

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CHRISTINA MINAKER, SCOTT
TAYLOR, and MALISA TAYLOR, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LINDA TAYLOR,

Respondent-Appellant,

and

DOUGLAS MINAKER and SCOTT REUM,

Respondents.

.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DOUGLAS MINAKER,

Respondent-Appellant,

and

LINDA TAYLOR and SCOTT REUM,

UNPUBLISHED

March 21, 2000

No. 217231

Wexford Circuit Court

Family Division

LC No. 98-013837-NA

No. 217637

Wexford Circuit Court

Family Division

LC No. 98-103837-NA

Respondents.

BEFORE: Markey, P.J., and Murphy and R. B. Burns*, JJ.

PER CURIAM.

On November 24, 1998, the trial court entered an order terminating respondents' parental rights to three minor children. In Docket No. 217231, respondent Linda Taylor appeals by delayed leave granted that part of the trial court's order terminating her parental rights to the minor children Christina Minaker, Scott Taylor, and Malisa Taylor pursuant to MCL 712A.19b(3)(b), (g), (i), and (j); MSA 27.3178(598.19b)(3)(b), (g), (i), and (j). In Docket No. 217637, respondent Douglas Minaker appeals by delayed leave granted that part of the trial court's order terminating his parental rights to the minor child Christina Minaker pursuant to MCL 712A.19b(3)(a)(ii); MSA 27.3178(598.19b)(3)(a)(ii). Respondents' claims were consolidated for appellate purposes. We affirm.

Procedural History

Linda Taylor (hereinafter respondent mother) is the mother of all three minor children, Christine Minaker (dob 7/3/90), Scott Taylor (dob 1/1/95), and Malisa Taylor (dob 6/21/97). Douglas Minaker (hereinafter respondent father) is the father of Christine Minaker only. Respondent Scott Reum is the biological father of Scott and Malisa Taylor. Reum did not contest the termination of his parental rights and is not a party to this appeal.

The children were removed from respondent mother's care and placed in foster care in June, 1998. A petition was subsequently filed seeking both adjudication and termination of parental rights at an initial hearing. On August 21, 1998, the last of four days of proofs related to this adjudicative hearing, the court made findings of fact on the record, and pursuant to MCL 712A.2(b); MSA 27.3178(598.2)(b), assumed jurisdiction over the minor children. The court postponed disposition until psychological evaluations could be completed. The court also ordered that pending the necessary dispositional hearing, supervised visitation by all three parents was to continue or be permitted anew. At the subsequently held November 20, 1998 dispositional hearing, before the presentation of proofs on the issue of the best interests of the children the court found that grounds had been established at the adjudicative hearing to terminate respondent mother's parental rights under MCL 712A.19b(3)(b)(i), (g), (i), and (j); MSA 27.3178(598.19b)(3)(b)(i), (g), (i), and (j), and to terminate respondent father's parental rights under MCL 712A.19b(3)(a)(ii); MSA 27.3178(598.19b)(3)(a)(ii). After hearing the proofs on the issue of the best interests of the children, the court found that termination of respondents' respective parental rights was in the children's best interests. The November 24, 1998 order memorialized this decision to terminate parental rights.

Though presented in different fashions, respondents raise essentially the same claims in their separate appeals. Both initially contest the trial court's findings that the respective statutory grounds for termination were established by clear and convincing evidence. Next, assuming our disagreement on

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

that first allegation of error, both respondents argue that termination of their parental rights was not in the best interests of the respective children.

Standard of Review

Proceedings to terminate parental rights involve a two-step process. A family court judge must first 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 JS & SM*, 231 Mich App 92, 97; 585 NW2d 326 (1998); *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). This Court reviews the family court's findings of fact under the clearly erroneous standard. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding of fact is clearly erroneous where the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Jackson, supra* at 25. After a statutory ground for termination has been established by clear and convincing evidence, respondent has the burden of going forward with evidence that termination is clearly not in the children's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997). The family court's non-discretionary decision regarding termination is reviewed in its entirety for clear error. *Id.* at 472. Guided by these principles, we address respondents' claims individually.

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Respondent mother contends that while the facts presented may have supported the court's initial assumption of jurisdiction, those facts did not rise to the level of clear and convincing evidence such as would support a decision to terminate her parental rights. Respondent mother also contends that termination was not in the children's best interests. Before we address the specific statutory factors on which termination was grounded, we note that in its entirety, the evidence presented establishes a continuing pattern of neglect on the part of respondent mother extending from 1992 until the children's eventual removal in June 1998. This history of neglect occurred despite repeated intervention by petitioner Family Independence Agency (FIA) and various other agencies and despite respondent mother's various changed living surroundings.

Respondent mother's pertinent, and identifiable, residential history can be briefly summarized. From 1989 to 1992 respondent mother and respondent father were in a relationship and living together in Grand Rapids. The minor child Christina was born out of that relationship. Sometime before mid-1994 respondent mother began a relationship with respondent Reum, that relationship producing the minor children Scott and Malisa. Respondent mother testified that she moved from Grand Rapids to Cadillac in late 1997 in an effort to end the abusive relationship she endured with respondent Reum. After some six or eight months in a house in Cadillac, in April or May 1998 respondent mother moved with the minor children to a trailer in Mesick. Between some of these moves, respondent mother and the minor children apparently stayed with friends or sought refuge in local shelters and hospices. Respondent mother's changes in housing and familial circumstances were allegedly undertaken for the purpose of improving the children's welfare. Nevertheless, beginning in 1992, contact with agency personnel continuously occurred based on repeated suspicion and evidence of neglect. Moreover, the

numerous agency witnesses who assisted respondent mother over the years testified to squalid living conditions in each of these homes.

Moving on to the specific statutory factors forming the basis for the trial court's decision with respect to respondent mother, we find that her parental rights to the minor children were properly terminated under MCL 712A.19b(3)(b)(i), (g), (i), and (j); MSA 27.3178(598.19b)(3)(b)(i), (g), (i), and (j). Termination of parental rights under subsection (3)(b) is appropriate where:

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under either of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home. [MCL 712A.19b(3)(b); MSA 27.3178(598.19b)(3)(b).]

There was clear and convincing evidence to establish grounds for termination under subsection (b). The final incident leading to the children's removal from respondent mother occurred three days after the move to the new home in Mesick. The minor child Scott, at the time three years old, left the home during the night and was lost in a forest for approximately eighteen hours. Scott suffered injuries from this incident, and the risk of severe physical injuries was great given that a river ran through that part of the woods. The evidence demonstrates that Scott had previously left respondent mother's Cadillac home, yet rather than take precautions to avoid a similar incident at the Mesick home, respondent mother instead went to sleep leaving seven-year-old Christina in charge of Scott's care. Additional incidents of physical injury, or occasions presenting a risk of the same, occurred while respondent mother lived in Grand Rapids. On one occasion where respondent mother left the children alone in her car while she went into a store, Christina found a cigarette lighter and started a fire in the car. The evidence also indicated a risk that respondent mother would return to an abusive situation like that which existed during her relationship with Reum in Grand Rapids. FIA witnesses testified to numerous instances of unexplained bruises on the children during that time period, and a risk of similar future injury is apparent. Respondent has simply been unable to provide a safe environment for the children. Accordingly, there was clear and convincing evidence to support grounds for termination under subsection (3)(b).

The court was also correct in finding that termination was warranted under subsection (3)(g). Termination under subsection (3)(g) is proper when:

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 age of the child.
[MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g).]

There is clear and convincing evidence to support the court's findings under this subsection. Kent County FIA became involved with respondent mother when Christina was two years old. There was some involvement with the FIA almost the entire time respondent mother lived in Grand Rapids. Respondent mother received continuous help and counseling in trying to teach her how to keep her house safe and sanitary for the children. During that period, there were times where cleanliness improved somewhat, but any change was temporary. The unsanitary conditions continued when respondent moved to Cadillac, and even though she had only lived there three days when Scott disappeared in the forest, the Mesick trailer was filthy with clothes and food strewn around the floors from one end of the trailer to the other. Respondent mother simply has not benefited from the years of help she has received from the FIA and other agencies. In addition, by making her handle age-inappropriate tasks from the time she was a little girl, respondent mother consistently failed to treat Christina like a child. Accordingly, there was clear and convincing evidence establishing that respondent mother failed to provide proper care or custody for the children. In addition, given the number of years respondent mother has received agency help and intervention, the lack of improvement supports a finding that it is unlikely that she will be able to provide proper care and custody within a reasonable time considering the ages of the children.

Clear and convincing evidence also established grounds for termination of respondent mother's parental rights under subsection (3)(i), which provides:

(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful. [MCL 712A.19b(3)(i); MSA 27.3178(598.19b)(3)(i).]

It is undisputed that respondent mother voluntarily released her parental rights to two other children in 1988, after the FIA filed a petition to terminate her parental rights. The record indicates that those children were removed from her care due to neglect. As suggested by the evidence described in relation to the previous factors, it is also clear that attempted rehabilitation of respondent mother has been unsuccessful. Grounds for terminating her parental rights under subsection (3)(i) were established.

Lastly, there was clear and convincing evidence to establish grounds for terminating respondent mother's parental rights under subsection (3)(j). Termination is proper under subsection (3)(j) if:

There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.
[MCL 712A.19b(3)(j); MSA 27. 3178(598.19b)(3)(j).]

We agree with the trial court's comment that it is surprising the minor children have not been more seriously injured given the environment in which they have been raised. All witnesses agreed that respondent's homes have been filthy, unsanitary and unsafe for children to live in. Christina, eight years

old at the time of the hearing, has been treated like an adult since she was a toddler, required to perform tasks and chores which were not age appropriate. The psychological harm is apparent. Since being removed from respondent's care, Christina has indicated that it is wonderful to be and act like a child. Respondent mother has failed to keep Scott safe when he has been in her care. He would periodically disappear from houses she has lived at, culminating in the incident where he was lost in a forest for eighteen hours. The foster mother has not had similar problems with Scott. Accordingly, the threat of harm or injury to the children if returned to respondent mother's care is significant. Grounds were therefore established to justify termination of parental rights under subsection (3)(j).

Accordingly, there is clear and convincing evidence on the record to establish grounds for termination under MCL 712A.19b(3)(b), (g), (i), and (j); MSA 27.3178(598.19b)(3)(b), (g), (i), and (j). *In re JS & SM, supra* at 97. The next inquiry in the termination process requires consideration of the best interests of the children. Respondent mother had the burden of going forward with evidence to establish that termination of parental rights was clearly not in the children's best interest. *In re Hall-Smith, supra* at 472-473. She failed to present any such meaningful evidence. Although respondent mother testified that she loved the children and that there was a bond between them, other evidence established how much better the children were doing in foster care than when in her care. Christina was happier and her previous problems with wetting and soiling herself were almost gone. Scott's vocabulary had increased dramatically and he and Malisa were now able to sit and read books together without altercations erupting. We find no error in the trial court's conclusion that respondent mother failed to show that termination of her parental rights was clearly not in the children's best interests. Termination of her parental rights was therefore mandatory. *Id.*

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Respondent father contends that clear and convincing evidence to justify termination of his parental rights has not been demonstrated. Respondent father argues that "desertion," as referenced in MCL 712A.19b(3)(a)(ii); MSA 27.3178(598.19b)(3)(a)(ii), contemplates more than an inability to visit, care, or provide for a child. Rather, he contends, it represents an intent to sever all relations and avoid all responsibility for the child, which did not occur in this case. Respondent father also contends that it was not in Christina's best interests for his parental rights to be terminated.

We find that clear and convincing evidence established grounds for termination of respondent father's parental rights under subsection (3)(a)(ii). Termination under subsection (3)(a)(ii) is appropriate when:

The child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period. [MCL 712A.19b(3)(a)(ii); MSA 27.3178(598.19b)(3)(a)(ii).]

Initially, we note our agreement with the trial court's acknowledgment that termination of the parental rights of respondent father presents a closer question than did termination of respondent mother's parental rights. However, we also agree with the court's conclusion that considering the totality of the

circumstances herein presented, respondent father's minimal and sporadic contact with Christina satisfies the principle underlying this statutory provision.

In finding that respondent father “deserted” Christina, the trial court focused on respondent father’s failure to physically see the child for an entire year preceding the termination proceedings. The evidence indicated that until the court organized and scheduled visitation meetings between the adjudicative and dispositional hearings, respondent father had last seen Christina on her birthday, July 3, 1997. The court noted that while testimony did lend support to respondent father's claims that he had contacted Christina on a somewhat regular basis during the preceding year, by making phone calls and sending cards, such limited interaction had been the norm for most of the six years since respondent father's relationship with respondent mother had ended. The court stated:

[I]t was benign neglect that he practiced. The evidence which is largely uncontradicted is that from time to time he would see his child and from time to time they would have what would probably be - can be fairly described as positive interaction, but it was an on and off thing and very spotty and sporadic, and he never took any action to make it regular and systematic and nurturing for the child.

Ultimately, the court held that notwithstanding his proffered excuses for failing to see Christina for over a year, clear and convincing evidence demonstrated that respondent father "did not take such steps as would have been necessary for the protection of his child and to prevent a 91 day period of desertion to occur."

We find, in agreement with the trial court, that at best the evidence supports a conclusion that since his separation from respondent mother, respondent father's involvement with Christina was minimal and consistently irregular. With regard to the five years during which respondent mother remained in Grand Rapids, disregarding respondent mother's testimony that there were additional periods of up to a year where he did not see Christina, respondent father's testimony merely indicates that what were initially weekly visits diminished to monthly reunions after respondent mother began her relationship with respondent Reum. Respondent father additionally testified that although respondent mother's house was almost always filthy when he would visit, he was unaware that protective services had initiated involvement. This lack of awareness regarding respondent mother's parenting deficiencies is supported by the Kent County protective services and FIA workers, who uniformly testified that respondent father was not involved with any of the services provided to respondent mother between 1992 and 1997, the period she continued to live in Grand Rapids. While the maintenance of a measure of contact during these years indicates that respondent father clearly did not abandon Christina, his lack of knowledge concerning the seriousness of the problems with her surroundings, and his failure to take steps that may have prevented the intervention of protective services, demonstrate that respondent father's involvement with Christina's life was woefully deficient.

Moving to the critical period of time, that following Christina's seventh birthday when respondent father failed to see his daughter for over a year, we again find in agreement with the trial court that none of the asserted reasons for this failure excuse such a lack of involvement in the life of a child known to be at some risk. Respondent father acknowledged that he had not seen Christina since

her birthday in July 1997, shortly after which respondent mother had moved to Cadillac. He testified that he did not know respondent mother had moved to Cadillac until a month after she began living there, and that on being made aware of the move, he called at least one time per month to talk with Christina until respondent mother moved again and he was without a contact phone number. Respondent father further testified that he did not know respondent mother had moved to Mesick until he received court papers for the instant action.

Respondent father testified that throughout this time period he did not have a driver's license and did not know of anybody who could transport him to Cadillac for visitation. He claimed to have asked respondent mother five or six times to bring Christina down to Grand Rapids for visitation in exchange for gas money. Respondent mother testified that she recalled two occasions on which such a request was made, and acknowledged that she never did drive Christina back down to Grand Rapids. According to his testimony, the only identifiable effort respondent father made to visit Christina during that year occurred in April 1998, when he drove to Cadillac with his fiancée only to find respondent mother's house empty and the only forwarding address a Post Office Box. Additional testimony indicated that at no time did respondent father ever make substantial efforts to seek custody of Christina. Although he claimed to have made inquiries toward this end, respondent father testified that he was told he needed a lawyer. He testified that he was too poor to hire an attorney, and that he never made efforts to borrow money from friends.

Respondent father has, under legal obligation, been paying support for Christina. Allegedly respondent father also provided assistance not demanded by the courts. However, minimal financial support in no way justifies the lack of overall involvement or the absence of face-to-face contact during the last year. We find respondent father's proffered reasons for this lack of contact to be unacceptable excuses. Simply put, random phone calls and cards do not constitute sufficient involvement in Christina's life to avoid a finding that respondent father "deserted" his daughter, within the meaning of the statute. Under the circumstances, respondent father ought to have gone to extremes in his efforts to see Christina. The trial court's phrase "benign neglect" aptly describes respondent father's actions through the years with regard to Christina. We conclude that such action, or inaction, does rise to the level justifying termination of his parental rights under subsection (3)(a)(ii). Accordingly, we hold that there was clear and convincing evidence to support termination of respondent father's parental rights under subsection (3)(a)(ii). *In re JS & SM, supra* at 97.

As for respondent father's argument that it was not in Christina's best interests for his parental rights to be terminated, he offered little tangible support. In respondent father's testimony at the best interests portion of the dispositional hearing he asserted his belief that it was in the best interest of a child to be raised by a natural parent. Respondent father testified that his fiancée was willing to take Christina into their home, that he was willing to take parenting classes, and that he was working on a room that could be a bedroom for Christina. He further acknowledged his awareness that the most important element that would be expected of him was consistency and dependability in his care of Christina. However, other evidence presented demonstrated that in the three months between the adjudicative and dispositional hearings, respondent father had missed weekly visitation appointments on four or five occasions. Respondent father offered reasons for these missed sessions, indicating that sometimes he

had been late in calling to confirm the appointment and that on two dates he had transportation difficulties. Testimony of Christina's foster mother indicated that such excuses did nothing to limit the extreme disappointment Christina exhibited whenever her father failed to appear.

As the trial court intimated, we consider telling respondent father's unreliability in the months following initiation of this action. It was blatantly apparent to respondent father that he was in danger of losing his daughter through these proceedings. After the court established a visitation schedule at the adjudicative hearing, the easiest way to attempt to counter the potentially forthcoming, and eventually realized, presumption that termination was in Christina's best interests, would have been to make every appointment and show a desire to keep Christina happy by not disappointing her. Respondent father failed in the efforts he made to accomplish this simple goal. Given the additional testimony of agency personnel and the children's foster mother evidencing a strong belief that the best interests of the minor children required keeping all three together, we find no error in the trial court's finding that respondent father's failures in this critical time period support the conclusion that termination of his parental rights to Christina was in her best interests. Termination of respondent father's parental rights was accordingly mandatory. *In re Hall-Smith, supra* at 472-473.

Affirmed.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Robert B. Burns