STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JACKIE L. THOMPSON, ASIA DOMINIQUE THOMPSON, JAMAL LAMAR THOMPSON and RENA ETTA THOMPSON, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MARY BROOKS and LAWRENCE THOMPSON,

Respondents-Appellants.

UNPUBLISHED
July 23, 1999

Nos. 212576;212777
Oakland Circuit Court
Family Division
LC No. 96-062009 NA

Before: Collins, P.J., and Jansen and White, JJ.

PER CURIAM.

In these consolidated cases, respondents appeal as of right the family court order terminating their parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i) and (g); MSA 27A.3178(598.19b)(3)(c)(i) and (g). We affirm.

Respondents in this case pleaded no contest to the existence of statutory grounds for termination, specifically, MCL 712A.19b(3)(c)(i); MSA 27A.3178(598.19b)(3)(c)(i) (the conditions that led to the adjudication continue to exist and are not likely to be rectified within a reasonable time given the age of the children) and (g) (without regard to intent, the parent fails to provide proper care or custody and is unlikely to be able to do so within a reasonable time given the age of the children). The trial court accepted their pleas and, three months later, conducted a hearing to determine whether termination of respondents' parental rights was clearly not in the minor children's best interests. After the hearing, the trial court made extensive findings on the record with regard to the testimony provided. Concluding that respondents had not shown that termination of their rights was clearly not in the minor children's best interests, the court terminated those rights.

Respondents first argue on appeal that because they were in compliance with the treatment plan at the time of the best interest hearing and presented a great deal of testimony supporting the conclusion that termination of their parental rights was premature, the trial court erred in proceeding with termination of their parental rights. However, although respondents may have satisfied their burden of producing evidence on the best interest issue, it does not necessarily follow that they successfully established that termination of their parental rights was clearly not in the children's best interests. See *In re Miller*, 433 Mich 331, 345; 445 NW2d 161 (1989).

MCL 712A.19b(5); MSA 27.3178(598.19b) provides:

> If the court finds that there are grounds for termination of parental rights, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent shall not be made, unless the court finds that termination of parental rights to the child is clearly not in the child's best interests.

As this Court explained in *In re Hall-Smith*, 222 Mich App 470, 472; 564 NW2d 156 (1997), the above provision

> create[s] a mandatory presumption that can only be rebutted by a showing that termination is clearly not in the child's best interest. If no such showing is made and a statutory ground for termination has been established, we believe that the trial court is without discretion and must terminate parental rights.

Furthermore, the respondent bears the burden of going forward with evidence that termination is not in a child's best interest. *Id.* at 473. This Court reviews the lower court's nondiscretionary decision regarding termination in its entirety for clear error. *Id.* at 472.

The record of the best interest hearing in this case reveals considerable testimony indicating that termination of respondents' parental rights was premature. Indeed, the only testimony recommending termination was with regard to the minor child Rena. However, it is undisputed that respondents did not begin complying with the parent-agency agreement until ten months after the court took jurisdiction over the children. Each of the minor children was deemed to have special needs. However, both respondents denied the existence and severity of these special needs. Furthermore, each witness testified that respondents' respective chances of relapse was high, given the stress associated with taking care of four special needs children. Finally, the witnesses were in agreement that both respondents needed further treatment before reunification could even be contemplated. Given the compelling evidence demonstrating respondents' past deficiencies and failure to benefit from past services, respondents' high risk of relapse, the necessity of further treatment before further reunification could be contemplated, the length of time the children have been in foster care, and the children's special needs, we find no clear error in the court's decision to terminate respondnts' parental rights.

Respondents also argue that the minor children have not received the care they require within the foster care system. Although respondents do not explain how this allegation relates to their appeal, it appears that they argue this point in an effort to show that the children would be better off in their care

rather than in foster care. In any event, we find such argument to be without merit. The record reveals that the children have received a considerable amount of counseling and help with their special needs while in foster care. The inability of some foster parents to place the children in special education classes appears to stem from the various school systems not wanting to place children in these classes, not from a lack of effort by the foster parents or foster care workers.

Finally, respondents argue that the court erred in terminating their rights because the children are not likely to be adopted. Although the availability of suitable alternative homes has no place in determining whether a petitioner has established a statutory ground for termination, the determination of a child's best interests may include consideration of the availability of suitable alternative homes and placement with relatives. *In re Mathers,* 371 Mich 516, 530; 124 NW2d 878 (1963); *In re Futch,* 144 Mich App 163, 170; 375 NW2d 375 (1984). Here, upon a motion by respondent mother, the court admitted into evidence a newspaper article detailing the low rate of adoption of permanent court wards, particularly African-American children. However, the likelihood of the children being adopted was only one of several factors considered by the court in determining whether termination of respondents' parental rights was clearly not in the children's best interests. Upon consideration of all the evidence in this case, the trial court determined that such a showing had not been made. Again, we find no clear error.

Affirmed.

/s/ Jeffrey G. Collins
/s/ Kathleen Jansen
/s/ Helene N. White