

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ANGELA HAMMETT, BRENT
GEORGE, SYDNEY RAE NEWSOM, and
ANDREA HAMMETT, Minors.

FAMILY INDEPENDENCE AGENCY

Petitioner-Appellee,

v

CASSIE HAMMETT,

Respondent-Appellant,

and

DAVID MCCLUER and WILLIAM NEWSOM,

Respondents.

In the Matter of SYDNEY RAE NEWSOM, a/k/a
SIDNEY RAE NEWSOM, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee

v

WILLIAM NEWSOM,

Respondent-Appellant,

and

CASSIE HAMMETT,

UNPUBLISHED

November 6, 1998

No. 209629

Jackson Probate Court

LC No. 92-017590 NA

No. 209680

Jackson Probate Court

LC No. 92-017590

Respondent.

Before: Talbot, P.J., and McDonald and Neff, JJ.

PER CURIAM.

In Docket No. 209629, respondent Cassie Hammett appeals as of right from an order terminating her parental rights to her minor children pursuant to MCL 712A.19b(3)(c)(i), (g) and (j); MSA 27.3178(598.19b)(3)(c)(i), (g) and (j). In Docket No. 209680, respondent William Newsom, appeals as of right from the same order terminating his parental rights to his daughter, Sydney Newsom, pursuant to the same statutory grounds. We affirm in part and reverse in part.

The permanent termination of parental rights is an extremely serious matter. *In re Sanchez*, 422 Mich 758, 765; 375 NW2d 353 (1985). Accordingly, in the probate court the petitioner bears the burden of proving by clear and convincing evidence that a statutory ground for termination has been met. MCR 5.974(A)(3) and (F)(3); MCL 712A.19b(3); MSA 27.3178(598.19b)(3); *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997). If the court finds at least one statutory ground for termination, it must terminate parental rights, unless it finds that termination is clearly not in the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *Hall-Smith, supra* at 472-473. On appeal, the court's decision regarding termination is reviewed in its entirety for clear error. MCR 5.974(I); *Hall-Smith, supra* at 472. A finding is clearly erroneous if, although there is evidence to support the finding, the Court is left with a definite and firm conviction that a mistake was made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

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With respect to respondent Hammett, after reviewing the entire record we conclude that the probate court did not clearly err in finding that the statutory grounds for termination were established. We also conclude that the probate court did not clearly err when it determined that the evidence failed to support a finding that the termination of respondent Hammett's parental rights would not be in the best interests of the children. Accordingly, respondent Hammett is not entitled to relief on appeal. *Hall-Smith, supra* at 472-473.

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With respect to respondent Newsom, we first address the termination of his parental rights pursuant to MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i). Although the condition which led to Sydney's initial adjudication as a neglected minor and temporary ward of the state – respondent Newsom's incarceration – continued to exist at the time of the order terminating his parental rights, the record indicates that respondent Newsom was only six months away from completing his minimum term of imprisonment, at which time he would be “up for parole.” The record further indicates that Sydney was only three years old and residing in a relatively stable environment with respondent Newsom's mother, Nancy Nugent. Given these facts, we hold that the probate court clearly erred in finding “no

reasonable likelihood that the conditions [would] be rectified within a reasonable time considering the age of the child.” MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i). Simply put, at the time of the order, the probate court’s action on this statutory ground for termination was premature.

We next address the termination of respondent Newsom’s parental rights pursuant to MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g). The probate court found that respondent Newsom took good care of Sydney when she was in his custody and that they were well attached to each other. The evidence at the termination hearing also indicated that, during the period of his incarceration, respondent Newsom arranged for his mother to take care of Sydney. When respondent Newsom was incarcerated on the parole violation and Sydney was returned to the care of respondent Hammett, respondent Newsom filed a complaint against respondent Hammett alleging that she was unable to properly care for Sydney. At this point, the court removed Sydney from respondent Hammett’s care and Sydney was eventually placed with Nugent, where respondent Newsom believed she should be placed. Finally, respondent Newsom testified at the termination hearing that, during his incarceration, he continued to have as much contact with Sydney as possible by way of cards and telephone calls. Given the uncontroverted evidence of respondent Newsom’s successful efforts to attend to Sydney’s well-being before and during his incarceration, we hold that the probate court clearly erred in finding that he failed “to provide proper care or custody” for her and that “there is no reasonable expectation that [he would] be able to provide proper care and custody within a reasonable time considering the age of the child.” MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g); cf. *In re Curry*, 113 Mich App 821, 824-826; 318 NW2d 567 (1982) (explaining that a parent may still provide proper parental care without actually being present by entrusting the care of the child to relatives).

The probate court also terminated respondent Newsom’s parental rights pursuant to MCL 712A.19b(3)(j); MSA 27.3178(598.19b)(3)(j). However, this statutory ground for termination was not among those included in the petition for termination. Therefore, termination of respondent Newsom’s parental rights on this basis was improper. See MCL 712A.19b(1); MSA 27.3178(598.19b)(1).

Because no statutory ground for termination was supported by the record, we hold that the probate court clearly erred in terminating respondent Newsom’s parental rights. *Hall-Smith, supra* at 472-473.

Docket No. 209629 is affirmed. Docket No. 209680 is reversed.

/s/ Michael J. Talbot
/s/ Gary R. McDonald
/s/ Janet T. Neff