

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of CHERISH MACESHA JAHVAE  
BRAYBOY, Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CRYSTAL BETH BRAYBOY,

Respondent,

and

MACEO ASTOR WILLIAMS,

Respondent-Appellant.

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UNPUBLISHED

August 10, 1999

No. 214138

Wayne Circuit Court

Family Division

LC No. 88-266805

Before: Gribbs, P.J., and Smolenski and Gage, JJ.

PER CURIAM.

Respondent Maceo Williams (hereinafter “respondent”) appeals as of right from the family court’s order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g), and (j); MSA 27.3178(598.19b)(3)(c)(i), (g), and (j). We reverse.

The existence of a statutory ground for termination must be proven by clear and convincing evidence. MCR 5.974(A), (F)(3); *In re Hamlet (After Remand)*, 225 Mich App 505, 522; 571 NW2d 750 (1997). The trial court’s findings of fact are reviewed for clear error and may be set aside only if, although there may be evidence to support them, the reviewing court is left with a definite and firm conviction that a mistake has been made. MCR 5.974(I); *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996). Legally admissible evidence is not required in order to terminate parental rights on the basis of circumstances related to those that led the court to take jurisdiction initially, but is

required in order to terminate parental rights “on the basis of one or more circumstances new or different from the offense that led the court to take jurisdiction.” MCR 5.974(E) and (F)(2); *In re Snyder*, 223 Mich App 85, 89-91; 566 NW2d 18 (1997).

Parental rights may be terminated under subsection 19b(3)(c)(i) if “[t]he 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.” In this case, the only allegations involving respondent that were alleged in the initial petition, pursuant to which the court obtained jurisdiction, were that respondent had failed to establish paternity and failed to provide child support. Respondent and the child’s mother both subsequently executed an affidavit of parentage, thus rectifying that particular condition. Furthermore, although the trial court noted in its opinion that respondent had not provided support while the child was in foster care, there was no finding that he was either unable, unwilling or otherwise not reasonably likely to provide support within a reasonable time, nor was there any evidence supporting such a finding. Therefore, we conclude that the trial court erred in terminating respondent’s parental rights pursuant to subsection 19b(3)(c)(i).

A supplemental FIA petition alleged as bases for termination of respondent’s rights his failure to protect the child from the mother, who tested positive for drugs and exhibited violent behavior, and respondent’s own hostile, threatening behavior. Because these remaining allegations involving respondent that appear in the supplemental petition to terminate parental rights are “new or different from the offense that led the court to take jurisdiction,” petitioner was obligated to establish these allegations with legally admissible evidence. MCR 5.974(E); *Snyder, supra* at 89-91. Parental rights may be terminated under subsection 19b(3)(g) if “[t]he 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.” Additionally, subsection 19b(3)(j) provides for termination if “[t]here 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.”

Here, some legally admissible evidence was presented that respondent had several temper outbursts.<sup>1</sup> An FIA worker acknowledged that respondent had complied with every aspect of the parent-agency agreement, which included attending anger management counseling in which respondent actively participated, but she nonetheless opined that it did not appear that respondent had benefited from this counseling to the extent that the worker could recommend against termination of respondent’s rights. The trial court apparently believed this testimony, and we certainly defer to the court’s credibility determination. MCR 2.613(C). While the record also revealed some inappropriate statements and behaviors that respondent directed toward FIA employees,<sup>2</sup> apparently deriving primarily from FIA cancellations of respondent’s visitations, the instant record is completely devoid of any indication that respondent posed a risk of harm to this child. To the contrary, the uncontradicted testimony of several witnesses showed that during visitations the child bonded with respondent and respondent interacted well with the child. The parenting skills counselor to whom the FIA referred respondent opined that respondent was quite capable as a parent and seemed quite motivated to provide the child a safe environment. No problem ever arose during respondent’s unsupervised weekend visitations.

Moreover, respondent's testimony revealed that he and his former wife had raised two daughters who went off to college. In the absence of other legally admissible evidence, the FIA worker's opinion and evidence of respondent's angry confrontations with FIA workers do not in this case clearly and convincingly establish the propriety of terminating respondent's parental rights on the basis that respondent represented a risk of harm to the child, especially when one considers the uncontradicted testimony concerning respondent's good parenting skills and positive interactions with the child.

The FIA additionally sought termination of respondent's parental rights due to his alleged failure to protect the child from the child's mother. An FIA worker expressed her belief that respondent would not bar the mother access to the child, and revealed the basis of her opinion as respondent's statements that he believed it was wrong to come between a mother and her child. Respondent himself testified that he would comply with a court order that he keep the child from her mother. Absolutely no legally admissible evidence showed that respondent had ever allowed the mother to have contact with the child while she was in his care. Additionally, substantial evidence was presented that respondent recognized the mother's personal problems and parenting deficiencies, and that respondent supported the FIA's efforts to place the mother in a substance abuse program.

Viewing the legally admissible record evidence as a whole, we conclude that petitioner failed to clearly and convincingly prove that respondent was not reasonably likely to provide proper care and custody within a reasonable time considering the age of the child, nor was there a reasonable likelihood that the child would be harmed if returned to respondent. Accordingly, we conclude that the trial court clearly erred in terminating respondent's parental rights pursuant to either subsection 19b(3)(g) or (j).

Reversed.

/s/ Roman S. Gribbs

/s/ Michael R. Smolenski

/s/ Hilda R. Gage

<sup>1</sup> We note, however, that the trial court improperly admitted several hearsay statements regarding alleged threats or acts of violence by respondent.

<sup>2</sup> One incident of respondent's alleged violence involved respondent's attempt to prevent harm to an FIA worker. When the child's mother lunged to attack the FIA worker, respondent grabbed the mother around the neck to prevent her from reaching the FIA worker. We note that the FIA worker indicated that respondent's actions did not injure the mother.