

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

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In the Matter of SIRGO TIMMOTHY SNEED, a/k/a  
TIMOTHY CLARKE, II, Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TIMOTHY CLARK, a/k/a TIMOTHY CLARKE,

Respondent-Appellant,

and

LORRAINE ANETTA SNEED and REGINALD  
WASHINGTON,

Respondents.

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Before: Murphy, P.J., and Collins and Owens, JJ.

PER CURIAM.

Respondent-appellant Timothy Clark (respondent) appeals as of right from an order of the Family Division of the Wayne Circuit Court terminating his parental rights to his nine-year-old son, Sirgo Timmothy Sneed, under MCL 712A.19b(3)(a)(ii),(c)(i),(g) and (j); MSA 27.3178(598.19b)(3)(a)(ii),(c)(i),(g) and (j). Respondent Lorraine Sneed's rights were also terminated. She does not appeal. We reverse.

We review the decision of the Family Division of the Circuit Court 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). To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Sours Minors, supra* at 633. Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses. MCR 2.613(C); *In re 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 (1992). 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 interest. MCL 712A.19b(5); MSA 27.3178(598.19b)(5), MCR 5.974(E)(2), *In re Trejo Minors*, \_\_\_ Mich \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 112528, issued 7/5/2000), slip op at 10. Once the petitioner has established at least one ground for termination of parental rights, the court must terminate parental rights unless the court finds, based on evidence introduced by any party, or based on evidence the court finds from the whole record, that termination is clearly not in the child's best interest. *Id.*, slip op at 14.

We conclude that the trial court clearly erred in finding that the statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence. MCR 5.974(I), *In re Miller, supra.*

With respect to §19b(3)(c)(i), we note that the initial dispositional order was issued on September 23, 1997 and that the petition requesting termination of the respondent's parental rights was filed on January 26, 1998, one hundred twenty-five days after the issuance of the initial dispositional order. Since §19b(3)(c)(i) requires one hundred eighty-two or more days to have elapsed since the issuance of the initial disposition order before termination may occur pursuant to it, termination under §19b(3)(c)(i) was clearly erroneous. *In re Sours Minors, supra* at 636.

Even if one hundred eighty-two days had elapsed prior to the filing of the termination petition, §19b(3)(c)(i) was not proven by clear and convincing evidence with respect to respondent. The conditions that led to the adjudication which concerned respondent were that the child's guardian called Protective Services on June 9, 1997, indicated that she wished to give up guardianship of the child, and requested that Protective Services remove the child from her home on or by June 11, 1997, and that no one was willing or able to plan for the child at that time. While the petitioner submitted a petition for jurisdiction two or three days later, it was not until August 18, 1997 that the guardianship was terminated. Therefore, at the time of the petition, respondent had no right to custody of the child since the guardianship was still in existence.

In contrast to the circumstances that led to the adjudication, however, the guardianship was no longer in effect when the termination petition was filed and the evidence at the termination hearing indicated that respondent had a new home, a new full-time job, was engaged to be married, and was ready and willing to care for the child. Thus, we conclude that the evidence did not clearly and convincingly establish that the conditions concerning respondent that led to the adjudication continued to exist. Therefore, termination of respondent's parental rights under §19b(3)(c)(i) was clearly erroneous.

With respect to §19b(3)(g), we find that the evidence did not clearly and convincingly establish that there was no reasonable expectation that respondent would be able to provide proper care and custody for the child within a reasonable time considering the child's age (nine years). Indeed, during the year preceding the guardian's resignation and the filing of the petition for original jurisdiction, the guardian had permitted the child to live with respondent. The evidence was not clear and convincing that, during that year, respondent did not provide proper care for his son. The evidence was also not clear and convincing that respondent would not be able to provide proper care for his son in the future. Therefore, termination of respondent's parental rights under §19b(3)(g) was clearly erroneous.

With respect to §19b(3)(j), we find the evidence was not clear and convincing that the child would be subject to a reasonable likelihood of harm if returned to respondent. As mentioned above, during the year preceding the guardian's resignation and the filing of the petition for original jurisdiction, the child lived with respondent. There was no evidence that the child was harmed while living with his respondent. In fact, respondent regularly took the child to visit his half-siblings at the foster home in which they were living (and in which Sirgo would subsequently live). In addition, the evidence was not clear and convincing that the child would be subject to a reasonable likelihood of harm if returned to respondent's care. Although there was evidence that respondent had a past substance abuse problem, there was no allegation in the termination petition that this was still a problem. At the termination hearing, respondent testified that he was attending on-going substance abuse treatment and that he was credentialed by the State of Michigan as a Certified Addictions Counselor. In sum, we find that the evidence did not clearly and convincingly establish a reasonable likelihood of harm if the child were to be returned to respondent. Therefore, termination of respondent's parental rights under §19b(3)(j) was clearly erroneous.

We likewise conclude that §19b(3)(a)(ii) was not proven by clear and convincing evidence. Termination is appropriate under §19b(3)(a)(ii) when a respondent "has deserted the child for 91 or more days and has not sought custody of the child during that period." In this case, the evidence showed that respondent visited the child shortly after his removal from the child's guardian and possibly on other occasions prior to the filing of the termination petition. Respondent was apparently unaware that a parent/agency agreement had been drawn up that provided for weekly visitation. It had been mailed to him, but he apparently never received it. In any event, such visitation would have been difficult, given his work schedule and the almost 200 mile distance from Big Rapids to Detroit. He did, however, continue to maintain regular telephone contact with the child. The child's foster parent told the foster care worker that respondent had telephone contact with his son every other week; respondent testified that the telephone contact was weekly. In addition, respondent sent his son Halloween and Christmas cards containing gifts of money.

While respondent admitted that when he left Detroit, he did not give the workers a forwarding address and never found out what he had to do to gain custody of his son, he testified that when he left Detroit in August of 1997, it was his understanding that Sirgo's mother was working on her treatment plan in an attempt to regain custody of the child. He was in agreement with that happening. The foster care worker admitted that the focus had been on returning the child to his mother and that respondent would not have known what was required of him. As soon as he found out that the mother was no

longer doing well in her plan to regain custody of the child and that the agency was seeking termination of their rights, he contacted the agency, indicated his interest in the child, drove from Big Rapids to Detroit for court hearings, and visited his son when permitted by the agency.

It was reasonable for respondent to not actively seek custody of his son when the boy's mother was complying with the case plan, he was in agreement with her regaining custody, and his son had made it clear to him that he would rather be with his mother as opposed to anybody in the whole world. Once he learned the mother would, in all likelihood, not be regaining custody of their son, he sought custody. In the meantime, he evidenced his intent to continue a parent-child relationship with his son by sending cards and money and by having weekly (or at least bi-weekly) telephone contact and one or more visits. Under these circumstances, the evidence did not establish clearly and convincingly that respondent deserted the child. Accordingly, termination of respondent's parental rights under §19b(3)(c)(ii) was clearly erroneous.

Perhaps reflecting the paucity of evidence which would justify terminating respondent's parental rights to his son, the Referee made inadequate findings of fact on the four requested grounds for termination. In his oral findings of fact on the record, the Referee merely stated:

However, throughout the tenure of the life of this child of his I think Mr, Mr. Clark has taken a back seat with respect to parenting these children, his child rather. And I do believe that the statutory grounds do exist for terminating his parental rights.

In his written findings of fact, the Referee stated:

The father of Sirgo Sneed is Timothy Clark. He has not seen fit to take active participation in any plan for return of his son to him. His original plan was for the child to return to the care and custody of his mother. He left the jurisdiction in the fall of 1997, without providing information as to his whereabouts. He resurfaced in February of 1998, and wishes to plan for the child. To date, he has not entered into or completed a Parent/Agency Agreement to have his child returned to him.

Acknowledging that the evidence concerning termination of respondent's rights was not strong, the Referee stated: "... this is not a slam dunk case either way" and "I'll be honest with you, this is . . . a very difficult call for me . . ." Perhaps acknowledging his uncertainty as to whether termination was justified, the Referee stated: "... I'll be honest with you. I'm thankful today that we have an appellate system, a review system and then an appellate system, I'm very thankful today."

The Referee then focused on the best interest of the child. While acknowledging that "... Mr. Clark's child is very bonded to him," the Referee stated, "... I cannot and will not break up these children . . . . Consequently, I will . . . terminate parental rights . . . ."

The effect on children of separating siblings certainly goes to the issue of their best interest. However, under the statute, §19b(5), and the court rule, MCR 5.974(F)(3), the court must first find that at least one statutory ground for termination of parental rights exists before considering whether

termination of parental rights to the child is clearly not in the child's best interest. *In re Trejo Minors, supra*. If at least one statutory ground under §19b(3) has not been established by clear and convincing evidence, the issue of whether termination would be clearly contrary to the child's best interest is never reached. *Id.* However much a court may believe that it would be contrary to a child's best interest to separate half-siblings (although in this case, they had been separated for at least one year, and possibly several, previously), the court may not terminate a parent's rights without at least one statutory ground having been established by clear and convincing evidence. Because the statutory grounds relied upon by the trial court were not established by clear and convincing evidence, the trial court clearly erred in terminating respondent's parental rights.

Reversed and remanded to the Family Division of the Wayne Circuit Court for further appropriate proceedings under the Juvenile Code. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Jeffrey G. Collins

/s/ Donald S. Owens