

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ERLH, IJH, MCH, KSH, and KSH,
Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

UNPUBLISHED
June 19, 2001

v

CHAPPELLE EDWARD WILLIAMS,

Respondent-Appellant,

No. 226626
Wayne Circuit Court
Family Division
LC No. 96-342766

and

LAMONA CLAUDETTE HART, EDWARD
TURNER, and DARRELL TUCKER,

Respondents.

Before: McDonald, P.J., and Murphy and Meter, JJ.

PER CURIAM.

Respondent appeals as of right from the family court's order terminating his parental rights to his minor children, IJH (d/o/b-10/19/90) and MCH (d/o/b-1/13/92), pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist; no reasonable likelihood that conditions will be rectified in reasonable time), (g) (parent, without regard to intent, fails to provide proper care or custody; no reasonable expectation that parent will be able to provide proper care and custody in reasonable time), and (j) (reasonable likelihood, based on conduct or capacity of parent, that children will be harmed if returned to parent's home).¹ We affirm.

¹ The family court additionally terminated the parental rights of Lamona Hart, the mother of IJH and MCH as well as ERLH, KSH, and KSH, and terminated the parental rights of Edward Turner and Darrell Tucker, the fathers of the other three children. These three parties do not appeal the termination order.

Following removal of all five children from their mother's home on July 15, 1996, based on the mother's admissions the court established temporary jurisdiction over the children at a September 16, 1996 hearing. Respondent attended the hearing, and the court's September 24, 1996 order of disposition indicated that respondent had established paternity of IJH and MCH, and had provided support. Thus, while the mother's other three children were placed in foster care, respondent's two children were left with him, having been placed there at the time of removal. Though none of the allegations in the initial petition concerned respondent, because he did not have legal custody respondent accepted the need for petitioner to monitor his custody of his two children and he agreed to comply with a parent-agency agreement.

The parent-agency agreement required respondent to demonstrate appropriate parenting skills, to provide a legal source of income, to maintain suitable housing, and to maintain the family bond. According to various court reports, prepared in connection with review hearings conducted between September 1996 and September 1998, during that two-year period there were but a few minor concerns regarding respondent's compliance. Though it took a few referrals, petitioner confirmed that respondent completed parenting classes. Petitioner also consistently approved respondent's living arrangements, finding suitable both respondent's initial residence, which he shared with his family, and his subsequently obtained two-bedroom apartment. Additionally, respondent, who suffered from epilepsy, received steady income in the form of state assistance based on this disability. However, of some concern to petitioner was respondent's occasional failure to transport his children for visitation with their mother. At least twice during review hearings it was noted that respondent's children had missed up to five weekly visits in the preceding three-month period. Petitioner accepted respondent's explanation that these missed visits were a consequence of his epilepsy, and his related inability to drive, but also made clear to respondent that because he did not have legal custody of his children, it was his responsibility under the parent-agency agreement to transport the children for visits. Based on the overall satisfactory nature of respondent's care for the children, beginning in July 1997 petitioner advised respondent to pursue legal custody of his children in circuit court.

Unfortunately, following a September 2, 1998 hearing, a significant problem came to light with respect to the children's placement with respondent. The caseworker learned, in December 1998, that IJH and MCH had respectively missed thirty-two and twenty-five days of school since the start of the school-year in September. As a consequence of this educational neglect, following a January 8, 1999 review hearing the children were removed from their extended placement at respondent's home and returned to their mother. As petitioner was to continue monitoring the case, at the time of removal the caseworker again advised respondent that in order to avoid termination of his parental rights he needed to pursue legal custody.

Placement of respondent's two children with their mother was ultimately unsuccessful, despite petitioner's continued supervision and assistance, and the children were eventually placed in foster care with respondent's mother. On September 14, 1999, petitioner filed an amended supplemental petition seeking permanent custody of all five of the mother's children. Only one allegation specifically addressed respondent and his two children, that being the assertion that the children were removed from their placement with respondent based on educational neglect. However, besides this allegation in the final petition, the record is enlightening with respect to respondent's actions and attitude following removal of the children from his care.

The caseworker's report prepared ahead of a March 31, 1999 review hearing indicates that despite being upset at the removal of his children, and contrary to his promise to the children, respondent failed to file an appeal of the decision. Furthermore, in the intervening three months, respondent contacted the worker but once, to notify the worker that he was not getting regular visitation. The report prepared in connection with a June 23, 1999 review hearing indicates that respondent contacted the worker twice over that three-month period, on both occasions requesting the return of his children. Despite respondent's apparent desire to get his children back, the report indicates that both telephone conversations ended with respondent hanging up on the worker. The worker later acknowledged, during her testimony at the trial, that no new treatment plan was established with respect to respondent. However, consistent with the assertion that respondent abruptly ended their telephone conversations, the worker also characterized respondent as "offensive to [her]" during their contacts following the children's removal. Lastly, of eight supervised visits scheduled prior to the filing of the permanent custody petition, respondent apparently failed to attend on six occasions.²

Due to various adjournments, the permanent custody trial was held over two days, December 21, 1999 and February 29, 2000. At the conclusion of these proceedings respondent's counsel argued that termination of respondent's parental rights was inappropriate because respondent had complied with the majority of the terms of his only parent-agency agreement and because following removal of the children from his care, petitioner failed to continue assisting respondent and failed to initiate a new agreement that could have addressed the issue of educational neglect. Respondent's counsel also made note of the fact that during his testimony respondent had acknowledged and accepted responsibility for his failings, and additionally reiterated respondent's contention that his disability, which he asserted to be at the root of these failings, was finally under control. Over these arguments the family court terminated respondent's parental rights, along with those of the other three parents.

The court's generalized finding was that in the nearly four years since it had initially taken jurisdiction, every parent had had ample opportunity to comply with treatment plans, but all had failed. The court noted that "each time they were at the front door in terms of being able to get their children back, and they just kept slipping back for one reason or another." With respect to respondent, specifically, the court indicated that an eleventh-hour assertion that a disability was the root of his failings was not acceptable given that his children had been in the system for four years.³ The court also found support for termination in the fact that respondent failed to

² Respondent claimed to have frequently visited with his children between October 1999 and February 2000, during which time trial proceedings were ongoing and the children were placed with respondent's mother. The validity of this claim is of negligible impact, however, because as both petitioner and the court made clear, pursuant to court order respondent's visits were supposed to be supervised in order that interactions could be monitored.

³ We acknowledge the error in the court's representation of the time respondent's epileptic condition was made known. Contrary to the court's misleading suggestion that this disability was asserted as an excuse only at the last minute, it is clear from the record that petitioner was aware of respondent's condition from the outset of these proceedings. Nevertheless, because other factors support the court's termination order, we conclude that to the extent the court relied at all on this misperception, any such reliance is ultimately immaterial to our resolution of the matter.

consistently visit his children after petitioner removed them from his care and the fact that respondent allowed them to miss significant amounts of school without good reason. The court's written order effectuating this ruling additionally indicated that neither parent had obtained suitable housing and based the need for permanent planning in part on the finding that the children had been in foster care since July 16, 1996.⁴

Respondent now argues that the family court clearly erred in finding that clear and convincing evidence supported termination under any of the three cited statutory bases. Respondent contends first, that the court erred in concluding that petitioner made reasonable efforts to reunite him with his children; second, that the court erred in finding that clear and convincing evidence supported termination under subsection 19b(3)(c)(i); and third, that the court erred in finding that the best interests of the children would be served by termination of his parental rights because there was no clear and convincing evidence that he had failed to provide proper care and custody or that the children would be harmed by missing more school if returned to him. Contrary to respondent's arguments we affirm, finding that termination of respondent's parental rights was justified pursuant to subsection 19b(3)(c)(i) because despite repeated urgings on the part of petitioner, respondent failed to make reasonable efforts toward securing legal custody of his children and removing the need for petitioner's supervision.

A two-prong test applies to a decision of the family division of circuit court to terminate parental rights. "First, the probate court must find that at least one of the statutory grounds for termination, MCL 712A.19b, has been met by clear and convincing evidence." *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). We review the family court's decision for clear error. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake had been made. *Miller, supra*. Once a statutory ground for termination of parental rights is established, the court must terminate parental rights unless it finds that termination of parental rights to the child is clearly not in the child's best interest. MCL 712A.19b(5); MCR 5.974(E)(2); *In re Trejo*, 462 Mich 341, 364-365; 612 NW2d 407 (2000).

MCL 712A.19b(3)(c)(i) provides that termination of parental rights is appropriate if:

(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:

⁴ Again, we are compelled to note that the court's findings, as incorporated in its written opinion, are at best misleading—due to a lack of particularized application to each parent—and at worst erroneous. With respect to respondent, his housing was consistently deemed suitable and his children were arguably not in "foster" care until placed with his mother around the time the permanent custody petition was filed. Nevertheless, we again also conclude that potential reliance on these erroneous findings is immaterial.

(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.

The court's assumption of jurisdiction, the adjudication in this matter, was clearly based on the acts and/or failings of the children's mother. Respondent, as a non-custodial parent, was effectively unable to challenge that exercise of jurisdiction and explicitly accepted the fact by entering into a parent-agency agreement with petitioner. Arguably, therefore, respondent's lack of legal custody of his children was a condition existing at the time of adjudication.

We accordingly find dispositive in this matter the fact that petitioner consistently, but unsuccessfully, advised respondent that he needed to secure legal custody of his two children to avoid termination of his parental rights. From as early as July 1997 the caseworker pushed respondent to petition for custody in the circuit court. When the children were removed from respondent's care in January 1999, based on the educational neglect issue, the caseworker was still recommending that respondent seek custody. In reports prepared by petitioner for review hearings conducted on May 28, 1998 and September 2, 1998, it was noted that respondent claimed he was having trouble contacting his attorney and that his attorney claimed she had drafted the necessary paperwork but was awaiting payment by respondent before she filed the papers. Nevertheless, while petitioner's reports indicate that the caseworker was to some degree dissatisfied with respondent's attorney's efforts, they additionally note that the worker provided respondent with referrals to alternate legal aid organizations. Despite petitioner's repeated encouragement, respondent never took the requisite steps in the circuit court to gain custody.⁵

Notwithstanding our acknowledgment that with respect to respondent the family court's often non-particularized findings were misleading, if not erroneous, we hold that the record sustains a finding that clear and convincing evidence supports termination pursuant to at least subsection 19b(3)(c)(i). *Jackson, supra*. We further hold that nothing in the record would support a finding that termination of respondent's parental rights is clearly not in the child's best interest. *Trejo, supra*. On this point we wholly agree with the trial court's overriding conclusion that in the nearly four-years during which the court maintained jurisdiction, respondent had ample time to take the initiative and address those issues which necessitated petitioner's continued supervision of the children's welfare.⁶

⁵ Although it was asserted by substitute counsel, at the September 2, 1998 hearing, that respondent had filed for custody in circuit court, that alleged first step was clearly never followed by further action because there is no record indication that any custody proceedings occurred.

⁶ Even were we to completely accept respondent's arguments that the educational neglect issue was his only significant failing and that he could have addressed it but for petitioner's failure to provide him with updated assistance following removal of the children from his care, we would decline to reverse the family court's order of termination on the evidence that respondent's relationship with the caseworker after January 8, 1999 was hostile and antagonistic. Regardless of his sense of injustice at the court's decision to remove the children and return them to their mother, respondent was by then fully aware that termination of his and their mother's parental rights was an impending outcome. We believe that the onus was on respondent, as it would be

(continued...)

Affirmed

/s/ William B. Murphy

/s/ Patrick M. Meter

(...continued)

on any parent who truly desired to keep his children, to take the initiative with petitioner and seek further assistance.