

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
October 23, 2012

In the Matter of CALHOUN, Minors.

No. 309713
Oakland Circuit Court
Family Division
LC No. 04-700463-NA

Before: K. F. KELLY, P.J., and MARKEY and SERVITTO, JJ.

PER CURIAM.

Respondent, C. Calhoun, appeals as of right from a circuit court order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(g) and (j). We affirm.

Although respondent first argues that the circuit court clearly erred in finding that the statutory grounds for termination were established by clear and convincing evidence, respondent's counsel conceded below that "the Court could find statutory grounds for meeting the limit and boundaries of termination." A party cannot assign error to something which his own attorney deemed proper at trial. *Hilgendorf v St John Hosp & Med Ctr Corp*, 245 Mich App 670, 683; 630 NW2d 356 (2001). Nor may a party "take a position in the trial court and subsequently seek redress . . . based on a position contrary to that taken in the trial court." *Holmes v Holmes*, 281 Mich App 575, 587-588; 760 NW2d 300 (2008). Therefore, respondent's challenge to the existence of a statutory ground for termination may be deemed waived. Even if respondent did not waive this issue, however, the circuit court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 3.977(K).

The evidence showed that respondent had a serious alcohol problem, which exacerbated his poor impulse control. The children had become temporary court wards, twice before, due in part to respondent's alcohol abuse. Despite receiving alcohol abuse treatment, he continued to drink. In October 2011, he knowingly drove while heavily intoxicated, with two of his children in the car. That alone placed the children's safety at risk. Respondent compounded the risk by his reckless driving while attempting to evade the police, which culminated in a roll-over accident in which the children were injured. Respondent's conduct relative to the two child occupants of his vehicle was probative of how he was likely to act with his third child. *In re Jackson*, 199 Mich App 22, 26; 501 NW2d 182 (1993); *In re Andeson*, 155 Mich App 615, 622; 400 NW2d 330 (1986). Respondent's alcoholism and his poor decision-making and impulse control while intoxicated resulted in injury to two of his children. Respondent's alcoholism

continued to be a problem. The trial court did not clearly err in finding that the evidence established grounds for termination under §§ 19b(3)(g) and (j).

The trial court also did not clearly err in finding that termination of respondent's parental rights was in the children's best interests. MCR 712A.19b(5); *In re Trejo*, 462 Mich at 356-357. Although the evidence showed that respondent loved his children and that they missed respondent, the evidence also showed that respondent had a serious, long-standing alcohol abuse problem, which had contributed to the disruption of the family and the children's prior placement in foster care. Prior attempts at treatment had been unsuccessful and respondent narrowly averted termination of his parental rights in 2010 in connection with a prior petition. Respondent nevertheless continued to drink and endangered two of the children's lives by driving recklessly while drunk. Given respondent's inability to achieve sobriety and the danger he presented to the children when he drank, the trial court did not clearly err in finding that termination was necessary to assure the children's safety.

Contrary to respondent's assertion, the circuit court was not required to consider the children's placement with relatives in making its best-interests determination in this case. When a child has been removed from his home and placed with relatives, that placement "weighs against termination under MCL 712A.19a(6)(a)." *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). If the child is living with relatives when the case proceeds to termination, that is a factor to be considered in determining whether termination is in the child's best interests. *Id.* For purposes of § 19a, the term "relative" is defined as "an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce." MCL 712A.13a(1)(j). Thus, a relative is someone other than a parent, i.e., the mother or legal father, MCR 3.903(A)(18), who is related to the child. In this case, the children were never in foster care; they remained in their home with their mother and were not placed with relatives. Therefore, respondent's reliance on § 19a(6)(a) and the cases interpreting it is misplaced.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Jane E. Markey

/s/ Deborah A. Servitto