

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

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In the Matter of RALPH GENE HILL, JOSHUA  
MATTHEW HILL, and CHRISTOPHER  
WILLIAM HILL, Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

RALPH GENE HILL,

Respondent-Appellant,

and

DELIA ANN HILL,

Respondent.

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UNPUBLISHED

June 16, 2005

No. 258302

Wayne Circuit Court

Family Division

LC No. 92-300592-NA

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Before: Gage, P.J., and Whitbeck, C.J., and Saad, J.

PER CURIAM.

In these consolidated appeals, respondents Ralph and Delia Hill appeal as of right from the trial court order terminating their parental rights to their three children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

### I. Basic Facts And Procedural History

Delia Hill is the mother of six children. Her three older children, Pierre (born 11/29/86), Charie (born 12/4/84), and Cynthia (born 7/1/89) are not the subjects of this appeal. In 1991, Delia Hill married Ralph Hill, and over the next five years, they had the three children who are at issue in this case: Ralph (born 5/4/91), Joshua (born 9/28/92), and Christopher (born 11/5/96). The FIA filed a petition for temporary custody of these children on January 13, 2000, alleging improper supervision and failure to prevent injuries when Joshua and Ralph were burned on a heater. The children's school contacted the FIA regarding the burns on December 22, 1999, but the Hills did not take the children to the doctor until January 10, 2000.

FIA workers discovered that the Hills lived in a dirty, unhealthy home, and although they received help to relocate, they still needed help maintaining the home despite having sufficient income. The Hills left the younger children in care of the older children, who often missed school as a result, and the Hills allegedly failed to benefit from services. The referee agreed with the guardian ad litem that the children should be removed from the home.

At a pretrial on January 21, 2000, the FIA requested that the children be returned to the Hills. The referee recommended placing the children with Delia Hill under FIA supervision, which would include parenting classes and homemaking education. An adjudication was held on March 28, 2000, and the trial court dismissed the petition, but made a referral to preventive services, including a psychiatric evaluation for Christopher.

A new petition was filed on April 17, 2002, alleging that Ralph Hill had abandoned the family and that Pierre had pushed and swore at Delia Hill. Delia Hill had sent Cynthia to stay with her grandparents in Tennessee, and Charie was staying with a friend. Delia Hill was being evicted from her apartment for disturbing the peace, failing to pay rent, and failing to keep the apartment clean. Delia Hill had epilepsy, and she and Pierre had allegedly failed to take their medication and attend therapy. Pierre was hospitalized twice for psychiatric problems. Joshua also suffered from epilepsy and was supposed to wear a helmet to protect him when he experienced seizures, but the helmet had been lost or misplaced. The referee authorized the petition, and the children were placed in emergency foster care. In removing the children, the referee cited lack of housing, mental health issues, and failure to protect and take medicines.

The FIA filed an amended petition seeking permanent custody in May 2002. This petition alleged desertion; failure to protect; failure to provide proper housing, support, or care; and a history of FIA involvement dating back to 1986. At a pretrial, the FIA requested that

Pierre not have visits with the other children because he had reportedly threatened his siblings. The referee allowed parent visitations and let the FIA exercise its discretion regarding Pierre.

Testimony at the August 1, 2002 bench trial indicated that the FIA had received referrals on the Hill family in December 1999, September 2001, and March and May 2002. The trial court took judicial notice of the file from prior proceedings. On the March 2002 referral, there were allegations that Pierre sexually abused the other children, but Delia Hill was dismissive of the allegations. Delia Hill said she talked to Pierre and told him not to do things like this. Delinquency charges were not filed against Pierre. The trial court entered an order of disposition making the children temporary wards and allowing unsupervised parenting time for respondents at the workers' discretion.

At the continued hearing on August 21, Joshua, then nine years old, testified that once in early 2002, while no adult was home, Pierre "humped" him and touched his anus with his finger. Pierre also held Ralph's hands behind his back and put his finger in Ralph's mouth. According to Ralph, Pierre also "whipped" Christopher once. Joshua testified that he told his mother what Pierre did to him, but she could not respond because Pierre beat her. Joshua explained that his father planned to fight Pierre, and his grandmother was going to call the police.

When the bench trial resumed on September 11, 2002, the FIA agreed to amend the petition to request temporary custody in exchange for certain admissions. Delia Hill testified that she was "majorly depressed" but did not take her medicines because she was afraid of how they would interact with her epilepsy medication. Delia Hill reported that Joshua did not like wearing his helmet because kids teased him, and Pierre refused to go to school, had problems with his medications, and spanked the younger boys. Delia Hill would have her mother stay with the children so that they would not be alone with Pierre.

Ralph Hill testified that he was gone for 3½ to 4 months during this time, and only saw the children every other week. He knew that Joshua did not wear his helmet, but said that they had a hard time making him wear it because other children teased him. He was aware that Pierre had psychiatric problems, that Pierre got in loud verbal fights with Delia Hill, and that Delia Hill was in counseling, but did not know that she took medicine for depression. Ralph Hill worked for a temporary employment service but was otherwise unemployed.

The Hills' parent-agency agreement called for parenting classes, family and individual counseling, supervised visitation, and participation in the Clinic for Child Study. The Hills were to maintain suitable housing and income, and Delia Hill was to document taking her medicines.

By the time of the next dispositional review in December, 2002, the Hills had been attending visitations and had begun family therapy. However, an assessment revealed that there was little food in the house. Further, Ralph and Joshua were having behavioral problems in school, and Christopher had been expelled from first grade. The Hills were allowed unsupervised visitation up to two days a week plus holidays, but these were suspended due to tardiness and lack of attendance. Pierre was on the honor roll at school, interacting appropriately with others, and making significant progress in therapy, and he began visiting overnight on weekends. Family therapy that included Pierre was scheduled to facilitate eventual reunification.

The next review was June 11, 2003. Unsupervised home visits had been reinstated, but were again discontinued when it was discovered that the Hills had allowed Pierre to stay overnight with the younger children, resulting in a Children's Protective Services referral. Christopher and Ralph were acting out inappropriately in the foster homes, and Ralph Hill was unemployed.

The next review was in September 2003. The Hills continued to visit regularly but were sometimes late, which they blamed on the buses they took. Unsupervised visitation had not been resumed. Delia Hill had advised Ralph not to discuss himself or the family with his therapist to avoid affecting court proceedings, which, according to Ralph's therapist, caused him stress and anxiety. This observation was confirmed by an FIA worker, who reported that Ralph was noticeably insecure, unsure, and uncomfortable after visits. By this time, the goal was not reunification but termination.

All three children were in therapy. Ralph was working on depression, anxiety, separation, and loss. Joshua was in a classroom for the educable mentally impaired. Christopher had behavioral problems at school and in the foster home, and was taking medication for hyperactivity. He had been in several foster homes. Pierre joined the weekly visitations. Pierre denied the allegations of sexual abuse, and was not receiving individual therapy.

Ralph Hill stopped attending therapy after about three months due to lack of funds. He had no diagnosable mental illness or substance problem and thus was not eligible to receive therapy where Delia Hill had been receiving services. Delia Hill had been diagnosed with major recurrent depression with anxiety features, and she took medication for depression and seizures.

At this time, Delia Hill was in compliance with psychological treatment, parenting classes, visitation, housing, and income requirements. However, some problems with funding had arisen, and family therapy was discontinued for lack of funding and clinical reasons. Further, the Hills had been letting Pierre spend the night despite a court order to the contrary. The FIA recommended termination due to the length of time the children were in care, the amount of services provided, and concerns that the family had not benefited from those services.

Delia Hill testified that she had done all that was asked and did benefit from services, and she expressed a willingness to do whatever the court asked. She did not know if the claims regarding sexual abuse were true, and wanted to deal that issue in family therapy. Delia Hill denied telling Ralph not to discuss family business with his therapist. She felt the children were acting out because they wanted to come home. She and Ralph Hill were actively looking for work and planning for the children.

The referee noted that family counseling had been included in all orders since September 2002 and should be occurring. The referee stated, "[G]iven that chaotic services are offered here, the court regards the recommendation for termination of parental rights to be superficial given the ages of the children." The referee found unsupervised visitation not in the children's best interests because of concerns in the report regarding Delia Hill. The trial court's order continued sibling visits between Pierre and the other children as frequently as recommended by the family therapist.

A permanency planning hearing was held on December 11, 2003. Ralph and Christopher were in new foster homes and adjusting well. Joshua had moved back to his previous foster home. All three were in therapy. The Hills attended visitations fairly consistently and brought food and toys, but they missed two visits and were usually late. Delia Hill often discussed the case with the worker in front of the children, which she was told not to do because it added to the children's anxiety. Delia Hill twice stated that no inappropriate sexual behavior ever occurred in her home and that the children were in care "because of people's lies and running their mouths."

The FIA recommended filing for permanent custody, but the guardian ad litem testified that all three children were "definitely bonded to the parents" and wanted to go home. The referee found that no serious effort at reunification had been made, but questioned whether such would succeed given Delia Hill's attitude.

At the next hearing in March 2004, Delia Hill again minimized the sexual abuse allegations, and testified that Joshua told her he was being brainwashed. Both Ralph and Delia Hill were unemployed and had been evicted for admission of drug use, and their new two-bedroom apartment was too small for all of the children. A caseworker reported that, during visitations, Delia Hill could not control the children, who would run around, scream, and fight.

The referee found that the Hills' apartment was not clean and that Delia Hill could not manage the children's behavior. The referee further found that while Ralph Hill had the "psychological ability to care for his children," he had not proved that he had the "actual ability" to do so. The referee recommended that visits continue but a termination petition be filed. The trial court's order also stated that family therapy and visitation should not include Pierre.

The FIA filed a termination petition in April 2004, alleging that all the children "continue to demonstrate anger and embarrassment towards their mother and have learned that their mother is unreliable." The Hills' home remained dirty. The Hills allegedly did not contest the drug use in their apartment on being evicted, and they failed to protect the children from sexual abuse. Further, the children had recently stated that Pierre's friend also sexually abused them. After Pierre spent the night with the other children in April 2003, Ralph and Christopher began sexually acting out in their foster homes, and allegedly informed the worker that they told their parents of the sexual abuse while it was occurring. Delia Hill allegedly failed to comply with individual therapy since February. Ralph Hill did not support the family, although he had recently become employed at a fast-food restaurant making \$400 a month.

According to a worker's report, Ralph and Christopher continued to act out significantly at visitations. Both told Delia Hill to shut up and called her a liar, and they threw objects, fought, and swore. Delia Hill could not control them, and Ralph Hill did not try to do so. The worker believed that family visits and therapy had been "very chaotic and unhealthy for the children." All three children had told the worker, foster parent, therapist, and family therapist that Pierre sexually abused them. Pierre continued to deny this but admitted being violent and mean. Delia Hill accused workers of brainwashing the children and accused Ralph of lying.

Ralph was taking medication had improved greatly with psychiatric services, although he still demonstrated anxiety and aggression. He had bonded with his foster mother and foster family. Joshua was in a separate foster home, and was no longer in therapy because the Hills had

not signed consent forms. Christopher was moved to another new foster home and bonded with the new foster parent, and had stopped going to family therapy at the therapist's suggestion.

The termination hearing began on June 16, 2004. A worker testified that Delia Hill's parent-agency agreement included attending visitations, regular contact with the worker, parenting classes, improving parenting skills, using proper discipline, and developing emotional stability through therapy and psychiatric services. She also had to address the sexual abuse allegations and have suitable housing and income. As of May 2004, the home was messy and dirty and the rent and utilities were unpaid. At their previous flat, the director of housing said the Hills were evicted after being warned many times about their guests, who used drugs. Delia Hill provided no documentation of her income since November 2002. She also did not document taking medicine for her seizure disorder and gave inconsistent documentation of attending medication review and therapy.

The children had unsupervised weekend visitations with Delia Hill at home in April 2003. One weekend, Pierre also stayed in the home despite the fact that he was not allowed to be present while the other children were visiting. A worker described visitations as "chaotic and uncontrollable at times." While Delia Hill did occasionally try to use the skills taught in parenting classes, she was very inconsistent and ineffectual. She also acted hostile towards agency workers and accused them, in front of the children, of brainwashing the children. Delia Hill said Ralph lied about the allegations of Pierre's sexual abuse and asked him why he had lied. Ralph and the others never changed their position regarding the sexual abuse.

According to the guardian ad litem, the children reported that Delia Hill "badger[ed] them" in visits with "brainwashing questions." Delia Hill also "caused a ruckus at the agency," making untrue allegations against the foster parents. The FIA attorney said that "certain children" had said they did not wish to visit the parents any longer. The referee terminated the visits.

At the continued hearing on August 27, 2004, a worker testified that Delia Hill's goals were communication and parenting skills, addressing the allegations of sexual abuse, and appropriate roles and boundaries. Christopher was taken out occasionally due to destructive behaviors. Eventually, Christopher was removed from family therapy after expressing hostility toward his parents and a desire to "divorce" his family. Family therapy and visitations continued to be marked by screaming and fighting, and these sessions were ultimately cancelled. All three children's behavior improved after family therapy stopped.

At a special session with Ralph's therapist, Ralph confronted his parents regarding the sexual abuse allegations. In this session, all three boys made allegations of anal penetration against Pierre. The Hills responded by questioning the children's motives for making false allegations. The therapist felt that the Hills did not benefit from therapy and the last report recommended closing the case for no progress.

An FIA worker testified that Ralph Hill had been making about \$420 a month, but his hours had been cut recently and his last paycheck was \$21. Ralph Hill complied with family therapy until being dismissed for missing sessions. The family therapist said he was generally passive, but also questioned the children's motives for lying about the sexual abuse, which he

believed never happened. Although Ralph Hill was very affectionate with the children and related to them well as individuals, he had some difficulty with group or family communication. Generally, when the children were screaming and fighting, he would sit back and play with Joshua or Christopher and leave Delia Hill to handle the misbehavior. Ralph Hill benefited from parenting classes in that learned to handle disagreements better, but he needed to learn to intervene more aggressively. On the other hand, the Hills had still not learned to protect their children by keeping Pierre away from the younger children. The FIA worker recommended termination due to noncompliance with the parent-agency agreement, the long time the children were in care, and the remaining issues with failure to protect.

Delia Hill testified that in 2003, Ralph said both to her and in family therapy that Pierre never really touched him. According to Delia Hill, Ralph said the workers were "making him say this" and "putting stuff in his head," although he talked more about the abuse after Pierre stopped attending family therapy. Christopher contradicted himself in the same manner. Joshua said the workers were brainwashing him. Delia Hill never heard Joshua say he was abused. Initially, she did not believe that Pierre inappropriately touched her sons because their stories conflicted. Since dealing with the issue in family counseling, Delia Hill came to believe that something happened, because the boys sometimes said Pierre had violated them. She testified that if the children were returned, she would get a personal protection order against Pierre and call the police if necessary.

Delia Hill kept in regular contact with the agency, and was looking for a job to supplement her social security income. She regularly took her medicine for seizures. She missed some appointments because of her mother's illnesses. She stated that she wanted another chance to be a better parent by working on her anger and the sexual abuse issues. She loved her children very much and felt bonded to them. Delia Hill denied that Pierre battered her, and stated that Pierre was only allowed to stay in the home during the April, 2003 visit due to a transportation problem.

According to the guardian ad litem, Ralph wanted the trial court to terminate both parents' parental rights; he did not want to see his parents anymore and wished to be adopted. Christopher said that he would like to live with his parents but really enjoyed living with his foster parents. Joshua said that he thought he would be safe if he went home, and expected his mother to fix better food and not have Pierre there. The guardian ad litem thought that termination was in the best interests of the children because they needed a safe and nurturing environment, which the Hills could not provide.

The trial court found that the Hills had not completed or benefited from counseling, had not maintained regular contact with the foster care agency, and had not addressed the issues that brought the children into care. Specifically, the trial court cited Delia Hill's failure to consistently follow the medical regimen necessary to control her physical and mental health issues; Ralph Hill's failure to plan for or financially support the children; and both parents' inability to control the children, keep them safe, and provide adequate housing. The trial court terminated the Hills' parental rights under MCL 712A.19b(3)(c)(i), (g), and (j).

## II. Termination Of Parental Rights

### A. Standard Of Review

We review the trial court's findings of fact, and its determination regarding the child's best interests, for clear error.<sup>1</sup> A finding is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been made.<sup>2</sup>

### B. Legal Standards

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence.<sup>3</sup> If the petitioner establishes a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights, unless the court finds from evidence on the whole record that termination is clearly not in the child's best interests.<sup>4</sup>

### C. Clear And Convincing Evidence

The Hills' parental rights were terminated under MCL 712A.19b(3)(c)(i), (g), and (j), which provide:

(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 child's age.

\* \* \*

(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

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<sup>1</sup> MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

<sup>2</sup> *Id.*

<sup>3</sup> *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993).

<sup>4</sup> MCL 712A.19b(5); *In re Trejo*, *supra* at 353.

able to provide proper care and custody within a reasonable time considering the child's age.

\* \* \*

(j) There is a reasonable likelihood, based on the conduct of 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 same evidence was used to support all three subsections.

The Hills argue that they substantially complied with their parent-agency agreements and sufficiently dealt with the problems that brought the children into care. The trial court found otherwise, and the record supports the trial court's findings. The primary issue was the sexual abuse suffered by all three children from Pierre. It was not the delays in referrals or the multitude of foster homes or caseworkers that prevented the Hills from helping the children get over this abuse; rather, it was the Hills' own attitudes and apparent belief that the abuse did not happen. Both parents questioned the veracity of the children's accusations, and allowed Pierre to stay at their home with the younger children, despite knowing of the alleged sexual abuse. The children needed to have confidence that respondents could protect them in the future from Pierre and his friends. This could not happen without a profound change in the Hills' attitudes. Both respondents evidently failed to benefit from family counseling, as the sessions were marked by screams, swearing, and hitting, and often left the children upset and troubled.

Termination of parental rights is appropriate where a parent fails to protect or places the child at unreasonable risk of harm from sexual abuse.<sup>5</sup> Here, although Delia Hill said she intended to keep Pierre away from the children, the trial court evidently did not believe her, and this was reasonable based on her history. Specifically, she had allowed the contact before and still did not believe that Pierre committed the sexual abuse; therefore, the trial court could reasonably conclude she would not take adequate steps to protect the younger children. Judging by Ralph Hill's failure to intervene when necessary in conflicts between Delia Hill and the children and his leaving home at crucial times, he would likely fare no better. While Ralph Hill argues that he should not be penalized for his inaction, his passivity was harmful to the children. These problems showed that respondents were not benefiting from the services provided. As this Court has explained, "it is not enough to merely go through the motions; a parent must benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent's custody."<sup>6</sup>

The Hills were also not in compliance with other important aspects of the parent-agency agreement. Ralph Hill had trouble finding and keeping a job. Delia Hill had significant problems with seizures and mental health, yet did not consistently take her medicine or attend therapy. The Hills' home was messy and cramped. Failure to substantially comply with a court-

<sup>5</sup> See MCL 722.638(1)(b)(i); *In re AH*, 245 Mich App 77, 84-85; 627 NW2d 33 (2001); *In re Parshall*, 159 Mich App 683, 690; 406 NW2d 913 (1987).

<sup>6</sup> *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005).

ordered treatment plan is evidence of continuing neglect.<sup>7</sup> Taken together with the failure to protect and significant deficiencies in parenting skills, there is a high probability that respondents would not provide proper care and the children would need to be removed again. The children have been in foster care for nearly three years and all three have very high special needs. Under these circumstances, we have no definite and firm conviction that the trial court erred in finding sufficient evidence to terminate respondents' parental rights.

#### D. Best Interests Of The Children

We also find no clear error in the trial court's decision on the best interests issue. While respondents and the children were bonded, the history of the case and the long stay in foster care, considered with the Hills' apparent failure to change their attitudes regarding the sexual abuse, meant that they would be unable to provide a proper home for the children in the foreseeable future. The children need a permanent, safe, stable home, which the Hills are unable to provide. Because we have no definite and firm conviction that the trial court committed clear error in finding termination not clearly contrary to the children's best interests, we affirm.<sup>8</sup>

Affirmed.

/s/ Hilda R. Gage  
/s/ William C. Whitbeck  
/s/ Henry William Saad

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<sup>7</sup> *Trejo, supra* at 360-361 n16.

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