

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of FALL, Minors.

UNPUBLISHED  
March 13, 2014

No. 317903  
Shiawassee Circuit Court  
Family Division  
LC No. 10-012738-NA

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Before: DONOFRIO, P.J., and SAAD and METER, JJ.

PER CURIAM.

Respondent appeals from the circuit court order that terminated his parental rights to his two minor children. For the reasons outlined below, we affirm.

On April 23, 2010, a petition was filed to remove the children from the home of their mother, as she had recently become incarcerated.<sup>1</sup> The petition alleged that respondent was also incarcerated since 2008. While incarcerated, respondent took advantage of the services offered to him, in December 2011 was released from prison, began supervised parenting time and, in March 2012, the children were returned to respondent's care. Sadly, six months later, respondent once again committed domestic violence and was again incarcerated.

At the dispositional review hearing, respondent testified that he had a maximum release date in April 2018, but that he could be released as early as February 2014. Further, he testified that he was again complying with the offered services, and that he was committed to getting his children back upon his release. However, foster-care case workers recommended termination because of respondent's inability to provide appropriate care and custody within a reasonable period of time. At the conclusion of testimony and oral arguments, the trial court terminated respondent's parental rights. In support of its decision, the trial court found that a statutory basis for termination existed as 182 or more days had elapsed since the initial disposition order and the conditions that led to the adjudication continued to exist and there was no reasonable likelihood that the conditions would be rectified within a reasonable period of time. The court also found

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<sup>1</sup> The children's mother's parental rights were also terminated. She is not appealing from that decision.

that termination was in the best interests of the children, as they were in need of permanency, but could not be adopted until parental rights were terminated.

A trial court's decision to terminate parental rights is reviewed for clear error. *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). A decision is clearly erroneous if this Court is left with a definite and firm conviction that a mistake has been made. *In re Pardee*, 190 Mich App 243, 250; 475 NW2d 870 (1991).

Defendant argues that the trial court erred by finding that statutory grounds for termination existed under MCL 712A.19b(3)(c)(i). This argument is without merit.

MCL 712A.19b(3)(c)(i) reads as follows:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence . . .

\* \* \*

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

Here, the condition leading to adjudication was the lack of a suitable home for the children due to the incarceration of both respondent and the children's mother. At trial, the evidence established that there continued to be no suitable home for the children, as their mother had ceased participating in the reunification process and respondent was once again incarcerated.

On appeal, defendant asserts that the trial court's finding was clearly erroneous, as he could be released from prison as early as February 2014 and could have an appropriate custodial environment in place within a year of his release date. However, this date is purely speculative, and, indeed, he is still incarcerated. Respondent's maximum release date is April 2018. The children should not have to wait to see if and when respondent is released from prison. Moreover, if respondent were to be released prior to 2018, it would still take a period of time for him to establish an appropriate environment and show that he should regain care of his children. There was testimony that it would take at least a year after respondent was released before he could provide the necessary care and custody for the children. It is true that respondent has complied with the services he was provided, and a foster-care worker testified that he had at one point intended to close respondent's case. However, before that could happen, respondent engaged in domestic violence and was again incarcerated. This foster-care worker opined that he did not think it would be appropriate to return the children to respondent upon his re-release, as he had three convictions for domestic violence and did not appear to have benefitted from the anger management services that were provided to him during his previous incarceration. This opinion is consistent with the record.

Under these facts, the trial court did not clearly err by determining that statutory grounds for termination existed under MCL 712A.19b(3)(c).

Affirmed.

/s/ Pat M. Donofrio  
/s/ Henry William Saad  
/s/ Patrick M. Meter