

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

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In the Matter of KAREN T. PERRY, a/k/a KAREN  
FOSMIRE, Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

AUSTIN PERRY,

Respondent-Appellant,

and

HOPE FOSMIRE,

Respondent.

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UNPUBLISHED

October 24, 1997

No. 201402

Kalamazoo Juvenile Court

LC No. 94-000040-NA

Before: White, P.J., and Cavanagh and Reilly, JJ.

PER CURIAM.

Respondent appeals as of right the termination of his parental rights to his daughter, Karen Tenille Perry, a/k/a Karen Fosmire. Respondent's parental rights were terminated pursuant to MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g) (without regard to intent, parent has failed to provide care and custody, and there exists no likelihood of change within a reasonable amount of time). We affirm.

I

Respondent first argues that the probate court violated his rights by failing to appoint appellate counsel in order to appeal the court's exercise of jurisdiction. We disagree. Respondent was not denied appointed counsel; rather, he failed to comply with the court's request that he submit a statement

regarding his financial status before it appointed him counsel. Respondent argues that providing financial information was unnecessary because his financial status was on record and he was represented by appointed counsel in the probate court proceedings. However, because respondent's financial situation could have changed, his right to appointed counsel might have been affected. Accordingly, we find no error.

## II

Respondent next argues that the probate court erred in basing its decision to terminate his parental rights in part on psychological evidence admitted at the dispositional phase in February 1997. Respondent contends that, pursuant to MCR 5.974(D), the probate court should have based its findings only on the evidence introduced at trial when the court assumed jurisdiction.

MCR 5.974(D) provides:

The court shall order termination of the parental rights of a respondent at the initial dispositional hearing held pursuant to MCR 5.973(A), and shall order that additional efforts for reunification of the child with the respondent shall not be made, if

- (1) the original, or amended, petition contains a request for termination;
- (2) the trier of fact found by a preponderance of the evidence that the child comes under the jurisdiction of the court on the basis of MCL 712A.2(b); MSA 27.3178(598.2)(b);
- (3) *the court finds on the basis of clear and convincing legally admissible evidence introduced at the trial, or at plea proceedings, on the issue of assumption of court jurisdiction, that one or more facts alleged in the petition:*
  - (a) are true,
  - (b) justify terminating parental rights at the initial dispositional hearing, and
  - (c) fall under MCL 712A.19b(3); MSA 27.3178(598.19b)(3)

unless the court finds, in accordance with the rules of evidence as provided in subrule (F)(2), that termination of parental rights is clearly not in the best interest of the child. [Emphasis added.]

Interpretation of a court rule is subject to the same basic principles that govern statutory interpretation. A court rule should be construed in accordance with the ordinary and approved usage of the language in light of the purpose to be accomplished by its operation. *Smith v Henry Ford Hosp*, 219 Mich App 555, 559; 557 NW2d 154 (1996).

The language of the court rule is clear. When termination is sought at the initial disposition, as in the present case, the evidence supporting the court's findings on the statutory factors must be that which was admitted at the adjudicative phase. Therefore, we find that the probate court erred in considering evidence that was not introduced at the trial to support the court's exercise of jurisdiction over this matter. Nevertheless, we conclude that the error was harmless because, as discussed in Issue III, clear and convincing evidence was presented at the trial to support the termination of respondent's parental rights, and respondent presented no evidence to show that the termination of parental rights was clearly not in the best interest of the child.

### III

In his final issue, respondent claims that the termination of his parental rights was not based on clear and convincing evidence presented at the initial dispositional hearing. We disagree.

This Court first reviews the probate court's factual findings for clear error. A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made. *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996). After the probate court concludes that clear and convincing evidence supports at least one of the statutory grounds for termination, the respondent has the burden of putting forth some evidence to show that the termination of parental rights is clearly not in the best interests of the child. *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997). The trial court's decision to terminate a parent's parental rights is discretionary. *Conley, supra* at 43.

Respondent challenges two of the probate court's findings. The court stated that the deterioration in Karen's mood, demeanor, and appearance could be linked to respondent because she was with him twenty-four hours a day in May through August 1996. Because Karen maintained contact with her foster parents and her sister during this time, respondent argues that it was erroneous for the court to conclude that the child was isolated with him during this time. The court also attributed Karen's deterioration solely to respondent's failures as a parent. Respondent contends, however, that Karen's condition could be attributed to her separation from her foster family.

The probate court's findings are not clearly erroneous. Karen was placed with respondent from mid-May through early August 1996, and he was her primary caregiver during this time. There was substantial evidence that respondent did not regularly feed Karen while she was with him. Respondent consistently denied that this was a problem, yet multiple witnesses who interacted with them recognized that the child was hungry. There was evidence that respondent failed to ensure that Karen received sufficient rest. There was also evidence that respondent's home was unsanitary. Although concern had been expressed regarding the child's reaction to cigarette smoke, respondent continued to smoke at home and missed an appointment to take her to an allergist.

Furthermore, there was evidence that Karen changed, both physically and emotionally, while she was in respondent's care. Karen, who had previously been a happy, outgoing child, became depressed and defiant while living with respondent. She talked to her therapist about hating respondent, not wanting to live with him, running away, and wanting to kill him. Her therapist testified that, while a

period of adjustment was to be expected, the longer Karen remained with respondent, the more she deteriorated. After Karen was removed from respondent's care, she rebounded physically and emotionally. Based on the above evidence, we cannot conclude that the probate court clearly erred in attributing Karen's deterioration to respondent.

Furthermore, the probate court's ultimate decision to terminate respondent's parental rights was not an abuse of discretion. There was clear and convincing evidence that respondent was unable to provide proper care and custody for Karen. There was no evidence that respondent would be able to do so in a reasonable time. Accordingly, the court did not abuse its discretion in concluding that termination of respondent's parental rights was in Karen's best interest.

Affirmed.

/s/ Helene N. White

/s/ Mark J. Cavanagh

/s/ Maureen Pulte Reilly