

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JONI and TIFFANI MALONEY,
Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JON MALONEY and LINDA MALONEY,

Respondents-Appellants.

UNPUBLISHED
November 17, 2000

No. 226111
Ottawa Circuit Court
Family Division
LC No. 99-032273-NA

Before: Neff, P.J., and Murphy and Griffin, JJ.

PER CURIAM.

Respondents appeal as of right from the trial court's February 10, 2000 order terminating their parental rights to their two youngest daughters, then aged ten and twelve. The court found that clear and convincing evidence supported termination pursuant to MCL 712A.19b(3)(c)(i) and (g); MSA 27.3178(598.19b)(3)(c)(i) and (g). Respondents argue that the court erred in finding that termination was supported because their household was otherwise deemed fit for their two older children, and because the only evidence supporting termination was the testimony of the two girls that they did not want to return home. We disagree and affirm the termination order.

The family came to the attention of Ottawa County Protective Services on February 10, 1999, through referrals from the three schools attended separately by the two girls and their then fourteen-year-old sister. Each referral involved the same allegation, that the girls had packed their belongings, brought them to school, and had informed school personnel that they refused to go home until things changed. Following a preliminary hearing, the court took jurisdiction and the three girls were placed with relatives. One month later respondents pleaded "no contest" to allegations contained in an amended petition. A son, two years older than respondents' eldest daughter, remained with respondents and was never subject to the court's jurisdiction.

After a year of unsuccessful attempts to resolve the issues surrounding the family through individual and family therapy sessions, counsel for the two youngest girls filed for termination of

respondents' parental rights.¹ The court held a termination hearing over two days, taking testimony including that of respondents, all four children, and three counselors from Bethany Christian Services, each of whom had at one time or another had conducted family therapy sessions.

Respondents and the older children testified that the family's living conditions had improved and that respondents had adjusted their lifestyle such that it was appropriate for the younger girls to return home. The two younger girls, meanwhile, testified that they were happy living with their cousin and were finally doing well in school. They testified that counseling had been useless because respondents had not admitted responsibility for the problems which had led the girls to leave the home. They also believed that nothing had truly changed and that if they were returned home respondents would fall back into the same bad habits. Each of the counselors testified that the family therapy sessions had seen little or no progress, due primarily to respondents' attitudes and hindering behavior. Each counselor testified that further efforts at therapy would be futile because of the breakdown in communication, and each recommended that the younger girls not be returned home. The court took the matter under advisement and one week later issued the termination order from which respondents now appeal.

A two-prong test applies to a decision of the family division of circuit court to terminate parental rights. "First, the probate court must find that at least one of the statutory grounds for termination, MCL 712A.19b; MSA 27.3178(598.19b), has been met by clear and convincing evidence." *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). We review the family court's decision for clear error. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). 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 had been made. *Miller, supra*. Once a statutory ground for termination of parental rights is established, the court must terminate parental rights unless it finds that termination of parental rights to the child is clearly not in the child's best interest. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); MCR 5.974(E)(2); *In re Trejo*, 462 Mich 341, 364-365; 612 NW2d 407 (2000).

Respondents challenge the trial court's findings that clear and convincing evidence supported termination under the identified statutory provisions. Those subsections, MCL 712A.19b(3)(c)(i) and (g); MSA 27.3178(598.19b)(3)(c)(i) and (g), provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(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

¹ Respondents' eldest daughter had returned home at her own insistence eight months after leaving. Because she opposed termination of parental rights the court appointed her separate counsel.

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.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

In support of their claim that the conditions which led to adjudication no longer exist, respondents point to the FIA caseworker's testimony that based on their current living situation a petition similar to the one respondents pleaded to could not have been filed at the time of the termination hearing. However, the trial court appropriately found that respondents' living arrangement was a false indicator of their success in addressing the conditions which led to adjudication. As the court identified, those conditions were an "inability to maintain a home of their own, and inability to maintain employment and budget properly so as to maintain the home." That respondents were living with their two older children in a clean home at the time of the termination hearing was due only to the graciousness of a friend, Faith Koenes, who allowed the family to stay in her home. Respondents had no significant responsibility for basic bills such as rent, utilities or groceries, and purportedly owed their ex-landlord almost \$6,000 in unpaid rent and cleaning charges. Furthermore, despite a year to address the identified concerns, respondent-mother remained unemployed and respondent-father maintained only an unstable pattern of serial part-time employment. Given respondents' failure to secure meaningful employment in the face of these proceedings, and the family's decade long history of repeated movement within and between Michigan and North Carolina, we conclude that the trial court did not err in finding that respondents' pattern of providing an unstable home environment would "be repeated as soon as the Court is out of the picture, or as soon as Faith Koenes gets tired of supporting the Maloneys." Accordingly, clear and convincing evidence supported termination under § 19b(3)(c)(i).

Regarding § 19b(3)(g), the evidence overwhelmingly demonstrated a breakdown in the relationship between respondents and their two youngest daughters. The two girls were unequivocal in their testimony that they did not want to return to respondents' care because they believed the family's home environment would swiftly revert to the problematic state which originally led to their departure. Each of the counselors involved in the case recommended that the girls not be returned at the time of the hearing, and each counselor also testified that further counseling was unlikely to be beneficial. The counselors testified that the two girls had put legitimate efforts into the process, and had not simply been unwaveringly pessimistic, but that respondents had been hostile and non-compliant with both therapist teams. The counselors also testified that respondent-father had blatantly hindered success in the process by regularly exhibiting controlling and manipulative behavior during counseling sessions. The counseling reports indicated that beyond accepting minimal responsibility for past conduct, respondent-father refused to allow the girls to address the problems that led to their decision to leave.

Respondent-father asserted during sessions that such issues were in the past and should be forgiven and that all that needed to be discussed were future efforts. The court did not clearly err in finding that based on respondents' conduct in counseling, the relationship was broken to the extent that further intervention would be futile.

This conclusion is not impacted by the fact that respondents' eldest daughter, the leader of the exodus, chose to return to respondents' home midway through these year long proceedings. Unlike the younger girls, who comfortably settled into the relative placement and began to thrive at home and at school, respondents' eldest daughter left the relative placement due to conflicts and moved through two unsuccessful foster placements before demanding to return to respondents. This return, though authorized by the court because of the child's age, was not approved by any of the counselors involved in the case and cannot be considered a valid indicator of allegedly improved conditions and parenting skills.

The prior home environment alleged by all three girls involved physical, mental and emotional abuse. In addition to conditions attributable to financial difficulties, the girls clearly identified concerns regarding respondents' parenting skills and lifestyle choices. At the time of the termination hearing, despite continuing financial strife, respondents did present a credible picture of a commendable change in lifestyle. However, respondents' unwavering refusal to address the previously problematic lifestyle during counseling foreclosed any chance that the two younger girls would feel their concerns had been addressed.

Viewed in their entirety, the proofs not only present clear and convincing evidence that respondents failed to provide proper care and custody, but also represent clear and convincing evidence of no reasonable expectation that they would be able to do so within a reasonable time considering the girls' ages. The court did not err in concluding that termination was also supported by § 19b(3)(g).

Affirmed.

/s/ Janet T. Neff
/s/ William B. Murphy
/s/ Richard Allen Griffin