

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SAVANAH LILLIAN JEAN
SYLVESTER, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

V

NICHOLAS B. POLKER,

Respondent-Appellant.

UNPUBLISHED

August 26, 2008

No. 284082

Monroe Circuit Court

Family Division

LC No. 07-020171-NA

Before: Cavanagh, P.J., and Jansen and Kelly, JJ.

MEMORANDUM.

Respondent appeals as of right from the order terminating his parental rights to the minor child under MCL 712A.19b(3)(g). We affirm.

The trial court did not clearly err in finding clear and convincing evidence to terminate respondent's parental rights to the minor child. MCR 3.977(J). Respondent was convicted of attempted possession of child sexually abusive materials, in violation of MCL 750.145c(4). He was sentenced in 2005 to 90 days in jail, two years' probation, and fines, costs, and fees. Respondent twice violated his probation by failing to complete his sex offender treatment program. He also fell behind in payments of fines and costs. Respondent's probation was extended the first time from June 2007 to December 2007, and the second time until June 2009. Savannah was born on May 28, 2007. During the termination hearing in February 2008, respondent was serving a 243-day jail sentence and was scheduled for release in May or June 2008.

Respondent argues that the trial court failed to consider his willingness to continue treatment, ability to support the child, and parental fitness. Respondent's arguments are not persuasive. Upon release from jail, respondent would have to continue with or begin anew his sex offender treatment. His probation would not end until June 2009. The terms of probation prohibited contact with minors under the age of 16; knowing this, respondent had provided transportation to the minor child and her mother and had other unauthorized contacts with the child. Respondent described his crime as possessing CDs or tapes depicting images of adults performing sex acts on toddlers. After considering the evidence, we find that the trial court did not clearly err in finding that respondent did not provide proper care or custody for Savannah, and

would be unable to do so within a reasonable time considering her age. *In re Hamlet*, 225 Mich App 505, 514-519; 571 NW2d 750 (1997), overruled in part on other grounds, *In re Trejo*, 462 Mich 341, 353 n 10; 612 NW2d 407 (2000).

Moreover, the trial court also did not clearly err in finding termination not clearly contrary to the minor child's best interests. MCL 712A.19b(5); *Trejo, supra* at 353-357. Respondent argues that transporting the minor child to the hospital and DHS appointments was in her best interests. While respondent may have had good intentions in doing these things, his actions were in direct violation of his probation. After two tries, respondent failed to finish his sex offender treatment in twice the allotted time and could not support his child because he was usually in jail. He argues that he was simply inarticulate in showing what he had learned, but he had no remorse and failed to recognize a connection between possessing child sexually abusive materials and a risk of harm in caring for a young child. Respondent had no bond with his daughter and would not be able to start establishing one until at least June 2009. We find no reversible error in the trial court's ruling.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly