

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MATTHEW ANTONIO
DEANGELO MCCREE, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

HERLANDOS YUGURI MCCREE,

Respondent-Appellant,

and

DEANGELO DRAKE,

Respondent.

UNPUBLISHED
September 9, 2003

No. 241272
Wayne Circuit Court
Family Division
LC No. 00-389932

Before: Bandstra, P.J., and White and Donofrio, JJ.

PER CURIAM.

Respondent Herlandos McCree appeals by delayed leave granted from an order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (g), and (j). We affirm.

Respondent argues that the trial court erroneously terminated her parental rights because the evidence showed that she substantially complied with the parent-agency agreement and, contrary to the trial court's determination, there was no evidence of desertion. She also argues that termination of her parental rights was clearly contrary to the child's best interests.

The existence of a statutory ground for termination must be proven by clear and convincing evidence. MCR 5.974(A) and (F)(3)¹; *In re Miller*, 433 Mich 331, 344-345; 445

¹ The court rules governing child protective proceedings were amended and recodified as part of new MCR subchapter 3.900, effective May 1, 2003. This opinion refers to the rules in effect at the time of the trial court's decision.

NW2d 161 (1989). The trial court's findings of fact are reviewed for clear error and may be set aside only if we are left with a definite and firm conviction that a mistake has been made. MCR 5.974(I); *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996). Due regard is given to the trial court's special opportunity to judge the credibility of witnesses. MCR 2.613(C); *In re Miller, supra* at 337. Once a statutory ground for termination is validly established, "the court shall order termination of parental rights . . . unless the court finds that termination . . . is clearly not in the child's best interests." MCL 712A.19b(5). That determination is to be made from evidence on the whole record, and is reviewed on appeal for clear error. *In re Trejo*, 462 Mich 341, 353-354, 356; 612 NW2d 407 (2000).

Although § 19b(3)(a)(ii) (desertion) appears to be applicable to the child's father, we agree that the evidence failed to show that respondent deserted the child. Therefore, the trial court clearly erred insofar that it indicated that termination of respondent's parental rights was appropriate under § 19b(3)(a)(ii). But, the court did not clearly err in finding that the remaining statutory grounds for termination were established by clear and convincing evidence.

With regard to § 19b(3)(c)(i), one of the conditions that led to adjudication was respondent's substance abuse. The evidence indicated that about a month after completing her first substance abuse treatment program respondent refused to submit to random drug screens for approximately three months. Subsequently, between July and November 2001, she tested positive for marijuana use. Although she submitted negative drugs screens after that, she still had not completed her second substance abuse treatment program as of February 2002, and her therapist had recommended that respondent continue individual counseling, including treatment for depression, and continue submitting random drug testing. Because this condition continued to exist and was not reasonably likely to be rectified within a reasonable time, the court did not clearly err in finding that termination was warranted under § 19b(3)(c)(i).

There was also clear and convincing evidence that respondent did not have steady employment or appropriate housing. And, she had attended only one of the child's medical appointments and appeared to be in denial concerning his medical problems and special needs, and the possibility that they were caused by her use of cocaine during pregnancy. She also seemed unwilling to accept responsibility for her mistakes. Therefore, termination was also appropriate under § 19b(3)(g).

Finally, there was evidence that the child had medical problems, developmental delays, and other special needs that respondent refused to accept. Because of a likelihood that respondent would not be able to attend to the child's medical needs, especially in light of her unresolved substance abuse issues, there was a reasonable likelihood that the child would be harmed if placed in respondent's care. We find termination was appropriate under § 19b(3)(j).

Concerning the child's best interests, although there was evidence respondent's conduct was appropriate during visits, there was no evidence of bonding between her and the child. On the other hand, there was substantial evidence that respondent refused to recognize the child's medical problems and special needs. The evidence did not show termination of respondent's parental rights was clearly not in the child's best interests. MCL 712A.19b(5). We find the

court did not err in terminating respondent's parental rights to the child. *In re Trejo, supra.*

Affirmed.

/s/ Richard A. Bandstra

/s/ Helene N. White

/s/ Pat M. Donofrio