

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

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In the Matter of BRADLEY ROGERS II,  
BRANDON ROGERS, and BRENTON ROGERS,  
Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SHEILA HEIM,

Respondent-Appellant,

and

BRADLEY ROGERS,

Respondent.

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UNPUBLISHED

July 29, 2003

No. 246085

Jackson Circuit Court

Family Division

LC No. 01-005226-NA

Before: Neff, P.J., and Fort Hood and Borrello, JJ.

PER CURIAM.

Respondent-appellant (hereinafter respondent) appeals as of right from the trial court's order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We reverse and remand.

At the commencement of the termination proceeding, it was learned that respondent had recently entered New Vision, a residential substance abuse treatment program. The director of the program was unable to testify regarding the nature of the program and the availability of child placement with the parent in the program. Respondent's request for an adjournment to allow the director to testify was denied. The family independence agency case worker testified that two children were removed from respondent's custody based on domestic violence and alcoholism. A third child was born on August 10, 2002. The baby was removed from respondent's care, and she began to consume alcohol again. The case worker believed that respondent had consumed alcohol throughout her pregnancy, rather than the isolated incidents that were discovered due to police contact. Although respondent did attend domestic violence counseling, the case worker opined that respondent continued to have contact with the children's father. The case worker further opined that respondent had not made any progress with the

parenting skills that were addressed in therapy because she did not know how to interact with the children. Respondent was able to maintain suitable housing with financial assistance from her parents, but did not maintain steady employment. The case worker testified that the inability to maintain employment was based on respondent's attendance problems. Respondent's biggest obstacle was maintaining sobriety despite her involvement with one in-patient and two out-patient programs. However, the dismissal from one program was attributed to improper contact with another patient, not a relapse. The case worker acknowledged that respondent did attend Alcoholics Anonymous (AA) and, for a time, submitted to daily Breathalyzers. However, in recent weeks, her participation had ceased.

On cross-examination, the case worker acknowledged that respondent did not receive all services and did not attribute this deficiency to the fault of respondent. The case worker testified that one agency would not provide therapy to respondent because she was seeing a therapist for domestic violence issues. The case worker did not know if the therapist for the domestic violence problem had the training to also address the substance abuse issues. The case worker opined that a long-term residential treatment program was required to address respondent's alcoholism. However, respondent had refused to enter a year long residential program to be financed by a local church because it would have precluded contact with the children for the entire year. A referral for a long-term residential treatment program was made with the agency responsible for paying for the program. However, the agency sent respondent back to an out-patient program instead. The case worker acknowledged that respondent reported that she had made arrangements to enter into a long-term residential program. The case worker did not investigate the nature or existence of the program, noting that respondent had not provided a telephone number and the worker did not have a telephone book for Ann Arbor, the location of the program. The case worker opined that the agency had done all it could with referrals to address respondent's alcohol problem.

Respondent's domestic violence counselor testified that there was a misunderstanding with the case worker regarding the nature of her treatment. The counselor testified that she was trained to address domestic violence issues, and respondent had successfully completed this portion of her treatment plan. The counselor opined that there had been no reports of domestic violence between respondent and the children's father, and the contact with the father was limited to obtaining the funds to attend the residential treatment program. The counselor testified that she was not responsible for providing substance abuse counseling or parenting skills training. However, the counselor was qualified to provide a structured parenting program, but it was not requested. Thus, respondent never received any formal parenting program. The counselor also opined that service by multiple therapists to address different issues is appropriate if case coordination is properly managed to ensure that personnel are not working in opposite directions. Case coordination with other practitioners did not occur in this case.

The counselor opined that termination of parental rights was premature at that time. When the counselor spoke to the case worker, the case worker reported that respondent was not making any progress in addressing her alcoholism. Ultimately, the counselor contacted the substance abuse therapist, who contradicted the case worker. The substance abuse therapist reported that respondent was progressing and taking a serious approach to treatment. The counselor opined that respondent was sincerely committed to getting her children back. She further opined that it took a long time for women to achieve sobriety. However, the counselor

also admitted that she did not have an expertise in substance abuse issues and could not opine how much more time respondent needed to reunite with her children. The counselor also noted that a relapse was anticipated in light of the fact that respondent would be under stress when she delivered her baby, who would be immediately removed from and was in fact taken from respondent's care. The counselor also cited to the lack of knowledge regarding the degree to which respondent consumed alcohol during the pregnancy. The counselor questioned whether fetal alcohol tests were performed on the baby. She would be more supportive of proceeding to termination if the tests indicated consistent alcohol consumption during the pregnancy as opposed to respondent's reported isolated relapses.

The substance abuse therapist's testimony was consistent with the testimony of the domestic violence counselor. The therapist opined that relapse was anticipated because of the high risk time period when respondent would undergo the stress of removal of her child from her care after the birth. Shortly thereafter, respondent relapsed. After the relapse, respondent asked and the therapist agreed that a higher level of care was required. Therefore, the therapist made a recommendation or referral for residential treatment. However, the county program no longer covered residential treatment and "things kind of fell through." The therapist opined that respondent was motivated to seek treatment and did ask to come in for daily Breathalyzer tests. However, in the weeks prior to the termination proceeding, respondent had not continued to see the therapist.<sup>1</sup>

Respondent admitted that she was an alcoholic. However, she testified that she was motivated, not forced, to place herself into her current residential program. When placed on a waiting list to enter the program, respondent entered into a detoxification program to speed up the admission process. Respondent lived at the program, was required to have a job, had to travel in groups of three or more, attended individual counseling, and attended multiple AA meetings a week. There was the possibility that respondent's children could live with her later in the program. Respondent requested time to prove that she could stay with the program and have

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<sup>1</sup> The therapist testified that she was "uncomfortable" with the case worker after receipt of a letter following a telephone conversation. The therapist had a problem with the tone of the letter and opined that the letter took their telephone conversation out of context. Two letters in the lower court record reveal that the servicing workers were not functioning cohesively. When the therapist opined that respondent was progressing based on daily Breathalyzers, the case worker questioned how it was feasible to test respondent on weekends. The therapist did not provide the name of the service provider for the Breathalyzer test. The case worker did not request additional information regarding the frequency of the tests or the company name, but concluded that "it [the service] doesn't exist." In this letter to the therapist, the case worker noted that she was only required to provide "reasonable" efforts and opined that respondent was "setting herself up for another drunk." When the case worker and the counselor disagreed regarding the filing of a permanent custody petition, the case worker sent another letter, which stated in relevant part: "Let me clarify that I am the case manager for this case. Your role is to assist [respondent] with domestic violence issues. If you cannot fulfill this role, please let me know and other arrangements can be made." These letters exemplify how one worker could testify that respondent was not progressing in parenting counseling, and another worker would clarify that respondent was not receiving that service.

the children placed with her.<sup>2</sup> Respondent attributed her lack of steady employment to her recent pregnancy. The court terminated respondent's parental rights.

Our review of the family court's decision to terminate parental rights is reviewed under the clearly erroneous standard. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding is clearly erroneous if, although there is evidence to support it, the reviewing court, based on the entire evidence, is left with a definite and firm conviction that a mistake has been made. *In re JK*, \_\_\_ Mich \_\_\_; 661 NW2d 216 (2003). Inadequacies attributable to the agency, such as a vague parent-agency agreement, cannot be the basis for termination of parental rights. *Id.* at n 20.

In this case, termination was premised on the conditions that existed at the time of adjudication and the likelihood that the conditions would not be rectified within a reasonable period of time, MCL 712A.19b(3)(c)(i), failure to provide proper care or custody that would not be provided within a reasonable time, MCL 712A.19b(3)(g), and harm to the children if returned to the home of the parent. MCL 712A.19b(3)(j). After a thorough review of the record, we conclude that termination based on all three specified provisions was clearly erroneous. At the time of adjudication, the principal issues that caused removal of the children from respondent's home were the domestic violence between respondent and the children's father and respondent's alcoholism. Respondent's counselor concluded that she was successful in meeting the goal of addressing domestic violence. Respondent's counselor and therapist both concluded that residential treatment was necessary to address the chronic alcohol problem that had plagued respondent. However, despite the knowledge that traditional out-patient treatment programs were unsuccessful, the agency placed respondent back into the same program that had previously failed to address the severity of her problem.<sup>3</sup> At the termination proceeding, the case worker raised the issue of non-progress with parenting issues. However, there is no indication that respondent was referred to parenting classes. Additionally, although coordination of services was recommended with multiple counselors or therapists, it is unclear from the record why coordination of services did not occur. Ultimately, respondent obtained the funding for and entered into residential treatment without the assistance of those purporting to aid her in reunification with her children. Thus, to conclude that the children could not be returned to respondent's care in a reasonable time in light of the agency's deficient coordination and omission of services was clearly erroneous. *In re JK, supra*. In reaching this conclusion, we are mindful of respondent's lapses during her pregnancy and the obstacle chronic alcoholism bears

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<sup>2</sup> Respondent's parents were also alcoholics, and her mother was with her on one relapse occasion. The residential treatment program required her to move from her family support network that contributed to her alcohol abuse.

<sup>3</sup> We note that the case worker faulted respondent for failing to accept an offer by a local church to pay for residential treatment that would have required separation from the children for a full year. The resulting circumstances of acceptance of this offer were not explored at the proceeding below. That is, the case worker was not asked whether she would have sought termination based on a year long separation between respondent and the children without any guarantee of reunification at the end of this extensive absence from the children's lives.

on reunification with the children. However, the disparity in the testimony regarding the services actually requested and provided to respondent as well as the continued placement of respondent into a program that servicing workers knew would fail instead of placement into the residential program that all workers agreed was required necessitate reversal. Some evidence supported the trial court's findings, however, it was not clear and convincing on this record. *Id.* We therefore reverse the order terminating respondent's parental rights and remand for reconsideration in light of respondent's efforts and any progress in resolving the issues that led to the petition for termination.

Reversed and remanded. We do not retain jurisdiction.

/s/ Janet T. Neff  
/s/ Karen M. Fort Hood  
/s/ Stephen L. Borrello