

**STATE OF MICHIGAN
COURT OF APPEALS**

In the Matter of BROOKE L. RANDOLPH and
ROPORSHA L. RANDOLPH, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DONNA J. RANDOLPH,

Respondent-Appellant,

and

ISIAH BURTON and BRADLEY GREER,

Respondents.

UNPUBLISHED

August 1, 2000

No. 210796

Wayne Circuit Court

Family Division

LC No. 86-254,930

Before: White, P.J., and Doctoroff and O'Connell, JJ.

PER CURIAM.

Respondent-Appellant Donna Randolph appeals the family court order terminating her parental rights to her minor children, Brooke L. Randolph and Roporsha L. Randolph,¹ under MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist), (g) (unable to provide proper care and custody), and (j) (reasonable likelihood children will be harmed if returned to parent's home). The parental rights of the fathers² were also terminated and they are not parties to this appeal. We affirm.

¹ Brooke was born on April 19, 1988 and Roporsha was born on June 11, 1989.

² The children's fathers, Isiah Burton and Bradley Greer had their parental rights terminated and have not appealed.

In January 1990, Protective Services received a referral alleging substance abuse and neglect by respondent. The FIA filed a petition in May 1990 alleging neglect and substance abuse, and stating that Roporsha was very small for her age and showing poor weight gain and development. The petition stated that the respondent had been observed to be intoxicated several times, that respondent and Roporsha's alleged father had a history of physical violence, that the home was observed with little or no food on at least four occasions, that respondent had a history of mental health problems, that respondent had not refilled Roporsha's medication for seizures, and that respondent had been inconsistent in allowing Protective Services into the home. The children were made temporary wards of the court in August 1990, and a case service plan developed.

An updated service plan dated November 1992 stated that respondent had completed a seven month program of inpatient substance abuse treatment and had regularly participated in alcoholics and narcotics anonymous meetings. A report dated July 1993 stated that the children remained in a DSS foster home, that reasonable efforts to reunite the family had been unsuccessful, and that respondent needed to get involved with another substance abuse program. A supplemental petition dated November 1993 stated that the respondent had failed to comply with the court ordered case plan by failing to establish and maintain suitable housing, failing to attend substance abuse treatment, failing to provide urine drug screens, and failing to attend counseling. The petition further stated that both respondent and a baby she had given birth to in April 1993 tested positive for crack cocaine.

The children were returned to respondent's care in August 1994, based on her substantial compliance with the treatment plan, but were removed from her care in January 1996 for her failure to comply with the treatment plan. Dispositional hearings were held while the children were in foster care.

At the permanent custody hearing in July 1997, the court took judicial notice of the court file. Myrtle McClung, the FIA foster care worker assigned to this case from around 1993 to March 1997, testified that the case treatment plan developed in 1990 was to reunite the children with respondent, and required that respondent have in-patient substance abuse treatment, supply weekly random drug screens, visit the children, keep contact with the FIA, have a safe and suitable home for the children, and that she attend court hearings. McClung testified that while she was assigned to the case, she had no contact with the fathers of the children, and that no man came forward to visit or provide support to the children or expressed an interest in obtaining custody.

McClung testified that after respondent successfully completed the substance abuse treatment program at Harbor Light, she had several relapses, testing positive for cocaine and marijuana, and then was referred to and got substance abuse treatment, completing the program at Caregivers in 1995. McClung testified that respondent had not participated in substance abuse treatment since June or July of 1995, had submitted three positive drug screens in July and August of 1995, and had not submitted any drug screens since August 1995. Respondent later got substance abuse treatment from approximately October 1995 to December 1995, when she discontinued treatment.

McClung testified that the children were returned to respondent's care in August 1994 and removed in January 1996, because respondent stopped complying with her treatment plan. McClung testified that respondent visited the children while they were placed with their grandmother, but that as of October 1996, when the children were placed with their aunt and uncle, respondent had stopped visiting them. McClung testified that respondent was allowed to have supervised visits with the children there and lived less than half a mile away, but did not request any visits through McClung. When asked about the mother's living situation, McClung testified that she had not been to respondent's home since approximately August 1996, that respondent had not contacted her to have her home evaluated, and that she did not know respondent's source of income.

McClung testified that she recommended that respondent's parental rights be terminated because she deserted her children, had not re-enrolled in a substance abuse program or parenting classes, and had not supplied weekly random drug screens. McClung testified that she had previously filed a permanent custody petition requesting termination of respondent's rights in 1993. She testified that given the children's ages and the length of time they had been in foster care, they need some permanency in their lives, are in a safe and suitable home having their needs met, and respondent was making no efforts to have the children returned to her care.

McClung testified on cross-examination that she was aware that the children's aunt takes the children to their grandmother's house, but to her knowledge, that respondent did not see the children there.

Respondent called Helen Randolph, who is respondent's sister-in-law and with whom the children lived at the time of trial. She testified that respondent did not call her house and had not visited the children at her house since October 1996, despite the fact that she lived nearby. She testified that while the children were placed with their grandmother, she saw respondent visit them there "once in a while." She testified that since the children have lived with her, she takes them to their grandmother's occasionally, but has not seen respondent there. She testified that since the children have been living with her, respondent had contacted her "about twice," that respondent lived about half a block away, and that she had encouraged respondent to visit the children at her house.

At the conclusion of the hearing, the referee stated:

THE COURT: Okay. As Mr. Lewis [*counsel for the FIA*] pointed out in his statement, this case has been pending in this court for quite some time. The children were made temporary wards of the court in by [sic] my predecessor [sic], Referee Hall, and that happened in August of 1990. I believe they were initially placed in the home in foster care or in the home of a suitable relative but they were eventually returned to the care of the mother. And, let the court say that throughout the case the presenting issue has always been the mother's substance abuse. They were returned to the mother and, in fact, I believe at the time they were returned, a permanent custody was pending at that time I believe, and the court, in fact, dismissed after the mother made significant progress in her substance abuse problem. The court, and that was I believe '94, August '94. Her permanent custody petition was dismissed and the children were

placed in the home of the mother under the supervision of the, at that point, the Department of Social Services now Family Independence Agency. During that time they were in her home between August 8, '94 and January '96, the mother's compliance with the parent/agency agreement, and by that the court means substance abuse free or substance free, not using any illegal substances including alcohol and continue substance abuse treatment, that her compliance was spotty. But despite that, the court continued over that period. There were periods when the mother had positive urine screens and I remember one occasion when the child—attorney for the child argued that—I was contemplating and order that the mother go into in-patient substance abuse treatment. That was in February of '95, and the attorney for the child recommended a alternative [sic] which was that the mother should attend 90 consecutive days of Narcotics Anonymous and Alcoholics Anonymous meetings. And, despite all of our efforts the mother continued to fail to comply with the parent/agency agreement and demonstrate that she was substance free or submit—or to have a substance abuse treatment program. So, the court, in January of '96 had no alternative but to order the children to return to foster care and removed from the mother's home.

Now, since that time the mother has continued to fail to comply with the parent/agency agreement. She's not submitted any urine screens to demonstrate she's substance abuse free, drug free, she's not visited the children weekly, she has not provided proof that she has home [sic] suitable for the custody of her children.

So, the court finds as to the fathers, they have really never been involved. They have never visited, sought custody of the children or provided any support for the children.

So, the court does find that there is a statutory basis to terminate parental rights pursuant to 712A.19b(3)(a)(ii), (3)(c)(i) and (3)(g). The court finds it's clearly in the best interest of these children to terminate parental rights. They have been wards a very long time, almost seven years. It is time for them to have some permanency in their lives, and they need—

MS. RANDOLPH: --Yall [sic] lying on me—

COURT OFFICER: Okay, you have to be quiet.

MS. RANDOLPH: Why!

COURT OFFICER: Because that's what I said, that's why.

THE COURT: They need permanency and stability and - and they need to have parents that are going to be providing care for them. So, the court is recommending parental rights be terminated. Any dissatisfied with today's ruling have seven days to file a petition for review in front of the Presiding Judge or 21 days in which to appeal to the Court of Appeals. That's all.

The referee's conclusions of law included:

Based on the sworn testimony and the court records in this matter, the court finds the material allegations in the petition to be substantiated and determines by clear and convincing evidence that the children will be neglected in the long-term future . . .

Respondent petitioned for review of the referee's findings, on the basis of insufficient findings to support termination and that there were not specific findings relating to her having deserted or abandoned her children. At a hearing on that petition, the court affirmed the referee's decision, noting that it was clear that the referee's finding of desertion, MCL 712A.19b(a)(ii); MSA 27.3178(598.19b)(3)(a)(ii), applied only to the children's fathers.

II

We review the family court's decision to terminate parental rights for clear error. MCR 5.974(I); *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 has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Regard is given the trial court's special opportunity to judge the witnesses' credibility. MCR 2.613(C); *Miller, supra* at 337. Only one statutory ground is required to terminate parental rights. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). Once a statutory ground for termination is established, the court must terminate parental rights unless it finds that termination is clearly not in the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5), MCR 5.974(E)(2), *In re Hall-Smith*, 222 Mich App 470, 472; 564 NW2d 156 (1997). Once the petitioner has established a ground for termination of parental rights, the respondent has the burden of going forward with evidence to establish that termination is clearly not in the child's best interest. *Id.* at 473.

The applicable statutory subsections, MCL 712A.19b(3)(c)(i), (g), and (j); MSA 27.3178(598.19b)(3), (c)(i), (g) and (j), provided at pertinent times:

(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 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 age of the child.

* * *

(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 age of the child.

* * *

(j) 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.

The FIA states on appeal that respondent's parental rights were terminated pursuant to the above subsections as well as on the ground of desertion, under subsection (a)(ii). Given that on respondent's petition for review, the presiding judge affirmed the referee's findings and determined that subsection (a)(ii) applied to termination of the children's fathers parental rights only, and not to respondent's, we disagree. In any event, however, regardless of whether subsection (a)(ii) is considered, our disposition is the same. Respondent does not argue that any of the statutory grounds for termination were not proven. Respondent's appellate brief statement of questions presented states only that the court "abused its discretion" when it terminated her parental rights. Her appellate brief states two sentences of argument: that respondent "has now been clean and sober for the past seven months," and that although respondent is incarcerated, she will continue to be clean and sober and complying with the court requests.

The FIA argues that respondent's argument that she has been clean and sober for the past seven months is an attempt to enlarge the record developed at the trial level, that there was no testimony supporting either that assertion, or the assertion that respondent has even been incarcerated. We agree.

We conclude that, assuming respondent had properly challenged the grounds for termination, clear and convincing proof of the existence of a statutory ground was established. There is clear and convincing evidence to support the court's findings under subsection (g). Respondent's long-standing substance abuse problems go back to 1990, at which time a petition alleging substance abuse and neglect was filed. Respondent completed several substance abuse programs and had the children returned to her in 1994, but discontinued substance abuse treatment in December 1995 and discontinued providing drug screens, thus failing to comply with the treatment plan with regard to substance abuse. The children were again removed from her care in January 1996. From that time until the time of trial in July 1997 respondent did not obtain substance abuse treatment or provide drug screens. There is thus clear and convincing evidence to support the court's findings under subsection (g) that respondent failed to provide proper care or custody for the children and that there was no reasonable expectation that she would be able to within a reasonable time. Further, the court did not err in declining to conclude that termination of parental rights was clearly not in the children's best interest. *In re Trejo*, ___ Mich ___; ___ NW2d ___ (No. 112528, decided 7/5/2000), slip op at 17.

Affirmed.

/s/ Helene N. White
/s/ Martin M. Doctoroff
/s/ Peter D. O'Connell