

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of A.M. GIVENS, Minor.

UNPUBLISHED  
June 24, 2014

No. 318891  
Wayne Circuit Court  
Family Division  
LC No. 13-512021-NA

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Before: DONOFRIO, P.J., and GLEICHER and M. J. KELLY, JJ.

PER CURIAM.

Respondent-mother appeals by right the trial court’s order terminating her parental rights to the minor child. Because we conclude the petitioner failed to present sufficient evidence to establish grounds for termination, we vacate the trial court’s order terminating respondent’s parental rights and remand for continuation of the termination hearing after proper notice.

The child came under the trial court’s jurisdiction after petitioner, the child’s guardian and aunt, petitioned the court to terminate the parental rights of the child’s mother and father.<sup>1</sup> After holding a hearing that spanned two days, the trial court found that there was clear and convincing evidence to terminate respondent’s parental rights under MCL 712A.19b(3)(f), and that termination was in the child’s best interests, MCL 712A.19b(5).

We will first address respondent’s argument that the trial court erred when it found that the petitioner had established grounds for terminating respondent’s parental rights by clear and convincing evidence. Specifically, respondent contends the petitioner failed to present any evidence that she had the ability to provide support for the child.

“To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19(b)(3) has been established.” *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). This Court reviews “for clear error a trial court’s finding of whether a statutory ground for termination has been proven by clear and convincing evidence.” *Id.* “A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court’s special opportunity to observe the witnesses.” *Id.* (quotation marks and citation omitted). Here,

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<sup>1</sup> The trial court’s decision to terminate the father’s parental rights is not at issue in this appeal.

petitioner asked the trial court to terminate respondent's parental rights under MCL 712A.19b(3)(f) and the trial court found that petitioner established that ground for termination by clear and convincing evidence.

In order to establish this ground for termination, petitioner had to prove by clear and convincing evidence that the minor child had a guardian and that respondent had "the ability to support or assist in supporting the minor" and "failed or neglected" to do so "without good cause" for a "period of 2 years or more before the filing of the petition", or that respondent had "failed to substantially comply" with a support order "for a period of 2 years or more before the filing of the petition." MCL 712A.19b(3)(f)(i). Petitioner also had to prove by clear and convincing evidence that respondent, "having the ability to visit, contact, or communicate with the minor, has regularly and substantially failed or neglected, without good cause, to do so for a period of 2 years or more before the filing of the petition." MCL 712A.19b(3)(f)(ii).

During the hearing, petitioner presented testimony and evidence that respondent placed the minor child with petitioner and other relatives and that petitioner subsequently became the minor child's guardian. Petitioner also presented evidence that respondent had the ability to visit, contact, or communicate with the minor and neglected to do so without good cause for a period of 2 years or more before the filing of the petition. As such, petitioner presented sufficient evidence to establish the fact of guardianship and the requirement stated under MCL 712A.19b(3)(f)(ii). Petitioner also presented evidence that respondent failed to provide support of any kind to the minor child in the two years before the filing of the petition. However, petitioner did not present evidence that respondent had the ability to support or assist in the support of the minor child or failed to comply with a support order. Petitioner was the sole witness at the hearing and she did not testify concerning respondent's ability to provide material or other support and did not testify concerning the existence of a support order.

On appeal, petitioner notes that there was a discussion on the record concerning receipts that respondent brought to court at an earlier hearing date. These receipts, petitioner claims, established that respondent had the ability to provide some minimal level of support. Although there was some discussion about the use of these receipts at the hearing, the hearing was postponed to a later date before they were admitted or discussed by any witness. And, because respondent did not appear to testify at the later hearing date, the receipts never became part of the record. As such, those receipts cannot be used to establish that respondent had the ability to provide some material support. Similarly, although one might assume that respondent had the ability to provide physical or emotional support—that is, to provide her time and talents for the benefit of the minor child—there was also no testimony concerning her mental and physical ability to assist in this way. Finally, although there is a report in the lower court record that suggests that respondent might have been ordered to pay support and failed to do so, petitioner did not present any evidence at the hearing to establish the existence of a support order or that respondent failed to comply with it for the two years prior to the petition.

On this record, we conclude that there was insufficient evidence to support the trial court's finding that petitioner proved by clear and convincing evidence that termination was warranted under MCL 712A.19b(3)(f). Nevertheless, it is evident that the deficiencies in the record were in part occasioned by the sudden postponement of the hearing partway through petitioner's testimony. It also appears from the transcripts that respondent intended to testify and

present evidence that she had in fact provided support to the minor child. Indeed, the trial court determined that it had to postpone the hearing after the parties' dispute concerning the receipts and other documentary evidence demonstrated that the hearing was likely to take substantially longer than first thought. The discussion concerning respondent's intention to testify and present documentary evidence likely affected petitioner's preparation and plan for presenting her case on the date for the continuation of the hearing. Unfortunately, the hearing was further delayed and, when finally set for September, respondent did not appear. Accordingly, respondent did not have the opportunity to present her evidence and petitioner did not have the opportunity to examine respondent. Under these circumstances, we conclude that the parties and minor child would best be served by continuing the termination hearing to permit the parties to fully develop the proofs.

For these reasons, we vacate the trial court's order terminating respondent's parental rights and remand this case to the trial court. See MCR 7.216(A)(7). On remand, the trial court shall continue the termination hearing after ensuring that respondent has been given proper written notice of the continued hearing date. MCL 712A.19b(2); MCR 3.921(B)(2). After the parties have had a full and fair opportunity to present their evidence, the trial court shall determine whether petitioner established the ground for termination of respondent's parental rights and whether termination is in the child's best interests. MCL 712A.19b(5).

Given our resolution of this issue, we decline to address respondent's remaining claims of error.

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. We further order that none of the parties may tax costs. MCR 7.219(A).

/s/ Pat M. Donofrio  
/s/ Elizabeth L. Gleicher  
/s/ Michael J. Kelly