

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of NICHOLAS STANTON MEYER,
Minor .

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

UNPUBLISHED
December 26, 2000

v

JILL STANTON,

Respondent-Appellant,

No. 226526
Genesee Circuit Court
Family Division
LC No. 86-072044-NA

and

BERGE TCHIAKIAN,

Respondent.

Before: Doctoroff, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Respondent appeals as of right the termination of her parental rights to her minor child, Nicholas Stanton Meyer (DOB 2/19/97), pursuant to MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i) [conditions that led to adjudication continue to exist and are not likely to be rectified within a reasonable time], (g) [parent, without regard to intent, fails to provide proper care or custody for the child], and (j) [reasonable likelihood of harm if child is returned to parent's home]. We affirm.

Respondent argues that the family court erred in terminating her parental rights. A two-prong test applies to a family court's decision to terminate parental rights. First, the court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b; MSA27.3178(598.19b) has been met by clear and convincing evidence. *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). This Court reviews the 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. *Jackson, supra* at 25.

Once a statutory ground for termination has been met by clear and convincing evidence, the court must terminate parental rights unless “there exists clear evidence, on the whole record, that termination is not in the child’s best interest.” *In re Trejo*, 462 Mich 341, 356, 364-365; 612 NW2d 407; see also MCL 712A.19b(5); MSA 27.3178(598.19b)(5). The trial court’s ultimate decision regarding termination is reviewed in its entirety for clear error. *Trejo, supra* at 356-357.

On April 27, 1998, petitioner filed a petition requesting the family court to take temporary custody of the child and place him under petitioner’s care and supervision. The petition alleged that respondent neglected the child by abusing illegal substances, frequently running out of food, and failing to provide basic care to the child. The petition also alleged that respondent failed to reasonably participate in the programs offered by petitioner. A dispositional hearing was held on June 10, 1998, at which time the family court issued an order taking temporary custody of the child. The court also ordered that the child be placed with respondent’s brother.

The family court held dispositional review hearings on September 3, 1998; December 3, 1998; March 4, 1999; and June 3, 1999. At the December 3, 1998, hearing, the family court authorized petitioner to file a termination petition and ordered that respondent’s visitation with the child be stopped because it was harmful to the child. At the dispositional hearing on June 3, 1999, the family court again granted respondent supervised visitation.

On March 29, 1999, petitioner filed a petition requesting the court to terminate respondent’s parental rights because of respondent’s failure to comply with the Parent/Agency Treatment Plan and Service Agreement executed by respondent on September 3, 1998.¹ The termination hearing was held on December 14, 1999; January 7, 2000; January 12, 2000; and January 25, 2000. Nancy Swayze, the protective service worker for the Family Independence Agency (FIA) who prepared the petition initiating protective service intervention, testified that she was familiar with the case history, at least from January 1998 through April 1998. Swayze testified that the petition was filed against respondent as a result of several factors, including but not limited to the following: (1) she had received information that respondent was not properly caring for the child; (2) respondent was homeless; (3) there were allegations that respondent was drinking and driving with the child in the vehicle; (4) there were allegations that respondent was abusing drugs, in particular, crack cocaine; (5) respondent was asked to leave a treatment program called Transition House after approximately one week, apparently because of concerns about her care and/or lack of care of the child while she was in the program, which encouraged bonding between mother and child; (6) after respondent was assisted with finding an apartment in which to live, respondent failed to furnish and maintain it appropriately; and (7) during pre-scheduled appointments arranged by another support program, Families First, respondent was found to be sleeping during late morning and/or early afternoon hours while the child was awake and without supervision or care.

¹ On May 12, 1999, respondent executed a second Parent/Agency Treatment Plan and Service Agreement.

Maurice Cox, an out-patient substance abuse counselor at Community Recovery Services also testified on behalf of petitioner. Cox testified that respondent was referred to Cox's care on June 24, 1998, after successfully completing a thirty-five day residential treatment program called Turning Point. Cox testified that initial assessment indicated that respondent required individual counseling once a week and group sessions twice a week starting June 29, 1998, and continuing for at least eight weeks. Cox further testified that respondent was scheduled to undergo drug testing on a weekly basis. Cox stated that between June 29, 1998, and September 9, 1998, respondent attended only eleven group sessions. Cox further testified that between June 1998 and October 21, 1998, respondent attended only six individual sessions. Cox also indicated that, as a consequence of sporadic attendance, only four drug screens were conducted from June 29, 1998, through October 21, 1998. Cox testified that the excuses given by respondent for missing counseling sessions included, but were not limited to, transportation problems, illness, over-sleeping, and that she had to work. According to Cox, respondent was terminated from the program on October 21, 1998, because of her failure to participate in the treatment process and Cox had no further contact with respondent.

Bridget Palmatier, a life skills instructor/counselor for the State of Michigan, also testified on behalf of petitioner. Palmatier testified that respondent had been referred to the program twice; first in July 1998 and then again in May 1999. Palmatier indicated that, with regard to the first referral, between July 1998 and October 1998, respondent only attended ten of the eighteen scheduled classes and was at least fifteen minutes tardy to four of the ten classes. Palmatier further testified that attempts were made, without success, to make the schedule of classes more convenient for respondent. Palmatier testified that the importance of attending life skills classes was explained to respondent and that respondent indicated that she did not feel that participation in the life skills classes was necessary because she knew enough about parenting. Palmatier stated that, as a consequence of respondent's failure to attend the life skills classes as required by the program, respondent was terminated from the program in October 1998.

Palmatier also testified that respondent was referred to the life skills program again in May 1999. Palmatier indicated that of the forty-three classes that were held, respondent was absent but excused because of pregnancy issues from twelve classes, absent for another seven classes, and at least fifteen minutes late for five classes. Palmatier opined that, although respondent had not completed the program in its entirety, respondent was doing very well. Palmatier also testified that she knew nothing about respondent's home situation at the time of the termination hearing.

Shelly Munoz, respondent's sister, was called as a witness by petitioner. Munoz testified that she had temporary custody of respondent's fourteen-year-old daughter since August 1999. Munoz indicated that respondent visited with her daughter infrequently and typically failed to give advance notice of her visits. Munoz testified that the only restrictions placed on respondent by the FIA with regard to visiting her daughter was that the visitation had to occur before 7:00 p.m. and that Munoz had to be present at the visitation. Munoz further noted that between August 1999 and Thanksgiving of 1999, respondent visited with her daughter three times: once on Halloween night for approximately fifteen minutes, again on respondent's daughter's birthday, and again for another child's birthday party. Munoz testified that between Thanksgiving of 1999 and January 2, 2000, respondent visited with her daughter four times.

Munoz further testified that she received no financial assistance from respondent for the care of respondent's daughter.

Rodney Meyer, respondent's brother, was also called as a witness by petitioner. He testified that he had temporary custody of respondent's two-year-old son, Nicholas Stanton Meyer, since April 1998 and that respondent's visits with the child had not been regular. Meyer estimated that in the two years that he had custody of the child, respondent visited him approximately ten times. Meyer indicated that there were no restrictions on respondent's ability to visit, as long as she called in advance; on weekdays he requested two days' notice and on the weekends he requested a morning call the day of the prospective visit. Meyer testified that, about six weeks prior to the hearing, they agreed upon an arrangement in which respondent could visit the child every Monday at 12:30 p.m.; however, respondent had only visited two or three times. Meyer further noted that when respondent visited the child she only stayed an hour, although he had placed no time limitation on her visits. Meyer indicated that since the child was born he was not aware of respondent having a stable place to live for an extended period of time nor could he estimate how many residences respondent had over the previous five years. Meyer also testified that while respondent had telephoned his home to speak with the child, a large percentage of the time she called relatively late at night, i.e. around 10:00 p.m. In addition, Meyer testified that he had received no financial assistance from respondent for the child's care.

Suzanne Locke, guardian of respondent's autistic and severely mentally impaired seventeen-year-old daughter, also testified as a witness for petitioner. Locke explained that she began providing forty-eight hours of respite care a month to respondent's handicapped daughter in 1991. Locke indicated that as time passed she was providing more and more respite care which, in 1993, culminated in Locke caring for respondent's handicapped daughter on a full-time basis. Locke testified that from 1993 through 1996, respondent's daughter went to respondent's home after school for about an hour, five days a week. Locke further explained that in 1996 respondent moved out of her home and that since then, respondent had not visited her daughter on a regular basis and, in fact, hardly at all. Locke further testified that she was not compensated for caring for respondent's handicapped daughter and that she had not received respondent's daughter's Supplemental Security Income (SSI) checks until June 1998, because respondent received the checks and did not forward them to Locke.

Joan Brazelton, a clinical social worker who performed mental health and substance abuse counseling for Auburn Counseling, was also called to testify on behalf of petitioner. Brazelton testified that respondent was referred to her for substance abuse counseling by the Federal Pre-Trial Services Agency on October 1, 1999, and she had no knowledge or records of any previous out-patient counseling attended by respondent. Brazelton indicated that she began counseling respondent on October 11, 1999, in one-hour sessions, every other week. Brazelton noted that she had approximately six sessions with respondent and that respondent failed to attend three scheduled sessions. Brazelton stated that she considered respondent's prognosis of recovery to be "fair." Brazelton testified that, although she recommended that respondent attend a twelve-step recovery program, respondent did not attend any such self-help meetings. Brazelton opined that if respondent regularly attended the recommended meetings, her prognosis would be greater than "fair," she would be a healthier person, and, therefore, a better parent to her children. Brazelton further opined that respondent's cocaine addiction did not presently

impact her parenting skills because Brazelton had no knowledge of respondent using cocaine. Brazelton thought that it was possible that respondent's failure to be parented herself as a child had an impact on respondent's ability to parent. Brazelton testified that she was unable, however, to give an opinion as to whether respondent could appropriately parent her children.

Christina Muxlow, the foster care worker who had been assigned to this case since April 1998 and who filed the petition requesting termination of respondent's parental rights, testified at length about the case history. Muxlow testified that respondent executed a second parent/agency agreement in May 1999, subsequent to her failure to comply with the requirements of the first parent/agency agreement of September 3, 1998. Muxlow opined that respondent's compliance with the second parent/agency agreement was better until December 14, 1999, after which respondent only attended one of six life skills classes.

Muxlow also expressed concern with regard to respondent's ability to properly care for the child because respondent failed to maintain a stable residence. Muxlow testified that since October 1, 1999, she knew respondent to have five different addresses, in addition to respondent staying in hotels, with friends, and in a shelter. Muxlow also noted that one of the living arrangements resulted in a domestic violence altercation leading to the arrest of the male with whom respondent was living. Muxlow further testified that respondent was charged with Social Security fraud as a consequence of respondent's failure to use the Social Security funds for the care of her handicapped daughter. As a consequence, Muxlow testified, respondent was subject to a Federal diversion program.

Muxlow opined that the child would be harmed if he was returned to respondent's custody. In support of her assertion, Muxlow testified to reasons that included, but were not limited to, the following: (1) respondent stated to her on numerous occasions that she did not want full-time physical custody of her children; (2) respondent had no stable, affordable housing; (3) respondent did not work; (4) respondent's source of income was Aid to Dependent Children (ADC) payments of \$401 a month; (5) respondent provided little if any support to the child since September 1999; (6) respondent rarely visited the child; (7) respondent's attempts to visit the child were last-minute instead of pre-arranged; and (8) respondent did not adhere to a visitation schedule. Muxlow opined that the child would not have a stable home if returned to respondent, despite respondent being aware since June 1998 that she needed to provide a stable residence for her child.

On cross-examination, Muxlow acknowledged that respondent had problems with transportation; however, Muxlow noted that respondent was offered bus passes to enable her to participate in the required programs and respondent refused. Muxlow also testified that respondent failed to regularly attend the life skills classes at the end of December 1999 or the beginning of January 2000. Muxlow explained that she was continuing to seek termination of respondent's parental rights because of violations of the parent/agency agreement and because respondent continued to demonstrate decision-making that was not in the best interest of her children. Muxlow indicated that, to her knowledge, respondent had been drug-free since, at least, the last parent/agency agreement. On redirect examination, Muxlow testified that respondent's drug-free status did not change her opinion that the best interest of the child would not be served by returning him to respondent.

After petitioner rested, respondent testified on her own behalf. Respondent testified that she was told to leave the drug treatment program called "Transition House" because: (1) she knew that two of the counselors used drugs; (2) she smoked in the house which was against the rules; and (3) she refused to take her sick child outside during a practice fire drill. Respondent testified that, at some later date, she found another residential treatment center called "Turning Point" and eventually completed the drug rehabilitation program. Respondent further testified that after completing the Turning Point program she used drugs on one occasion, in September or November 1998, while she was staying in a shelter. Respondent further testified that after she admitted using drugs she was told to leave the facility. Respondent explained that after leaving the shelter she lived in several different places, including in a hotel, with friends, and again in the shelter. Respondent indicated that she had a car and that, although it was broken down, it could be fixed for \$15. Respondent noted that she had not worked for two or three months because she had been moving around and because of the court case. However, she testified, she planned on working in the future and had made baby-sitting arrangements. Respondent testified that she was paying her rent with borrowed money and paying other expenses with money she received from ADC.

Respondent testified that one of the reasons that she did not visit the child on a regular basis was because she had difficulty arranging visitation time with her brother who had custody of the child. Respondent indicated that her brother was very difficult to contact by telephone and that he did not always return her telephone calls. Respondent testified that she visited with the child at least thirty times over the previous eighteen months, contrary to her brother's testimony. She further opined that her brother was afraid of losing her child because the child had become a part of his family. Respondent testified that, if given custody of her child, she planned on slowly "weaning" the child away from her brother and his family because the child had lived with her brother since April 1998 and, thus, had grown close to that family.

On cross-examination respondent testified that she visited with the child on occasions when she knew that she was not allowed to visit the child. She explained that her brother, who had custody, allowed her to do so, but admitted that there were long periods of time in which she did not see the child. Respondent further admitted that she had been in a federal diversion program since May 1999, for social security fraud having to do with her handicapped daughter. Respondent testified that she used the social security money for rent, groceries, and drugs.

Upon completion of the hearing and after taking the matter under advisement, the family court found, in pertinent part, as follows: (1) respondent's drug problem did not appear to be a continuing direct problem, which was an improvement from the situation at the time the court assumed jurisdiction; (2) respondent appeared to be appropriately involved with her life skills program after being given a second opportunity to participate; (3) respondent demonstrated poor participation and a lack of commitment to a schedule or pattern of visitation and instead found problems and excuses for her poor performance; and (4) respondent's housing and financial situation had not improved. The family court noted that respondent had lived in several places over the eighteen months that this matter was pending and found no stable housing arrangement. The family court further found that respondent failed to secure stable employment from a legal source and instead lived on ADC. The court concluded, by clear and convincing evidence, that conditions that prompted adjudication continued to exist and, thus, grounds for termination

existed. The family court further held that termination of respondent's parental rights to the child was clearly not contrary to the child's best interests because he was only three years old, required a stable environment, and had lived with his uncle and his family for most of his life. Therefore, the family court terminated respondent's parental rights on February 28, 2000.

On these facts, we conclude that the family court did not clearly err in terminating respondent's parental rights in this case. The court's findings on the statutory factors were not clearly erroneous. Furthermore, the family court's findings regarding the child's best interest were not clearly erroneous. See MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *Trejo, supra*.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Mark J. Cavanagh

/s/ Patrick M. Meter