STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of KRISHNA GRAY
and KESEVA GRAY, Minors.

FAMILY INDEPENDENCE AGENCY, f/k/a
DEPARTMENT OF SOCIAL SERVICES,

Plaintiff-Appellee,

v

KELLY BAKER,

Respondent-Appellant,

and

RICHARD GRAY,

Respondent.

UNPUBLISHED
December 19, 1997

No. 200982
Muskegon Juvenile Court
LC No. 94-020153 NA

Before: MacKenzie, P.J., and Hood and Hoekstra, JJ.

PER CURIAM.

Respondent-appellant appeals by delayed application granted from the juvenile court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i) and (g); MSA 27.3178(598.19b)(3)(c)(i) and (g). We affirm.

The juvenile court did not err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I); *In re Miller,* 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Hall-Smith,* 222 Mich App 470, 472-473; 564 NW2d 156 (1997). The record reveals that respondent-appellant could not give the proper care to these exceptionally difficult children. Also, the court did not clearly err in concluding that it was in the children's best interests to terminate respondent-appellant's parental rights. *In re Hall-Smith, supra* at 472-473.

Respondent argues that the juvenile court abused its discretion in refusing to admit certain evidence. Although we agree that the court abused its discretion in refusing to admit the evidence, we find the error to be harmless.

Where, as here, the children are in foster care, the petition will typically focus on the parent's ongoing ability to provide proper care to the children. As a general rule, the actions of a parent that occur after the filing of a petition might reveal that the parent is capable of giving a child the proper care or might confirm that the parent is unfit to a care for a child. There is no basis on which to believe that the entire category of evidence of what occurs after the date of the petition is irrelevant. The juvenile court's decision to set the date of the petition as the cut-off date for relevant evidence is arbitrary.

More than six months had passed between the filing day of the petition and the second day of the hearing. Whether respondent-appellant had a job at the time of the termination hearing and whether her home on Pontaluna Street that was examined by a caseworker was an appropriate setting for children were relevant to whether she could properly care for the children. Moreover, the question of whether the foster family still had custody of both children was relevant to determine whether respondent-appellant's past failures were attributable to the difficult character of the children and was also relevant to examine whether termination was in the children's best interests. The juvenile court's decision to exclude this evidence on the basis of relevancy was an abuse of discretion. See *In re Hill*, 221 Mich App 683, 696; 562 NW2d 254 (1997).

Nevertheless, the error was harmless. The fact that Krishna had been placed with a different foster family was already in the record. The therapist had explained in the first day of the termination hearing that Krishna had been removed from the foster family's home in May 1996. Respondent-appellant also testified that she was employed at the time of the petition in March 1996. With regard to respondent-appellant's housing, she has failed to demonstrate what evidence she would have produced if she had been allowed to pursue this question. In any event, the condition of the trailer on Pontaluna would not have helped her because the record indicated that she only lived there for six weeks and subsequently lived at a carnival. We note that respondent-appellant also used this ruling to exclude evidence of unfavorable facts by objecting (through counsel) to a question regarding when she last visited the children because it was evidence of events post-petition. Petitioner indicates that respondent-appellant had failed to visit the children after the petition was filed, i.e., for more than six months. Hence, the evidence that respondent-appellant wished to produce was either cumulative or would not have assisted her case. Consequently, the error was harmless. See *In re Stowe*, 162 Mich App 27, 31-32; 412 NW2d 655 (1987).

Respondent also argues that her counsel (who was not present on the first day of the termination hearing) relied on the juvenile court to exclude post-petition evidence because the court excluded that evidence on the second day of the termination hearing (while counsel was present). Respondent-appellant claims that this is unfair. This claim fails for two reasons. First, the evidence of post-petition events is admissible if relevant. Second, where it is not admissible, the juvenile court would have no obligation to exclude it where there was no objection to the admission of the evidence. Thus, respondent-appellant would have no reason to "rely" on the court's action from the first day of the

termination hearing. The juvenile court did not act inconsistently because there was no request to exclude the post-petition evidence on the first day of the termination hearing.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Harold Hood
/s/ Joel P. Hoekstra