

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of AEDAN DENNIS PADGETT,  
Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LANETTE AVERY,

Respondent-Appellant.

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UNPUBLISHED

March 13, 2008

No. 280281

Otsego Circuit Court

Family Division

LC No. 05-000058-NA

Before: Saad, C.J., and Murphy and Donofrio, JJ.

PER CURIAM.

Respondent Lanette Avery appeals from the trial court's order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(ii) and (j). We affirm.

The trial court obtained jurisdiction over the child in August 2005, when it determined that the child was physically abused by his father, Kody Padgett. The court terminated Padgett's parental rights at the initial dispositional hearing, but denied a request to also terminate respondent's parental rights.<sup>1</sup> The court ordered petitioner to prepare a parent-agency agreement and work with respondent toward reunification with her child, but prohibited respondent from allowing Padgett to have contact with the child. The guardian ad litem also obtained a personal protection order prohibiting Padgett from contacting the child. The child was eventually returned to respondent's custody in January 2007. Despite the history of physical abuse and the no-contact orders, the evidence showed that respondent continued her relationship with Padgett, and allowed Padgett to have contact with the child. Indeed, in March 2007, authorities discovered that respondent had left the child alone with Padgett at a hotel room in Traverse City.

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<sup>1</sup> This Court affirmed the decision terminating Padgett's parental rights in *In re Padgett*, unpublished opinion per curiam of the Court of Appeals, issued February 15, 2007 (Docket No. 270617).

The trial court found that Padgett was a violent individual who would continue to be violent toward the child if given the opportunity, that respondent's actions demonstrated that she was either incapable or unwilling to protect the child from Padgett, and that it was reasonably likely that the child would be harmed if returned to respondent's care.

On appeal, respondent argues that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence. See *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). We disagree.

This Court reviews the trial court's findings of fact under the clearly erroneous standard. MCR 3.977(J). A finding of fact is clearly erroneous when the reviewing 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). In applying this standard, deference is accorded to the trial court's superior opportunity to assess the credibility of the witnesses who appeared before it. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991).

The trial court relied on the following two statutory grounds to terminate respondent's parental rights:

(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:

\* \* \*

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

\* \* \*

(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.

Respondent argues that the trial court clearly erred in finding that these statutory grounds were established because (1) Padgett was incarcerated at the time of the termination hearing and will remain incarcerated for a significant period of time, (2) Catherine Holmes, respondent's counselor, believed that respondent had severed her relationship with Padgett and had made

substantial progress in counseling, and (3) the guardian ad litem did not support the petition to terminate respondent's parental rights.

The evidence shows that Padgett was serving a prison sentence and that his earliest release date was March 10, 2012, at which time the child would be seven years old. The trial court found that despite Padgett's incarceration, it had no doubt that he would contact respondent upon his release from prison, thereby exposing the child to a reasonable likelihood of harm. This finding is not clearly erroneous. The evidence showed that respondent and Padgett had been involved in a relationship for several years. They were both placed on probation as juveniles and ordered not to have contact with each other, but repeatedly violated the no-contact orders. Despite a history of Padgett's physical abuse of respondent, respondent continued to maintain her relationship with him. During the first termination hearing, respondent promised that if she had to choose between her child and Padgett, she would choose her child and end her relationship with Padgett. Despite this promise, as well as additional no-contact orders prohibiting contact between Padgett and the child, there was evidence that respondent continued to associate with Padgett and allow him to have contact with the child, and falsely told authorities that Padgett had not contacted her. In March 2007, respondent admittedly left the child unsupervised with Padgett at a hotel in Traverse City while respondent went to work.

Although respondent testified that she now realized the danger that Padgett presented, that she had ended her relationship with him, and that she would take the necessary steps to prevent him from having contact with her child in the future, the trial court did not find this testimony credible. We defer to the trial court's findings regarding issues of credibility. *In re Newman, supra* at 65. Further, the trial court was not obligated to accept the testimony of respondent's counselor, Catherine Holmes, who believed that respondent had benefited from counseling and had severed her relationship with Padgett. The trial court acknowledged Holmes's testimony, but determined that the evidence of respondent's actual conduct was a better predictor of her future actions. As the trial court observed, respondent's actual conduct demonstrated that she was unable to remove herself from her relationship with Padgett, she continued to allow the child to be exposed to Padgett, and she failed to take advantage of many opportunities to protect herself and the child from Padgett. The trial court did not clearly err in finding that Holmes's opinion was not supported by the evidence of respondent's actual conduct.

Respondent also argues that the trial court should have given more weight to the recommendation of the guardian ad litem, who opposed termination. The guardian ad litem's recommendation was principally based on Holmes's testimony that respondent had severed her relationship with Padgett. As previously explained, the trial court did not clearly err in failing to accept Holmes's opinion testimony on this issue. Furthermore, we disagree with the guardian ad litem's opinion that respondent substantially complied with her parent-agency agreement. The overriding issue in this case was respondent's ability to sever all contact with Padgett in order to keep the child safe, which she was either unable or unwilling to do. Thus, the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence.

Respondent also argues that termination of her parental rights was not in the child's best interests.

Once a statutory ground for termination is established, “the court must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child’s best interests.” *In re Trejo, supra* at 354; MCL 712A.19b(5). The trial court’s best interests decision is also reviewed for clear error. *In re Trejo, supra* at 356-357.

Respondent argues that termination of her parental rights was not in the child’s best interests because the trial court found that she loved her child and was capable of providing for his physical needs. However, the trial court also found that respondent was not capable of protecting the child. Additionally, the court observed that the child was removed from respondent’s custody when he was only a few months old, and he did not look to respondent as a primary caregiver. Therefore, termination would not have a significant impact on the child. The trial court did not clearly err in finding that termination of respondent’s parental rights was not contrary to the child’s best interests.

Affirmed.

/s/ Henry William Saad  
/s/ William B. Murphy  
/s/ Pat M. Donofrio