

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TAYVION AMIOR POOLE,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TYRONE POOLE,

Respondent-Appellant.

UNPUBLISHED

August 26, 2008

No. 282591

Jackson Circuit Court

Family Division

LC No. 06-005211-NA

Before: Schuette, P.J., and Zahra and Owens, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(g) and (j). We affirm. We decide this appeal without oral argument under MCR 7.214(E).

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Sours Minors*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). If a statutory ground for termination is established, the trial court must terminate parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(J); *Trejo, supra* at 356-357; *Sours, supra* at 633. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989). Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *Miller, supra* at 337.

There was clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(g). Respondent was unable to provide proper care and custody for Tayvion because he was incarcerated with a maximum release date of April 22, 2013. Although respondent will be eligible for parole in July 2008, he was denied parole in July 2007, and he was never approved for release through the tether program for which he was eligible in

November 2007. Moreover, the evidence established that he would need at least one year to comply with the case service plan such that he could provide proper care and custody of Tayvion. Thus, there is no reason to believe respondent will be released from prison and able to provide proper care of Tayvion in the near future.

Respondent's inability to provide proper care and custody of Tayvion is also evident by his failure to financially support or contact Tayvion while he was in prison. An incarcerated parent retains the ability to financially support and contact his child to some degree. No incarcerated parent exception exists. *In re Caldwell*, 228 Mich App 116, 120-121; 576 NW2d 724 (1998). Respondent also never contacted the caseworker to find out what he would need to do to work toward reunification with Tayvion and only suggested a relative caregiver for Tayvion once the termination petition was filed.

Respondent's inability to provide proper care of Tayvion is also evident from his admission that he had a drug problem. Although respondent was involved with substance abuse treatment and Narcotics Anonymous in prison, he would have to demonstrate that he was drug free for a sustained period of time before Tayvion could be returned to him. Additionally, respondent claimed he read a book on parenting while in prison because parenting classes were not available to him; however, he never met Tayvion, bonded with the child, or demonstrated appropriate parenting skills. Respondent spent the majority of his adult life in prison. This has undoubtedly had a negative impact on his parenting skills and ability to provide for Tayvion. Also, respondent does not have independent housing in which to care for Tayvion. He plans to live with his mother upon his release from prison.

The court also did not err in terminating respondent's parental rights under MCL 712A.19b(3)(j). Respondent's extensive criminal history and propensity to commit violent crimes after participating in anger management programs reveals a likelihood that Tayvion would be harmed if placed in respondent's care. Given respondent's history of convictions for violent offenses, substance abuse, and the fact that he spent the majority of his adult life in prison, there is a risk that Tayvion would be harmed in his care.

Additionally, the poor judgment respondent demonstrated in recommending his sister as a caregiver for Tayvion shows that Tayvion would be at risk of harm in respondent's care. The sister's home had space and structural concerns, and she was the subject of CPS referrals as recently as September 14, 2007, involving allegations of physical abuse by her live-in partner. The sister was regularly visited by and lived with individuals who had histories of emotional instability and violent crimes, including criminal sexual assault by her fifteen-year-old son against a three-year-old boy. Respondent's belief that his sister would be an appropriate caregiver for Tayvion shows that he does not know how to protect Tayvion from harm or the importance of being aware of a child's environment to ensure his safety.

Finally, the trial court did not clearly err in its best interests determination. There was no evidence in the record that it was contrary to Tayvion's best interests to terminate respondent's parental rights. It is not in Tayvion's best interest to be left in the care of someone who is incarcerated and unavailable to parent him.

Further, a best interest finding requires more than a risk that a child will lose his biological identity as respondent suggests. Due to respondent's incarceration, he is unable to

provide proper care and custody of Tayvion. “If a parent cannot or will not meet her irreducible minimum parental responsibilities, the needs of the child must prevail over the needs of the parent.” *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000), quoting *In re AP*, 728 A2d 375, 379 (Pa Super, 1999).

Affirmed.

/s/ Bill Schuette

/s/ Brian K. Zahra

/s/ Donald S. Owens