

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

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In the Matter of RILEY WILLIAM BRITT,  
TAYLOR LEXUS BRITT, and MYKENZIE ERIN  
BRITT, Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MELISSA LOUISE BILBREY,

Respondent,

and

ERIC EARL BRITT,

Respondent-Appellant.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MELISSA LOUISE BILBREY,

Respondent-Appellant,

and

ERIC EARL BRITT,

UNPUBLISHED

August 25, 2005

No. 260215

Wayne Circuit Court

Family Division

LC No. 03-417776-NA

No. 260216

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Respondent.

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Before: Zahra, P.J., and Gage and Murray, JJ.

PER CURIAM.

In these consolidated appeals, respondents-appellants appeal as of right from the trial court's order terminating their parental rights to the minor children. Respondent-father's parental rights were terminated under MCL 712A.19b(3)(h), and respondent-mother's parental rights were terminated under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Respondent-father argues that the trial court erroneously terminated his parental rights under MCL 712A.19b(3)(h) because the court made no findings and the record did not establish that respondent-father failed to provide for his children during his incarceration. Respondent-father argues that he was in full compliance with his treatment plan and was able to parent his children prior to his incarceration. Respondent-father argues that his incarceration alone was not enough to justify termination, especially since his release could have been as soon as 2005.

Respondent-mother maintains that the trial court erred in finding clear and convincing evidence to support the statutory bases for termination of her parental rights. Respondent-mother argues that at all times during the case, she had regular and meaningful contact with her children and maintained a close bond with them. Respondent-mother's therapist thought that she had been making good progress toward resolving her issues and there was reason to believe that, given the right treatment program, family reunification could take place within a year to eighteen months. Respondent-mother argues there was absolutely no evidence of abandonment. In addition, there was a failure to make a timely diagnosis of respondent-mother's bipolar disorder, as well as failure by petitioner to place her in the type of program her treating physician and therapist recommended, or to offer any type of financial or job placement assistance. These failures, respondent-mother argues, unnecessarily complicated her path toward reunification.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993). This Court reviews the trial court's findings of fact under the clearly erroneous standard. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been made. *Id.* Regard is given to the special ability of the trial court to judge the credibility of the witnesses who appeared before it. *Id.* Here, we conclude that the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence.

Petitioner presented clear and convincing evidence that respondent-father was imprisoned for such a period that the children would be deprived of a normal home for a period exceeding two years, that respondent-father had not provided for the children's proper care and custody, and that there was no reasonable expectation that respondent-father would be able to provide proper care and custody within a reasonable time considering the children's ages. Respondent-

father has a substantial criminal history and was incarcerated for all but approximately five months during the pendency of this case. When he was not incarcerated, he visited his children once a week for three months, and he failed to establish stable housing, maintain a legal source of income, or refrain from criminal activity or substance abuse. The trial court did not clearly err in terminating respondent-father's parental rights. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

Respondent-mother did not adequately address her substance abuse issues. Throughout the case, she continued a pattern of relapse following participation in treatment programs. At the time of the termination hearing, she was enrolled in another inpatient program that was expected to last 90 to 120 more days. The trial court properly concluded that the children were not required to continue waiting to determine whether respondent-mother could stay clean and sober. Accordingly, the trial court did not clearly err in terminating respondent-mother's parental rights to the children. *Id.*

Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights, unless the court finds from evidence on the whole record that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo, supra* at 353. The trial court's decision regarding the child's best interests is reviewed for clear error. *Id.* at 356-357. Here, the trial court properly concluded that termination was not clearly contrary to the best interests of the children.

Since October 4, 2000, when the children were three and four years old, respondent-father had been continually incarcerated. On January 7, 2004, respondent-father was once again incarcerated and his earliest expected outdate was December 26, 2005, more than 2-½ years after the children went into foster care. There was no evidence that respondent-father provided a plan for the children or attempted to plan for his children until his eventual release. Accordingly, the trial court did not err in terminating respondent-father's parental rights.

There was evidence that respondent-mother loved her children and that they bonded to each other during visits. There was also evidence that respondent-mother had partially complied with the parent-agency agreement. However, there was no evidence that respondent-mother had resolved her substance abuse issues or would be able to resolve them within a reasonable time considering the ages of the children. Furthermore, there was evidence that respondent-mother could not properly care for the children while she was abusing drugs. Respondent-mother abandoned her children at a neighbor's home as a result of her substance abuse, which also led to a criminal conviction and incarcerations because of probation violations. As respondent-mother's therapist testified, respondent-mother may have been dedicated to resolving her addiction and may continue to rehabilitate and relapse until she was able to remain sober. However, it was not in the children's best interests to wait in foster care until their mother was able to conquer her addiction. Accordingly, the trial court properly terminated respondent-mother's parental rights.

Affirmed.

/s/ Brian K. Zahra  
/s/ Hilda R. Gage  
/s/ Christopher M. Murray