

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

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In the Matter of CLAYTON LINDSAY, Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MICHAEL LINDSAY,

Respondent-Appellant,

and

PAULA MEDINA,

Respondent.

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UNPUBLISHED

April 21, 2009

No. 287897

Jackson Circuit Court

Family Division

LC No. 05-002457-NA

In the Matter of CLAYTON LINDSAY, Minor.

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DEPARTMENT OF HUMAN SERVICES,

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PAULA MEDINA,

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and

MICHAEL LINDSAY,

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No. 288951

Jackson Circuit Court

Family Division

LC No. 05-002457-NA

Before: Bandstra, P.J., and Whitbeck and Shapiro, JJ.

PER CURIAM.

In these consolidated appeals, respondents Michael Lindsay and Paula Medina each appeal as of right from an order terminating their parental rights to the minor child pursuant to MCL 712A.19b(3)(g).<sup>1</sup> We affirm.

### I. Basic Facts And Procedural History

At the time this case began, the minor child lived with respondents Medina and Lindsay. On May 5, 2005, Medina was arrested on an outstanding warrant for possessing Vicodin and Valium without a prescription. The minor child was left in Lindsay's care while Medina was incarcerated. In the early morning hours of May 7, 2005, Ingham County Sheriff's deputies found the child sleeping in a car outside a drug house. Lindsay was arrested inside the drug house for possession of Vicodin, Valium, and Oxycontin. The Department of Human Services then brought a petition for temporary wardship.

Medina subsequently entered a plea of admission. She admitted that she had abused drugs for many years and that she had been arrested and incarcerated on three occasions because of her drug problem. She admitted that she was unavailable to care for the minor child when she was incarcerated. She also admitted that she was involved in a relationship with Lindsay, who also abused drugs, and that she left the minor child in his care after her arrest, which endangered the child. Medina was also subsequently convicted of fleeing or eluding a police officer and sentenced to a term in prison until December 13, 2007.

A termination hearing was held in August 2008. Cheryl Fosgate testified that she was assigned as the minor child's foster care worker when he was taken into care in May 2005. She stated that Lindsay did not become involved in services until January 2006. In 2006, he completed substance abuse treatment with the Washington Way program and regularly submitted negative drug screens. He attended therapy and completed parenting classes, and the minor child was placed with him in October 2006. However, in early 2007, his progress deteriorated, and in March 2007, the minor child was returned to foster care. Lindsay had only limited contact with the Department for the next eight months. Fosgate stated that this experience was "extremely devastating" for the minor child.

In January 2008, Lindsay underwent a substance abuse assessment. He admitted daily use of marijuana, Vicodin, and Valium, and recent use of alcohol to the point of intoxication. He admitted not participating in AA/NA meetings or other substance abuse programs in the past 30 days. He tested positive for marijuana on February 8 and 13, 2008. He accepted a recommendation to attend a seven-day detoxification program at Washington Way, successfully completed the intensive outpatient program on March 5, and started the early recovery skills program on March 13, 2008. He also provided documentation of attending some AA/NA

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<sup>1</sup> Section 19b(3)(g) provides that parental rights may be terminated where

[t]he 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.

meetings in February and March, but no other documentation of attendance. He then missed three required drug screens in June 2008.

In March and April 2007, after the minor child was removed from Lindsay's care, the trial court permitted Lindsay to have unsupervised visitation on the condition that he submit three negative drug screens within a one-week period. He never satisfied this condition, so no further visitation took place. Lindsay had problems with transportation and housing. He planned to sell property that he owned in Munith in order to raise money, but the property was not suitable for human habitation because there was no electricity or running water. Fosgate opined that Lindsay was "not capable to care for himself, much less this boy." She stated that Lindsay had not seen the minor child in approximately one year.

Fosgate stated that no services were provided to Medina until she was released from prison in December 13, 2007. Upon her release, Fosgate instructed Medina to provide documentation of the terms of her parole, but she failed to do so. Medina was required to attend AA/NA meetings and attend an anger intervention program, but she did not provide documentation that she complied. She also failed to provide proof of attending parenting classes. Medina's drug screen record was unsatisfactory. She tested positive for marijuana on December 20, 2007, and positive for cocaine on January 10, 2008. She missed screens in May and June. The drug screen from July 2, 2008, was "questionable" and indicated possible alcohol use. Fosgate did not know Medina's current housing situation and noted that she moved four times in the previous eight months. Fosgate also stated that Medina had not had any visitation with the minor child.

Fosgate recommended against visitation with either parent because of the minor child's emotionally fragile situation. Fosgate summarized the minor child's current status:

[The minor child] is probably the sweetest young man I know and he has been through so much emotional . . . destruction. He has no relationship with his mother. She admitted to her own hand [sic] that back in 2001 . . . and 2001 when she was having continued domestic violence incidents with Mr. Lindsay. She left the home and left the boys there rather than take them with her because she didn't have any place to stay. So [the minor child] was two at that time—at best. He admits no recollection of . . . a relationship with her. . . . He went through a large series of placements. Trying to find relative placements. The ongoing/off going relationship with Mr. Lindsay was very detrimental to him. [The minor child] does have a strong bond—or did, excuse me, have a strong bond with Mr. Lindsay. And the on again/off again part of that relationship was . . . very, very, very traumatic for [the minor child]. He went through bouts of pulling his hair out of his head. He self mutilated. He would stab himself with pencils and grind holes into his body. . . . The past year he has been in a stable placement. He is very, very bonded to these care-givers. He has told everyone who has worked with him or seen him in the past year that . . . he's home. He's finally home.

Fosgate stated that the Family Reunification Program (FRP) workers who supervised the minor child's placement with Lindsay before his removal reported that Lindsay often missed appointments with them, or rushed through appointments, making excuses to leave early. Lindsay often had bloodshot eyes. The FRP workers informed Fosgate that the minor child

became withdrawn and unwilling to speak to the FRP team members during the period that Lindsay's behavior deteriorated.

The minor child's behavior regressed more after he was removed from Lindsay's care. He pulled out his hair and was aggressive to others in the foster home and school. The Department would have allowed unsupervised visitation if Lindsay had three consecutive negative drug screens, but he never satisfied that condition. Fosgate further stated that Medina had sent cards and presents to the minor child from prison. He usually accepted these "nonchalantly," but he was very upset when he received the Christmas present she sent him. He pulled out his hair and had "some serious regressive behaviors." The next day in school, he stabbed another student with a pencil.

Fosgate estimated that it would take at least six to eight months for Lindsay to gain reunification with the minor child. He would have to remain sober another three months and establish support systems to avoid a relapse. He would have to rebuild his relationship with the minor child, who was devastated when Lindsay stopped visiting him. Reunification with Medina would take much longer because she has had "literally no contact with him for the majority of his life." The minor child had already been in foster care for three years and became severely distressed and pulled his hair out every time there was a hearing. Fosgate stated that he needed a permanent family immediately and could not wait a year longer.

The minor child's therapist, Pamela Wright, testified that she had been working with the minor child since his removal from Lindsay's and Medina's care. She opined that termination of the parental rights of Lindsay and Medina was in the child's best interests. She explained that repairing his relationship with Lindsay and building a relationship with Medina would be too stressful for him in view of his fragile mental health. Wright further stated that the minor child had made good progress since his foster care placement was changed in November 2007. He had only two episodes of destructive behavior during this period. She was concerned that he would regress if further efforts were made at reunification. She explained that the minor child was torn between loyalty to Lindsay and his realization that he needed a safe and stable home. She believed that after his placement was changed, he made a decision to save his life by focusing on being adopted and not seeing Lindsay again until he was an adult. Wright stated that the minor child never talked about Medina. The only memory he had of her was when they lived in Kentucky when he was two years old.

Wright opined that it would take at least six months of therapy to help the minor child adjust to any attempt at reunification. If the attempted reunification failed, he would feel devastated and would likely resort to self-mutilation. Wright commented that self-mutilation is the most serious mental health symptom after suicide, and it was rarely seen in a child of the minor child's age. It usually arose in pre-teen children with personality disorders. She noted that the minor child was seven or eight years old when he first committed self-mutilation.

Regarding Medina's progress since her release from prison, the trial court found that she substantially complied with the treatment plan and did so "fairly well." Nonetheless, the trial court emphasized that, despite her progress, Medina still would not be able to provide proper care for the minor child. The trial court commented on the minor child's improvement in foster care and Wright's concerns regarding regression. The trial court stated, "quite frankly I think to have him go back into your household, Ms. Medina, I think is going to take some number of

months. Maybe six, maybe twelve, maybe longer.” The trial court also commented that Lindsay’s future progress was uncertain, and that it would take six months or longer to resolve his substance abuse problem in the long run.

Regarding Lindsay, the trial court stated:

[T]here’s been a failure to provide care and custody. I think there was a sort of almost an abandonment during a number of different months. And whether that’s because of the untreated depression, or other issues, isn’t necessarily been proven why, but you certainly didn’t provide proper care and custody.

And is there a reasonable expectation that this can be fixed and he’d be provided proper care and custody? To me, we will still have a bunch of issues in terms of any reunification effort. I still think you . . . have major depression. [Y]ou’re making progress with this substance abuse but, you know, that has to be something that’s going to occur over a longer period of time. Maybe something could happen in six months, maybe it’s going to be longer. My problem is I’ve got a ten year old who’s spent, you know, almost three years in foster care. What’s reasonable?

The trial court explained that the minor child could not wait any longer for his parents to amend their deficiencies. It stated:

Is it reasonable to spend another six months, a year, a couple years? I think it’s—he’s really actually been in care too long as it is right now. And some of that was because there was an attempt to return home. I think the six months to a year that it’s going to take given his age, and the progress, and his fragility, because he has exhibited some very unusual, sever[e] and alarming symptoms.

The trial court concluded that the evidence established a statutory basis to terminate the parental rights of Medina and Lindsay pursuant to MCL 712A.19b(3)(g), for failure to provide proper care and custody without a reasonable likelihood of becoming able to do so.

The trial court also concluded that termination of parental rights was in the minor child’s best interests, stating:

I think with his age—and the amount of time, I think this is clearly in his best interest. He has not bonded with you. Maybe he could be bonded in the future, Ms. Medina, but we’re not breaking any bond there. I think the bond with the . . . father at one point was very, very strong. I think that has been . . . broken. . . . I think that he’s at risk of serious regressive behavior.

And I think this is . . . not just not against his best interests. I think this is in his best interest when you take all those factors together.

## II. Statutory Grounds For Termination

### A. Standard Of Review

Both Lindsay and Medina argue that the trial court erred in finding that § 19b(3)(g) was established by clear and convincing evidence.

To terminate parental rights, the trial court must find that the petitioner has proven at least one of the statutory grounds for termination by clear and convincing evidence.<sup>2</sup> We review for clear error a trial court's decision terminating parental rights.<sup>3</sup> 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 has been made.<sup>4</sup> Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.<sup>5</sup>

### B. Docket No. 287897 (Michael Lindsay)

Lindsay argues that the evidence showed that he was making progress in his recovery from substance abuse and, therefore, the evidence did not clearly and convincingly establish that he would not be able to provide proper care and custody within a reasonable time. We disagree. The trial court determined that it would take at least an additional six months before Lindsay could achieve long-term recovery, which was not a reasonable period of time considering how long the minor child had been in care and the child's deteriorating emotional and mental health. We find no clear error in this finding. This case had been pending for almost four years, during which time Lindsay had only sporadic, inconsistent success in addressing his substance abuse problem. Prior periods of success were followed by relapse. In the meantime, the minor child developed serious mental health issues due to the stress and uncertainty of his situation and the disappointment caused by past unsuccessful attempts at reunification. Accordingly, we conclude that the trial court did not clearly err in finding that § 19b(3)(g) was established by clear and convincing evidence.

### C. Docket No. 288951 (Paula Medina)

Although Medina participated in services and made progress with her treatment plan after her release from prison, she was a virtual stranger to the child and the length of time necessary before she could establish a relationship with the minor child and achieve reunification was unreasonable in view of the minor child's deteriorating mental health and special needs. Accordingly, we conclude that the trial court did not clearly err in finding that termination of Medina's parental rights was appropriate under § 19b(3)(g).

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<sup>2</sup> MCL 712A.19b(3); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

<sup>3</sup> MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *Sours*, *supra* at 633.

<sup>4</sup> *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

<sup>5</sup> MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

### III. Best Interests Determination

#### A. Standard Of Review

Both Lindsay and Medina also argue that the trial court erred in finding that termination of parental rights was in the child's best interests. Once a petitioner has established a statutory ground for termination by clear and convincing evidence, if the trial court also finds from evidence on the whole record that termination is clearly in the child's best interests, then the trial court shall order termination of parental rights.<sup>6</sup> There is no specific burden on either party to present evidence of the children's best interests; rather, the trial court should weigh all evidence available.<sup>7</sup> We review the trial court's decision regarding the child's best interests for clear error.<sup>8</sup>

#### B. Docket No. 287897 (Michael Lindsay)

The Department presented evidence that the minor child's emotional state began to deteriorate when he was returned to Lindsay's care and that Lindsay began to relapse. Additionally, the minor child began engaging in extreme, self-mutilating behavior, which was uncommon in pre-teens. According to the minor child's therapist, these behaviors improved when the child came to accept that adoption by a new family would be in his best interests and the child would likely become unsettled and regress if further attempts at reunification were made. Accordingly, we conclude that the trial court did not clearly err in finding that termination of Lindsay's parental rights was in the child's best interests.

#### C. Docket No. 288951 (Paula Medina)

Considering the minor child's urgent need for permanence and stability, and the absence of any bond or relationship between the child and Medina, we conclude that the trial court did not clearly err in finding that termination of Medina's parental rights was in the child's best interests.

In sum, the trial court did not err in terminating the parental rights of Lindsay and Medina to the minor child. Affirmed.

/s/ Richard A. Bandstra  
/s/ William C. Whitbeck  
/s/ Douglas B. Shapiro

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<sup>6</sup> MCL 712A.19b(5); *Trejo, supra* at 350. We note that MCL 712A.19b(5) was recently amended such that the trial court must now find that termination of parental rights is in the child's best interests, 2008 PA 199, effective July 11, 2008, rather than finding that termination is not in the child's best interests. We further note that, to the extent the statute conflicts with MCR 3.977(E), the statute controls. See *People v Watkins*, 277 Mich App 358, 363-364; 745 NW2d 149 (2007).

<sup>7</sup> *Trejo, supra* at 354.

<sup>8</sup> *Id.* at 356-357.