

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of AW and NW, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DERRALD D. WRIGHT,

Respondent-Appellant.

UNPUBLISHED

May 25, 2001

No. 229280

Wayne Circuit Court

Family Division

LC No. 97-360,760

Before: Doctoroff, P.J., and Saad and Wilder, JJ.

PER CURIAM.

Respondent Derrald Wright appeals as of right from a family court order terminating his parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j); MSA 27.3178(598.19b)(3)(c)(i), (g), and (j). We affirm.

I. Facts and Proceedings

This case first came to the attention of petitioner Family Independence Agency (FIA) in October 1997 after the FIA became aware of the fact that the minor children were living in an unclean, unsafe, burned out house in the city of Detroit with their mother, Valeria Wright and her boyfriend, Marshall Gates, Sr.¹ Following a preliminary hearing on the petition, the family court authorized the petition, made the children temporary court wards, and placed them in the care of relatives.

In December 1997, respondent entered into a parent-agency agreement with the FIA that required respondent to (1) submit to random drug and alcohol screens, (2) participate in drug and alcohol counseling, (3) attend parenting classes, (4) obtain safe, suitable housing, (5) obtain legal employment, (6) attend individual and family counseling and (7) visit his children regularly. On

¹ In an order dated April 26, 1999, both Valeria Wright and Marshall Gates' parental rights were terminated. Gates was the father to Valeria's other children. This order is not before this court.

April 26, 1999, after several review hearings where testimony of FIA social workers established that respondent was making great strides at complying with every aspect of the parent-agency agreement, the FIA placed NW, respondent's youngest child, in his care on an extended basis.² However, the FIA removed NW from respondent's home in late October 1999, following a positive drug screen for cocaine that took place on August 24, 1999. The FIA then filed a supplemental petition seeking termination of respondent's parental rights pursuant to MCL 712A.19b(3)(c)(ii), (g), and (j); MSA 27.3178(598.19b)(3)(c)(ii), (g), and (j).³ On March 30, 2000, a hearing was held before the referee regarding this supplemental petition. Based on the testimony and evidence presented at that hearing, the referee made factual findings and recommended termination of respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g) and (j); MSA 27.3178(598.19b)(3)(c)(i), (g), and (j). These findings and recommendations were approved by the family court and, in an order dated April 14, 2000, respondent's parental rights were terminated.

II. Standard of Review

This Court's review of a trial court's factual findings in an order terminating parental rights is for clear error. MCL 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Vasquez*, 199 Mich App 44, 51; 501 NW2d 231 (1993). A finding of fact is clearly erroneous if, although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake has been made. *In re Miller, supra*. Deference must be accorded to the trial court's assessment of the credibility of the witnesses before it. MCR 2.613(C); *In re Newman*, 189 Mich 61, 65; 472 NW2d 38 (1991). Once the trial court finds a statutory ground for termination by clear and convincing evidence, the court must terminate parental rights unless it finds, based on the whole record, that termination is clearly not in the best interests of the child. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Trejo Minors*, 462 Mich 341, 350; 612 NW2d 407 (2000); *In re Maynard*, 233 Mich App 438, 450-451; 592 NW2d 751 (1999).

III. Analysis

Defendant contends that the trial court erred in terminating his parental rights because the petitioner failed to establish a statutory ground for termination by clear and convincing evidence and, alternatively, that the trial court erred when it found that termination was clearly not against the best interests of the children. We disagree.

Respondent's parental rights to the minor children were terminated under MCL 712A.19b(3)(c)(i), (g), and (j); MSA 27.3198(598.19b)(3)(c)(i), (g) and (j), which provide as follows:

² Respondent's other child, AW, based on her wishes, remained in the care of her maternal grandmother.

³ The petition requested termination of respondent's under subsections 19b(3)(c)(ii), (g) and (j); however, at the review hearing where respondent's rights were terminated, petitioner sought termination under (3)(c)(i), (g), and (j).

(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 . . . 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 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 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.

Here, respondent's best friend testified that respondent requested urine from him for the purposes of using it for a drug screen. In requesting the urine, respondent stated that "he was drunk [and] . . . still had alcohol in him." Respondent's friend also testified that respondent showed him a full bottle of urine, belonging to someone else, that he used for drug and alcohol screens. In addition, the FIA worker assigned to respondent's case, testified that respondent did not provide all the requested drug screens asked of him, and that on several occasions, there was a delay of at least twenty four hours before compliance with the request for drug screens.⁴ The FIA worker also testified that she had been informed by respondent's son, that he had supplied urine for respondent's drug screens. This testimony was corroborated by the report of the Clinic for Child Study, which was entered into evidence at the hearing. In that report, the psychologist indicated that NW informed her that "he had urinated in a cup for [respondent] a few times." There was also testimony that respondent, despite the fact he had repeatedly denied drinking alcohol since 1997, drank at least one forty ounce bottle of beer a day for a month and a half period at the end of 1999. Further, the FIA worker testified that respondent refused a home assessment by the FIA, even though it had previously been ordered by the court and indicated that respondent's son had informed her that he was unhappy living with respondent because there were rats in the home and because he wanted clean clothes. This testimony, which was accepted by the family court, clearly establishes that respondent failed to provide for the proper care and custody of his minor children and that there was no reasonable expectation that he would be able

⁴ A delay of twenty four hours is sufficient to allow alcohol to escape detection.

to provide such care in a reasonable time, based on the age of the children. Accordingly, termination of his parental rights under subsection 19b(3)(g) was proper.⁵

Moreover, the family court's assessment of the best interests of the children was not clearly erroneous. MCL 712.19b(5); MSA 27.3178(598.19b)(5); *In re Trejo, supra*. The record reveals that respondent's children had been temporary court wards for nearly two and half years at the time of termination. The record also establishes that respondent's daughter, AW, was fearful that "he would drink and leave her alone" and that she did not wish to have any contact with him. In addition, the record indicates that both children had adapted well to their new foster homes and had bonded to their foster parents. Thus, based on the whole record, we are not left with the definite and firm conviction that termination was clearly not in the best interests of the children. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Miller*; *In re Trejo, supra*; *In re Maynard, supra*.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Henry W. Saad

/s/ Kurtis T. Wilder

⁵ Because the family court properly terminated appellant's rights under subsection 19b(3)(g) and only one statutory ground for termination must be established in order to terminate parental rights, we need not decide whether termination was also proper under the other subsections. *In re Trejo, supra* at 350.