STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ANTWAN GREEN and D'ANTWAN DASHAWN GRAY, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee/Cross-Appellee,

v

ANTWAN GREEN,

Respondent-Appellant,

and

LAVISHIA CORLANDA GRAY,

Respondent,

and

JAMES H. PILKINGTON and PATRICIA A. PILKINGTON,

Appellees/Cross-Appellants.

UNPUBLISHED
August 27, 1999

No. 211752
Wayne Circuit Court
Family Division
LC No. 94-317727

In the Matter of ANTWAN GREEN and D'ANTWAN DASHAWN GRAY, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

No. 211773
Wayne Circuit Court
Family Division
LC No. 94-317727

LAVISHIA CORLANDA GRAY,

Respondent-Appellant.

And

ANTWAN GREEN,

Respondent.

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

PER CURIAM.

Respondents Antwan Green and Lavishia Gray appeal as of right from a trial court order terminating their parental rights to the two minor children under MCL 712A.19b(3)(c)(i) and (g); MSA 27.3178(598.19b)(3)(c)(i) and (g). Appellees James and Patricia Pilkington, the former foster parents of minor Antwan Green, cross-appeal, challenging the trial court's order prohibiting them from adopting the minor children. We reverse and remand for further proceedings.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence. *In re JS & SM*, 231 Mich App 92, 97; 585 NW2d 326 (1998). This Court reviews the trial court's findings of fact under the clearly erroneous standard. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Hall-Smith*, 222 Mich App 470, 472; 564 NW2d 156 (1997).

As to respondent Gray, Docket No. 211773, a review of the record leads us to conclude that the trial court clearly erred in finding clear and convincing evidence to support termination of her parental rights under §§ 19b(3)(c)(i) and (g). MCR 5.974; *In re Miller*, *supra*. Termination was not warranted under § 19b(3)(c)(i) because the record discloses that the conditions that led to adjudication, Gray's lack of a home and failure to attend parenting class, had been rectified and that Gray had completed all of the requirements of her parent-agency agreement. Similarly, termination was not warranted under § 19b(3)(g) because, in view of Gray's progress and compliance with the parent-agency agreement, the evidence failed to establish that there was no reasonable expectation that she would not be able to provide proper care and custody within a reasonable time considering the children's ages. We find it significant that Gray's case worker, Shareen Allen, testified against terminating Gray's parental rights, and that the Family Independence Agency takes the position that Gray's parental rights should not be terminated. Accordingly, we conclude that the trial court erred in terminating Gray's parental rights to the children.

Likewise, in Docket No. 211752, we conclude that the trial court clearly erred in terminating respondent Green's parental rights under §§ 19b(3)(c)(i) and (g). With respect to § 19b(3)(c)(i), the record is devoid of any evidence regarding Green's anticipated release date from prison and what services, if any, may be required upon his release before he would be in a position to care for his children. The Pilkingtons contend that such evidence was presented at the adjudication hearing involving Green. Specifically, they rely on respondent's stipulation that he had been sentenced to a prison term of two to eight years in November 1995, and that he was not in a position to plan for the children at that time in light of his incarceration. While that evidence was sufficient to show that Green was unable to care for the children at the time of adjudication, it did not demonstrate that, at the time of the termination hearing, there was no reasonable likelihood that he would be able to care for the children within a reasonable time considering their ages, nor was other evidence presented to clearly and convincingly establish this required element. Similarly, with respect to § 19b(3)(g), given the absence of information showing how long Green would be incarcerated or what, if any, services he would require before he would be in a position to care for the children upon his release, the evidence failed to establish that there was no reasonable expectation that Green would be able to provide proper care and custody within a reasonable time considering the children's ages. Accordingly, we conclude that the trial court erred in terminating Green's parental rights to the children.[1]

Finally, on cross appeal the Pilkingtons contend that the trial court exceeded its authority and violated their due process rights when it excluded them as potential adoptive parents as part of the parental termination proceedings. Because we are reversing the trial court's decision to terminate the respondents' parental rights, the Pilkingtons' cross appeal is now moot. Nonetheless, if we were to decide the issue we would agree with their contention that the trial court violated their due process rights. The Due Process clause, US Const Am XIV, provides that an interested party must be given notice in a way that is reasonably calculated to apprise them of proceedings that may affect their interests, affording them an opportunity to respond. *Wortelboer v Benzie Co*, 212 Mich App 208, 218; 537 NW2d 603 (1995).

In the present case, the Pilkingtons did not file a petition to adopt the minor children under the adoption code, MCL 710.21 *et seq.*; MSA 27.3178(555.21) *et seq.*; rather, they filed a petition to terminate respondents' parental rights pursuant to the juvenile code, MCL 712A.1 *et seq.*; MSA 27.3178(598.1) *et seq*. The trial court's order provided that the Pilkingtons are not to be considered for adoption placement and also ordered them to cease all contact with Gray and the two children. We recognize that the trial court could order the Pilkingtons "to cease all contact" with Gray and the children. See MCL 712A.6; MSA 27.3178(598.6) which provides that the court can issue orders affecting adults as necessary for the physical, mental or moral well-being of the children in a parental termination case. However, we believe that the court exceeded its statutory authority when it excluded the Pilkingtons from being potential adoptive parents. See *In re Miller, supra* at 343 n 8, in which our Supreme Court noted that "in determining whether to terminate parental rights, the relative value of other placements for the child is not a valid consideration." While we agree with the trial court that there is some evidence of possible undue influence exerted on Gray by the Pilkingtons, the issue of their suitability to adopt the children was not before the court. Therefore, if we were to decide the issue, we would conclude that the court's order violated the Pilkingtons' right to due process when it excluded

them from being potential adoptive parents without granting them notice and an opportunity to be heard on that issue.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Roman S. Gribbs
/s/ Michael R. Smolenski
/s/ Hilda R. Gage

[1] We wish to make clear that the reversal of the termination of parental rights as to Green is based upon a *lack of evidence* in this record. Nothing in this opinion precludes termination hearings in the future if otherwise appropriate.