

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MARSHALL JOHNSON, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DAVID JOHNSON,

Respondent-Appellant,

and

PAMELA JOHNSON,

Respondent.

UNPUBLISHED

October 14, 2003

No. 247936

Gladwin Circuit Court

Family Division

LC No. 01-000184-NA

Before: Donofrio, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court order terminating his parental rights to the minor child in accord with MCL 712A.19b(3)(c)(i), (g) and (j). We affirm.

This Court reviews a trial court's decision to terminate parental rights for clear error. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). If the trial court determines that the petitioner established the existence of one or more statutory grounds for termination by clear and convincing evidence, then the trial court must terminate the respondent's parental rights unless it determines that to do so is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). We review for clear error the trial court's decision with regard to the child's best interests. *Id.* at 356-357.

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence in this case. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Expert testimony established that respondent had serious personality deficiencies and mental health issues that persisted over time. He needed psychotropic medication to stabilize his thought processes and enable him to perform daily tasks such as

cooking, cleaning and tending to his personal hygiene. Expert testimony adduced at trial established that respondent-appellant did not have the insight or capacity to provide appropriate parental supervision and anticipate a child's developmental needs relative to an "average" child, let alone a child like Marshall who is profoundly developmentally delayed. Respondent-appellant refused to accept that he suffered from mental illness and thus similarly refused to consistently take the medication to stabilize his thought processes. Respondent-appellant's tangential, "highly associative" thought patterns were particularly evident during his trial testimony.

Further, evidence presented at trial revealed that respondent-appellant refused to take responsibility for the conditions that resulted in the FIA's decision to remove Marshall from his care and custody. On that point, respondent-appellant specifically indicated that he would not engage in any efforts to rebuild or otherwise clean up his residence because he wanted to underscore the inadequacies inherent in the federal government's housing programs. Aside from the federal government, respondent-appellant also blamed his developmentally disabled wife for the filthy, substandard condition of the residence. As of the time of trial, respondent-appellant still did not have a residence suitable for human habitation because of his adamant refusal to accept any personal responsibility. Petitioner established that substandard housing conditions presented a "chronic" problem for respondent-appellant.

Further, expert testimony established that Marshall is severely developmentally delayed because of environmental deprivation. For Marshall to learn critical language skills, social skills and appropriate patterns of social behavior, he must have the opportunity to interact with others in social settings. Contrary to Marshall's developmental needs, respondent-appellant suggested that, if Marshall were returned to his care and custody, he would isolate himself and remove people from Marshall's immediate environment. According to expert testimony, isolation would severely affect Marshall's quality of life well into the future and would also compromise his ability to ultimately live in the least restrictive environment possible. The expert's testimony was clear that respondent-appellant's inability to perceive and anticipate his son's needs posed a "severe risk" to Marshall's developmental, emotional and cognitive growth. Considering Marshall's profound developmental disabilities, the trial court correctly found that he needs a "very skilled caregiver" in a controlled, stable environment where he can receive clear messages and a very clear reinforcement schedule to reward any progress. Marshall's level of functioning improved significantly in and through the stable environment provided by his foster care parents. Certainly, respondent-appellant's "filthy," cluttered residence is not the "controlled, stable" environment through which Marshall may realize his full developmental potential.

Moreover, testimony adduced at trial demonstrated that Marshall does not have the ability to understand or anticipate danger. Consequently, a safe environment is paramount, as Marshall does not have the ability to "really look out for himself." Respondent-appellant's residence as it existed at the time of trial is not a hazard-free environment that would adequately ensure Marshall's physical safety. Accordingly, based on respondent-appellant's unstable mental condition and Marshall's extensive developmental disabilities, along with the concomitant need for a skilled care-giver in a physically safe, controlled environment, there is a reasonable likelihood that if he were returned to respondent-appellant, Marshall would be developmentally stifled, emotionally harmed, and subject to physical harm.

Additionally, we find that the evidence produced at trial did not demonstrate that termination of respondent-appellant's parental rights was antithetical to Marshall's best interests. MCL 712A.19b(5); *Trejo, supra* at 356-357. Accordingly, the trial court did not err in terminating respondent-appellant's rights to his minor child.

We also reject respondent-appellant's claim that the trial court's denial of his motion for disqualification denied him due process of law. This Court will not disturb a denial on a motion for disqualification absent an abuse of discretion. *FMB-First Michigan Bank v Bailey*, 232 Mich App 711, 728; 591 NW2d 676 (1998). Respondent-appellant argues that a comment made by the trial judge in a previous divorce proceeding involving respondent-appellant established the requisite personal bias sufficient to secure disqualification. To establish bias or partiality, respondent must demonstrate an entrenched favoritism or antagonism that would prevent a fair and impartial judgment. *Cain v Dep't of Corrections*, 451 Mich 470, 496; 548 NW2d 210 (1996). On this record, respondent-appellant failed to demonstrate actual bias or prejudice on the trial judge's part, so the trial court did not abuse its discretion.

Affirmed.

/s/ Pat M. Donofrio
/s/ David H. Sawyer
/s/ Peter D. O'Connell