STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of SOYR SHOOK, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TIM PACKARD,

Respondent,

and

AMY SHOOK,

Respondent-Appellant.

UNPUBLISHED
November 19, 1999

No. 217537
Midland Circuit Court
Family Division
LC No. 98-000204 NA

Before: Hoekstra, P.J., and McDonald and Meter, JJ.

PER CURIAM.

Respondent Amy Shook ("respondent") appeals by right from an order terminating her parental rights to her minor child under MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g).[1] We affirm.

In evaluating a decision to terminate parental rights, this Court reviews the trial court's findings of fact, as well as its ultimate disposition, for clear error. *In re JS & SM*, 231 Mich App 92, 97-98; 585 NW2d 326 (1998). Clear error exists if this Court is left with a definite and firm conviction that a mistake has been made. *Id*. at 97.

Respondent argues that the trial court clearly erred in finding that clear and convincing evidence supported termination under MCL 712A.19b(3)(g); MSA 27.3198(598.19b)(3)(g), which provides for the termination of parental rights 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 age of the child.

We disagree that the trial court erred in finding that this basis for termination was supported by clear and convincing evidence. See *In re Hall-Smith*, 222 Mich App 470, 473-474; 564 NW2d 156 (1997). Evidence of the following was presented at the termination hearing: (1) respondent had been convicted in the past of fourth-degree child abuse; (2) respondent had a history of drug abuse; (3) according to one of respondent's own witnesses, respondent was "an addict" and "could slip again" into drug usage; (4) respondent smoked cigarettes during her pregnancy with the child; (5) approximately two weeks after the child's birth, respondent and her roommate smoked a marijuana cigarette in his presence; (6) while respondent smoked the marijuana cigarette, the two-week-old child was seated in a baby swing with no support for his head; (7) respondent and her roommate had purchased bags of marijuana in the past; (8) beginning when the child was approximately nine days old, respondent smoked marijuana each day for a week; (9) the child had developmental delays that could have been caused by drug abuse; (10) on the day the child was removed from respondent's care, a green substance – later determined to be the result of a yeast infection – was draining from his eye, and respondent had not sought treatment for the condition; (11) the child's circumcision had to be reopened shortly after he was removed from respondent's care; (12) the child had ongoing tremors that could have been caused by drug or alcohol abuse during pregnancy; (13) respondent had been through neglect proceedings involving other children, who had been removed from her care; (14) respondent's older child had a "very strong body odor" on the day the child in the instant case was removed from respondent's care; and (15) despite a recommendation that respondent receive counseling regarding her own physical and sexual abuse as a child, respondent believed that she did not need such counseling because she had already "dealt with it."

We do not have a definite and firm conviction that the trial court made a mistake in determining that the aforementioned information constituted clear and convincing evidence that respondent "fail[ed] to provide proper care . . . for the child and [that] there [was] no reasonable expectation that [respondent would] be able to provide proper care . . . within a reasonable time" under MCL 712A.19b(3)(g); MSA 27.3198(598.19b)(3)(g). See *JS and SM*, *supra* at 103, and *In re Conley*, 216 Mich App 41, 43-44; 549 NW2d 353 (1996) (parent's substance abuse relevant in termination cases); *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973), and *In re Kantola*, 139 Mich App 23, 28; 361 NW2d 20 (1984) (parent's treatment of other children relevant in termination cases); and *In re Hamlet*, 225 Mich App 505, 516; 571 NW2d 750 (1997), and *In re Dahms*, 187 Mich App 644, 647-648; 468 NW2d 315 (1991) (parent's need for counseling relevant in termination cases). Although a small amount of the aforementioned evidence was arguably contradicted by other evidence at the termination hearing, "[i]t is not the function of this Court to resolve conflicts in the evidence or to pass on the credibility of witnesses." *Hodgins v Times Herald Co*, 169 Mich App 245, 259; 425 NW2d 522 (1988). Moreover, although witnesses at the hearing testified about respondent's apparently sincere intent to become a responsible parent, we are to view the situation "without regard to [the parent's] intent." See MCL 712A.19b(3)(g); MSA 27.3198(598.19b)(3)(g) and *Hamlet*, *supra* at 515-516. Accordingly, we remain convinced that the trial court did not err in finding that a proper

basis for termination had been established, and because respondent failed to show that termination of her parental rights was clearly not in the child's best interests, the court properly ordered the rights terminated. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *Hall-Smith, supra* at 472-473.

Respondent additionally argues that the trial court should not have considered the best interests of the child in making the termination decision. We disagree. If it finds that a proper basis for termination exists, a trial court is *required* to consider the child's best interests under MCL 712A.19b(5); MSA 27.3178(598.19b)(5). Here, because the court found a proper basis for termination, it properly considered whether termination of respondent's parental rights was in the best interests of the child.

Finally, respondent argues that the trial court erroneously concluded that reasonable efforts had been made by petitioner to keep the family intact. Again, we disagree. The record reveals that respondent was offered numerous services in an effort to improve her abilities as a parent. Despite these services, a statutory basis for termination nonetheless existed, and, as discussed above, the trial court properly terminated respondent's parental rights.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Gary R. McDonald
/s/ Patrick M. Meter

[1] The trial court's order listed MCL 712A.19b(3)(m); MSA 27.3178(598.19b)(3)(m) as an alternative basis for terminating respondent's parental rights. This subsection provides for termination if "[t]he parent's rights to another child were voluntarily terminated following the initiation of proceedings under section 2(b) of this chapter or a similar law of another state." Although respondent does not argue that the trial court erred in relying on this subsection, we question whether respondent's consent to a guardianship of another child can be considered a "voluntar[y] terminat[ion]" of her parental rights to that child. We need not address this issue, however, since (1) respondent does not argue this issue in her appellate brief, and (2) as discussed in the body of the opinion, termination was warranted under MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g).