

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JOSHUA LAWRENCE ATEMAN,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LAWRENCE CLEMARK JACKSON,

Respondent-Appellant,

and

MAE LOUISE ATEMAN,

Respondent.

In the Matter of BRANDON ALLEN TODD,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LAWRENCE CLEMARK JACKSON,

Respondent-Appellant,

and

UNPUBLISHED
March 24, 2000

No. 208443
Wayne Probate Court
LC No. 92-298837

ON REMAND

No. 208444
Wayne Probate Court
LC No. 94-320964

FRANCINE THEDORA TODD,

Respondent.

Before: Murphy, P.J., and Hood and Fitzgerald, JJ.

PER CURIAM.

This matter has a somewhat complicated and protracted procedural history. Originally, in Docket No. 207145, respondent Mae Louise Ateman (“Ateman”) appealed as of right from an order terminating her parental rights to Joshua Lawrence Ateman (born 8/1/95) pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (g), (i) and (j); MSA 27.3178(598.19b)(3)(a)(ii), (c)(i), (g), (i) and (j). In Docket No. 208443, respondent-appellant Lawrence Jackson (“respondent”) appealed as of right from the order terminating his parental rights to Joshua Lawrence Ateman, his son with Ateman, pursuant to MCL 712A.19b(3)(c)(i), (g) and (j); MSA 27.3178(598.19b)(3)(c)(i), (g) and (j). In Docket No. 208444, respondent appealed as of right the order terminating his parental rights to Brandon Allen Todd (born 8/30/92).

All three docket numbers were consolidated for this Court’s consideration and the case was submitted without oral argument. On February 5, 1999, the panel issued a memorandum opinion holding that the probate court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence and, accordingly, affirmed the trial court’s order terminating Ateman’s and respondent’s parental rights to the children. *In re Ateman*, unpublished memorandum opinion of the Court of Appeals, released February 5, 1999 (Docket Nos. 207145/208443/208444).

Respondent then filed an application for leave to appeal with the Michigan Supreme Court.¹ The Supreme Court, in lieu of granting leave to appeal, remanded the matter to this Court “for reconsideration in light of *In re Hulbert*, 186 Mich App 600 (1990)” and indicated that it would not retain jurisdiction in this matter. *In re Todd & Ateman*, 461 Mich 914 (1999).

In accordance with the Supreme Court’s order, the matter was resubmitted to the original panel for reconsideration.² On January 18, 2000, the panel issued two orders. The first order directed that Docket No. 207145 (Ateman’s appeal) was to be “disconsolidated” from the two appeals filed by respondent, Docket Nos. 208443 and 208444. The panel then issued a second order that stated:

This Court having issued an opinion on February 5, 1999, and the Supreme Court having remanded the matter on November 19, 1999, for reconsideration in light of *In re Hulbert*, 186 Mich App 600 (1990), upon further consideration, this Court is persuaded that the matter should not have been decided without oral argument. Accordingly, we VACATE our earlier decision and direct the Clerk of this Court to place this matter on the next available case call for plenary consideration.

Accordingly, we essentially begin anew with this appeal.

Respondent Jackson contends that the evidence presented at the termination hearing was insufficient to support termination of his parental rights to the minor children. In order to terminate parental rights, the probate court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). This Court reviews the family court's finding that the statutory grounds had been met for clear error. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Once a statutory ground has been proved by clear and convincing evidence, the court must terminate the parental rights unless the respondent produces some evidence that termination is not in the best interests of the children. *In re Boursaw*, ___ Mich App ___; ___ NW2d ___ (Docket No. 214828, issued 12/17/99), slip op at 9-10; *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997).

Respondent's parental rights were terminated pursuant to MCL 712A.19b(3)(c)(i), (g), and (j); MSA 27.3178(598.19b)(3)(c)(i), (g), and (j), which provide that:

The court may terminate the parental rights of a parent 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 the 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 age of the child.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody of the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child.

* * *

(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 parents.

Respondent contends that the trial court erred in relying on the reports of Dr. Mark Silverman, a psychologist at the Wayne County Clinic for Child Study, and clinician Nancy Robinson of the Wayne County Clinic for Child Study, because they were speculative and impermissibly based on "what might happen in the future." Respondent cites *In re Hulbert, supra*, where this Court found that the only evidence of actual neglect was the mother's failure to keep the child on an apnea monitor for the full time as advised by a doctor and to give the child a proper dosage of medicine. The *Hulbert* Court

found that the trial court's reliance on the testimony of three psychologists who opined that the respondents' "borderline" mental conditions "may" render them unfit or "ineffective" parents or "might" cause them to possibly inflict harm on their children was clearly erroneous. *Id.* at 602.

Although no evidence of neglect or abuse was presented in this case, this case is vastly different from *In re Hulbert*. Here, the experts in the present case indicated more than just that respondent's character flaws or mental disorders "might" render him an unfit parent. The conclusions of Dr. Silverman and Nancy Robinson were stronger than those reached by the experts in *Hulbert*. For instance, Dr. Silverman did not just indicate that respondent might harm the children; he testified that *there was a serious risk of harm* to the children and he *predicted* that harm would befall the children if they were returned to respondent's care. He also affirmatively testified that respondent was an exhibitionist, voyeur, "a stereotypic pedophile," and that he lacked parental capacity. In light of the fact that respondent had "two paraphilias," exhibitionism, and voyeurism, Dr. Silverman indicated that respondent was "very likely" to engage in pedophilic behaviors. Nancy Robinson testified that her evaluation of respondent revealed that he was "highly likely" to "sexually perpetrate against others."

Thus, the experts in this case, unlike in *Hulbert*, did not merely speculate on what could happen in the future. Rather, given respondent's own admissions, the experts had concrete evidence of respondent's actions and personality traits on which to base a prognosis. The experts here found a serious risk of harm, they predicted harm to the children, and found that it was "highly likely" that respondent would harm the children. This evidence is clear and convincing and is sufficient to warrant termination on the ground that there was a reasonable likelihood that the children would be harmed if returned to respondent's care. Therefore, termination of respondent's parental rights was proper under subsection (3)(j).

Once a statutory ground for termination has been met by clear and convincing evidence, MCL 712A.19b(5); MSA 27.3178(598.19b)(5) requires a parent to put forth at least some evidence that termination is clearly not in the child's best interest. *In re Hall-Smith, supra* at 222 Mich App 473. Absent any evidence addressing this issue by the parent, termination of parental rights is mandatory. *Id.* Here, aside from his own self-serving statements, respondent failed to put forth any evidence from which the probate court could conclude that termination was clearly not in the children's best interests.

Affirmed.

/s/ William B. Murphy

/s/ Harold Hood

/s/ E. Thomas Fitzgerald

¹ Respondent Ateman did not appeal from the decision of this Court that affirmed the trial court's order terminating her parental rights to Joshua.

² The original panel consisted of Judges Sawyer, Wahls, and Hoekstra.