

Affirmed.

/s/ Michael R. Smolenski
/s/ William B. Murphy
/s/ Kurtis T. Wilder