

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ALEXANDER WOHADLO and
KATELYNN SIMON, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JOSEPH WOHADLO,

Respondent-Appellant,

and

FELIX SIMON,

Respondent.

In the Matter of ALEXANDER WOHADLO and
KATELYNN SIMON, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

FELIX SIMON,

Respondent-Appellant,

and

JOSEPH WOHADLO,

Respondent.

UNPUBLISHED
December 16, 2003

No. 248920
St. Clair Circuit Court
Family Division
LC No. 02-000048-NA

No. 248970
St. Clair Circuit Court
Family Division
LC No. 02-000048-NA

Before: Fitzgerald, P.J., and Neff and White, JJ.

MEMORANDUM.

In Docket No. 248920, respondent Joseph Wohadlo appeals as of right from the circuit court order terminating his parental rights to both minor children under MCL 712A.19b(3)(a)(i), (a)(ii), and (g).¹ In Docket No. 248970, respondent Felix Simon appeals as of right from the same order terminating his parental rights to the minor child, Katelynn Simon, under MCL 712A.19b(3)(a)(i) and (a)(ii). Their appeals have been consolidated for our review. We affirm. These appeals are being decided without oral argument pursuant to MCR 7.214(E).

In Docket No. 248920, the trial court did not clearly err in finding that the statutory grounds for termination of respondent's parental rights had been established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Although respondent did pay some child support, this was only for Alexander and not Katelynn and only during periods where he was not incarcerated. Moreover, nearly ten months had elapsed since respondent expressed any interest in seeing his son. The trial court, therefore, did not clearly err in finding that respondent had deserted his children for ninety-one or more days and had not sought custody during that time. Similarly, the lack of support and visitation, as well as respondent's incarceration, support the trial court's finding that respondent had failed to provide proper care or custody and that there was no reasonable expectation that he would be able to do so within a reasonable time considering the ages of the children. Further, the evidence did not show that termination of respondent's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Therefore, the circuit court did not err in terminating respondent Wohadlo's parental rights to the minor children.

In Docket No. 248970, our review of the record refutes respondent Simon's claim that the trial court committed clear error when it would not allow him to complete an affidavit of parentage to establish his paternity of the minor child, Katelynn Simon, but required him to submit to and pay for DNA testing. The court's order did not state that respondent had to establish paternity through DNA testing but required only that respondent "establish or make a substantial effort to establish his paternity." Rather, the evidence indicates that it was the FIA caseworker who stated that respondent could not sign the affidavit because the child had a legal father. Accordingly, respondent incorrectly asserts that the court erred when it "required" him to "submit to and pay for DNA testing." Moreover, respondent voluntarily abandoned his quest to establish paternity in October 2002 when he informed the FIA caseworker that he no longer wanted to pursue paternity of Katelynn and would not be at the compliance hearing in November 2002. Hence, it was respondent's own inaction that resulted in the failure to establish paternity.

¹ Although the written order states that the court terminated respondent Wohadlo's parental rights under MCL 712A.19b(3)(a)(i), as well as under MCL 712A.19b(3)(a)(ii) and (g), in its bench opinion the court merely addressed subsections 19b(3)(a)(ii) and (g). Respondent has limited his appeal to these two statutory grounds. Our opinion does the same.

Furthermore, the circuit court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *Miller, supra* at 337. Four months had elapsed without any attempt by respondent to seek custody of Katelynn. Further, the evidence did not show that termination of respondent's parental rights was clearly not in the child's best interests. MCL 712A.19b(5); *Trejo, supra* at 356-357. Therefore, the circuit court did not err in terminating respondent Simon's parental rights to the minor child.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Janet T. Neff

/s/ Helene N. White