

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

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In the Matter of HOLLY YOUNG, Minor.

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DEPARTMENT OF HUMAN SERVICES, f/k/a  
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ANDREA L. YOUNG,

Respondent-Appellant.

UNPUBLISHED  
February 9, 2006

No. 264192  
Bay Circuit Court  
Family Division  
LC No. 97-005990-NA

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In the Matter of HOLLY YOUNG, Minor.

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DEPARTMENT OF HUMAN SERVICES, f/k/a  
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CALVIN YOUNG,

Respondent-Appellant.

No. 264272  
Bay Circuit Court  
Family Division  
LC No. 97-005990-NA

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Before: Wilder, P.J., and Zahra and Davis, JJ.

PER CURIAM.

In these consolidated appeals, respondent mother and father appeal as of right the trial court order terminating their parental rights. In Docket No. 264192, the trial court relied on MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j) to terminate respondent mother's parental rights. In Docket No. 264272, the trial court relied on MCL 712A.19b(3)(c)(i) and (g) to terminate respondent father's parental rights. We affirm.

To terminate a parent's parental rights, the petitioner must establish the existence of at least one statutory condition, as set forth in MCL 712A.19b(3), by clear and convincing evidence. *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). "Once a statutory ground for termination is established by clear and convincing evidence, the trial court must terminate parental rights unless it finds from the whole record that termination clearly is not in the child's best interests." *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004), citing MCL 712A.19b(5). We review the trial court's findings of fact for clear error. *Id.*, 296. "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *Id.*, 296-297. Further, we will not disturb a lower court's order unless "failure to do so would be inconsistent with substantial justice." *In re TC*, 251 Mich App 368, 370-371; 650 NW2d 698 (2002), citing MCR 2.613(A).

In Docket No. 264192, regarding respondent mother, we agree with her that the trial court erred in finding that MCL 712A.19b(3)(c)(i) and (c)(ii) had been established by clear and convincing evidence.

MCL 712A.19b(3)(c)(i) requires the trial court to find that "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 conditions leading to adjudication were homelessness, domestic violence, respondent father's drug use, and Holly's fear of returning home to respondent father. These conditions were rectified for respondent mother at the time of the termination trial because respondents had divorced and were living apart, and respondent mother had appropriate housing. There was some evidence that respondents had had limited contact after the divorce, but none showing that this contact would affect any of the above conditions or that the contact would continue. Because all the conditions leading to adjudication had been resolved at the time of trial, the trial court clearly erred in finding that section (c)(i) was established by clear and convincing evidence.

MCL 712A.19b(3)(c)(ii) requires the trial court to find that "other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age." Because the trial court did not place on the record what "other conditions" existed for the purposes of this section, we must conclude that the trial court clearly erred in finding that section (c)(ii) was established by clear and convincing evidence.

However, establishment of only one statutory ground is necessary, so erroneous termination on one ground is harmless if another ground was also properly established. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000). Here, we do not find clear error in the trial court's findings that MCL 712A.19b(3)(g) and (j) were established by clear and convincing evidence. Respectively, these sections require the trial court to find that "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" and that "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."

The expert evidence admitted in this case showed that the majority of the danger posed to the child was respondent father's presence in the home, which exposed the child to drug use, aggression, and instability caused by the parents' inability to associate with each other peaceably. However, it also showed that even with that danger removed, respondent mother's own psychological problems remained a significant risk to the child's emotional health. As a result of her dysfunctional interactions with the child, her parenting skills were borderline between inadequate and minimally adequate. Because of the disruptions already experienced by the child, the evidence showed that she remained at significant risk for increasing and possibly permanent emotional damage if she was reunited with the mother. The entire record is replete with indications that respondent mother consistently refused to acknowledge any psychological problems and would not make the kind of internal changes necessary. The trial court's decision to terminate her rights on the basis of sections (g) and (j) was not clearly erroneous.

Respondent mother also argues that the child's hearsay statements were improperly used against her. We disagree. The trial court's adjudication applied to both parents. Because she was subject to the adjudication, the rules of evidence did not apply at the dispositional hearings and hearsay was admissible. *In re Snyder*, 223 Mich App 85, 89; 566 NW2d 18 (1997).

In Docket No. 264272, respondent father argues that the trial court clearly erred in finding that the statutory bases for termination were established by clear and convincing evidence and that the trial court clearly erred in its best interests determination. We disagree. The trial court stated the following regarding respondent father:

Mr. Young has not participated in reunification efforts. He did not comply with the service plan. He did not make efforts to see his daughter at all during the duration of this case. He does not show any inclination to provide proper care or custody.

These findings are wholly supported by the evidence at trial. Because of respondent father's refusal to participate in a parent-agency treatment plan, he did not provide requested drug screens, did not complete requested treatment, did not complete requested domestic violence and individual counseling, and did not visit Holly. Therefore, the conditions leading to adjudication were not rectified, and the trial court did not clearly err in finding that section (c)(i) was established. In addition, he gave no indication that he had a home for the child and made no attempt even to see her during the pendency of this case. Instead, he insisted that petitioner was asking too much of him. The trial court did not clearly err in finding that he had not provided proper care or custody for the child and would not do so within a reasonable time, so section (g) was also established.

Finally, both parents argue that it was not in the child's best interests to terminate their parental rights. We disagree.

The child consistently and repeatedly expressed fear of respondent father. Respondent father did not attempt to see the child. Respondent father has a history of aggression, causing

instability in the family, and drug use. The trial court did not clearly err in rejecting respondent father's assertion that termination of his parental rights was not in the child's best interests.

The child initially expressed a desire to return to respondent mother, but changed her mind of her own volition. The trial court found this to be because the child had previously been forced to assume the "adult role" in interactions between the child and respondent mother. The trial court found that the child would be at risk of serious harm to be placed back with a psychologically ill mother who refuses to acknowledge her problems or seek help for them. The trial court found that the bond between the child and respondent mother had broken down, as shown by respondent mother's refusal to participate in family therapy and refusal to visit the child even before the trial court suspended visits. We find no clear error in any of these findings or in the trial court's finding that respondent mother failed to show that termination of her parental rights was not in the child's best interests.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Brian K. Zahra

/s/ Alton T. Davis