

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of MELANIE TRAVIS, DAVION  
NEWELL, AALIYAH NEWELL, and DEONTE  
VELEZ, Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JULIA BILAS,

Respondent-Appellant,

and

FRED NEWELL, CARL NEWSOME, and  
MICHAEL TRAVIS,

Respondents.

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UNPUBLISHED

October 4, 2005

No. 260388

St. Clair Circuit Court

Family Division

LC No. 03-000427-NA

Before: Zahra, P.J., and Gage and Murray, JJ.

PER CURIAM.

Respondent-appellant Julia Bilas appeals as of right from the trial court's order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We reverse. This case is being decided without oral argument pursuant to MCR 7.214(E).

This is a somewhat unusual termination case. It is an unfortunate fact that many, if not most of, the termination cases that come to this Court involve horrendous acts of abuse or extreme neglect that result in physical and emotional injury to children. Parents are either addicted to drugs or alcohol, are engaged in other criminal activity, are imprisoned, or are otherwise so neglectful of their children that the evidence of resulting injury, poor health, or sometimes even death of a child is stomach turning. Fact patterns like these easily satisfy the statutory requirements for termination, and absent some substantial procedural flaw, are routinely upheld on appeal.

This case is much different. With respect to respondent, there are no allegations of drug or alcohol use, physical or mental abuse of her children, or unsafe physical living conditions. In fact, respondent has, for the last three years, leased a three bedroom apartment, held steady employment, maintained her own vehicle, and satisfactorily clothed her children. So, how does a situation like this come to the attention of petitioner? After the birth of Deonte, respondent's youngest child, in February 2003, *respondent* asked for some assistance from petitioner because respondent, who was the primary caregiver to three of her other children, was suffering from post-partum depression.<sup>1</sup> Thus, it was respondent who recognized a concern, at that time and under those circumstances, about her ability to properly care for all four children, each of whom were under the age of five. There were also concerns about the verbally abusive relationship between respondent and Fred Newell, the father of two of the children.

Once petitioner became involved in the case, in-home services were provided, but, citing respondent's lack of progress, the children were taken out of her care in August 2003. Petitioner continued to refer respondent to numerous services. Although respondent completed the requirements of her parent-agency agreement, at trial petitioner took the position that respondent did not benefit from the services offered, that visits between respondent and the children were chaotic, and that respondent often seemed more concerned about her relationship with Newell than reuniting with the children. A psychological evaluation of respondent concluded that, although she was of average intelligence, she would need long-term psychotherapy and also recommended constant daily supervision in parenting the children. The trial court concluded that the evidence supported termination of respondent's parental rights under §§ 19b(3)(c)(i), (c)(ii), (g), and (j).

In *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003), our Supreme Court set forth the appropriate standard for reviewing a trial court's decision to terminate parental rights:

We review for clear error both the trial court's decision that a ground for termination of parental rights has been proved by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interests. MCR 5.974(I); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A circuit court's decision to terminate parental rights is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). [Footnote omitted.]

Because there was no evidence that there were other conditions that would cause the children to come within the court's jurisdiction apart from those that led to the court's initial adjudication of the children, or that the children would likely be harmed if returned to respondent's home, the trial court clearly erred when it terminated respondent's parental rights under §§ 19b(3)(c)(ii) and (j).

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<sup>1</sup> Respondent had three other children, but after the Family Independence Agency (FIA) became involved with the family, respondent established guardianships of those children with their father and maternal grandmother.

However, we must still determine whether there was clear and convincing evidence supporting termination under §§ 19b(3)(c)(i) and (g). MCL 712A.19b(3)(c)(i) and (g) provide for termination of parental rights where clear and convincing evidence establishes 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 an 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 child's age.

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(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.

Only a single statutory ground needs to be proven in order to terminate parental rights. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991).

We conclude that there was no clear and convincing evidence that respondent had failed to provide proper care and custody for the children. MCL 712A.19b(3)(g). As noted at the outset of this opinion, there was no evidence or suggestion that the children were not physically and materially well-cared for. Indeed, respondent was employed, and had an adequate home and transportation. The children had a pediatrician, were well-clothed, and there was no suggestion that they were inadequately fed. There were also no allegations of drug or alcohol use by respondent. The children and respondent also were well-bonded.

The lack of proper care and custody cited by the referee, and adopted by the circuit court, was that respondent was too focused with her on again, off again relationship with Newell, and that visits with the children were "chaotic." After a thorough review of the record, we do not believe this evidence constitutes clear and convincing evidence of improper care and custody. Although the evidence revealed that respondent's relationship with Newell was not helpful in her attempt to increase her parenting skills, there was insufficient evidence that this relationship – which had ended by the time her trial had concluded – interfered with the proper care of the children.

Although the eldest child was acting out and causing disruptions during the weekly visitation, petitioner's witness indicated that this was to get respondent's attention, which had been focused on the younger children. But this is hardly surprising given the lack of contact between the children and respondent, and the fact that there were four small children visiting with the parent at the same time in an admittedly small room. These once a week visitations also were occurring while respondent was working, taking classes as required by the agreement, and taking other courses for the benefit of her and her family. We therefore do not believe that these "chaotic" visits provide clear and convincing evidence that respondent could not provide proper

care of the children. See, e.g., *In re Newman*, 189 Mich App 61, 69; 472 NW2d 38 (1991). Moreover, “chaotic” visitations such as these do not rise to the level of improper care when there was an absence of any danger, injury, or other harmful effects to the children.

Respondent also contends that the court’s termination of her parental rights under §19b(3)(c)(i) was clearly erroneous. To warrant termination under §19b(3)(c)(i), the court must find, by clear and convincing evidence, that (1) the conditions that led to the adjudication continue to exist and (2) there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age. The determination of what constitutes a reasonable time requires consideration not only of how long respondent would need to improve her parenting skills, but also how long the children could wait for this improvement. *In re Dahms*, 187 Mich App 644, 648; 468 NW2d 315 (1991).

In this case, there was insufficient evidence in the record to provide clear and convincing evidence that the conditions that led to adjudication continued to exist, and that there was no reasonable likelihood that the conditions would be rectified within a reasonable time given these children’s ages. Each of petitioner’s witnesses testified that although respondent completed most of her courses, and therefore complied with the parent-agency agreement, her parenting skills did not improve. In other words, according to petitioner’s witnesses whose testimony the trial court accepted, respondent did not benefit from these courses. However, our Supreme Court has held that a parent’s compliance with the agreement is evidence of her ability to properly care for and parent her children. *In re JK, supra* at 214. The record contains a wealth of evidence that respondent had complied with the vast majority of the agreement, and had completed additional classes that she voluntarily took to improve her parenting skills. If compliance with the agreement, and with the completion of several additional classes, did not sufficiently improve respondent’s parenting skills, that is not attributable to respondent. *Id.* at 214 n 20. These facts, coupled with the undisputed bond with the children, lead us to conclude that termination was not proper. See *In re Boursaw*, 239 Mich App 161, 172-174; 607 NW2d 408 (1999)(reversing the termination of parental rights in part because respondent had complied with the many services offered by the agency, had a strong bond with the children, and attended all the visitations).

We are quite cognizant of the deferential standard for reviewing the trial court’s decision, and are aware that the trial court was in the best position to view the credibility of the witnesses.<sup>2</sup> The difficulty we have in this case, however, is the subjective nature of the petitioner’s conclusions in light of respondent’s compliance with virtually all of the agreement, and the fact that other than her “parenting skills” and the discontinued relationship with Newell, respondent appeared to be an adequate parent. In reaching this conclusion, we also recognize that petitioner is the agency assigned to make these important and often difficult decisions. Nevertheless, in exercising our appellate review, we hold that petitioner failed to satisfy its burden of proof, and termination was not legally warranted.

In light of the above conclusions, we need not determine whether termination of respondent’s parental rights was clearly not in the children’s best interests. MCL 712A.19b(5).

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<sup>2</sup> Neither the referee who held the bench trial, nor the trial court, made any explicit credibility determinations.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Brian K. Zahra

/s/ Hilda R. Gage

/s/ Christopher M. Murray