

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MATTHEW ADAM LEONARD,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ANDREW KRYSZTOPANIEC,

Respondent-Appellant.

UNPUBLISHED

August 26, 2003

No. 243902

Wayne Circuit Court

Family Division

LC No. 95-325159

Before: Donofrio, P.J., and Bandstra and O'Connell, JJ.

O'CONNELL, J. (*dissenting*).

The sole issue in this appeal concerns respondent Andrew Krysztopaniec's relationship with the minor child Matthew's heroin-addicted mother, Kimberly Leonard. Leonard was five months pregnant with respondent's next child, but agreed to move out of respondent's residence if Matthew was returned to respondent. Matthew was to have no contact with Leonard. At trial, the court exercised its function as a factfinder and judge of the credibility of the witnesses, see MCR 2.613(C), and concluded that respondent was still having contact with Leonard, contrary to the trial court's warning.

In my opinion, the trial court is in the best position to determine if this child should be returned to a home with heroin present. It is obvious to me that the trial court concluded that respondent was still associating with Leonard, the heroin-addicted mother of Matthew. It is also obvious to me that children should not be returned to homes where they will be exposed to illegal drugs like heroin. See MCL 712A.19b(3)(c)(i) and (g). The majority opinion concludes that there was not clear and convincing evidence to establish respondent's continuing relationship with Leonard. See *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). I disagree, considering that the court is the sole judge of credibility, this record supports the trial court's factual conclusions. See MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). It is not the appellate court's responsibility to substitute its judgment for that of the trial court.

I would affirm.

/s/ Peter D. O'Connell

