

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of APRYL MARIE KATHLEEN
NELSON, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MAYNARD ARDITO and WENDY SUE
NELSON,

Respondents-Appellants.

UNPUBLISHED

January 7, 2000

No. 214364; 214856

Oakland Circuit Court

Family Division

LC No. 95-059203 NA

Before: Gribbs, P.J., and Murphy and Griffin, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right an order terminating their parental rights to the minor child under MCL 712A.19b(3)(c)(i) and (g); MSA 27.3178(598.19b)(3)(c)(i) and (g). We affirm.

The proceedings in this case date back to early 1995, when the minor child was removed from respondent Nelson's home in response to abusive conduct on the part of respondent Ardito and the unsuitable condition of the home. Between then and the order of termination in September 1998, there were several proceedings, and respondents and the child availed themselves of many services. However, a petition for termination of respondents' parental rights was ultimately filed. As amended, the petition alleged that respondents had substantially failed to fulfill the conditions of their parent-agency agreements and requested termination of respondents' parental rights for the reasons that a condition leading to the original adjudication remained: respondents could not provide proper care and custody and the situation could not be rectified within a reasonable period of time considering the age of the child. See MCL 712A.19b(3)(c)(i) and (g); MSA 27.3178(598.19b)(3)(c)(i) and (g).

After a trial court finds, on clear and convincing evidence, that at least one statutory basis for termination exists, termination is mandatory unless the court finds that termination is clearly not in the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470, 472; 564 NW2d 156 (1997). The trial court's nondiscretionary decision regarding termination is reviewed in its entirety for clear error. *Id.* The burden of coming forward with evidence that termination is clearly not in the child's best interests is on the respondent. *In re Hamlet (After Remand)*, 225 Mich App 505, 522; 571 NW2d 750 (1997).

I
Docket No. 214364

Respondent Nelson raises several issues on appeal. She first contends that the trial court failed to issue adequate findings of fact and conclusions of law to support its decision to terminate respondent's parental rights. We disagree.

The procedural sufficiency of a trial court's findings presents a question of law which this Court reviews de novo. *People v Melotik*, 221 Mich App 190, 198; 561 NW2d 453 (1997).

Respondent argues that the lack of statutory citations in both the written opinion of the trial court and the order of termination constitutes a deficiency requiring remand. Respondent cites MCR 5.974(G)(3), which provides that "[a]n order terminating parental rights under the juvenile code may not be entered unless the court makes findings of fact, states its conclusions of law, and includes the statutory basis for the order."

However, the rule does not require that the statutory basis for the order be included within the written utterances of the court. That being the case, a court's statements on the record should suffice. In this instance, the trial court indicated in its statements from the bench that it found the statutory bases for termination met under MCL 712A.19b(3)(c)(ii) and (g); MSA 27.3178(598.19b)(3)(c)(ii) and (g), these paralleling the petition on which the court acted. The prosecutor then sought some clarification, observing that the court's statements indicated a finding under § 19b(3)(c)(i), and the court accepted the correction. Thus, the court's statements from the bench clearly indicated that it found that §§ 19b(3)(c)(i) and (g) were satisfied.

Respondent Nelson additionally argues that the trial court failed to find that reunification was not practical in a reasonable time, as required by § 19b(3)(c)(i) and (g). However, the court did state from the bench that "there is no reasonable likelihood that condition could be rectified within a reasonable time." Further, in citing the two relevant statutory provisions, the court accounted for the fact that respondent was found not likely to remedy the problems in a reasonable time considering the age of the child. This is of particular significance given the history of the case. Failure to provide proper housing had been a concern from the onset of this case, over two years before the court announced the conclusion that those statutory bases existed. Respondent's continuing difficulties in this regard obviously spoke to a continuing problem that seemed not to be on the brink of resolution.

We conclude that the trial court set forth its findings of fact supporting its decision to terminate respondent's parental rights with sufficient specificity. Respondent's suggestion that a trial court's recitation of findings in support of its conclusion that the relevant statutory provisions are satisfied must take the form of actually repeating all the particulars of those provisions is without merit.

II

We next find no merit in respondent Nelson's argument that the basis of her plea in lieu of trial did not provide the trial court with a sufficient factual basis to establish the statutory criteria for termination of her parental rights. Respondent admitted responsibility for three allegations: that she missed five of fourteen visits from June to September 1997, that her home lacked water, and that it had "some kind of septic problem, possibility of sewage." She maintains that these facts alone do not constitute clear and convincing evidence of a failure to provide adequate care and custody. We disagree.

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 McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993). This Court reviews the trial court's findings of fact for clear error. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made. *Id.* This Court defers to the special ability of the trial court to judge the credibility of witnesses. *Id.*

As previously noted, the trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(i) and (g); MSA 27.3178(598.19b)(3)(c)(i) and (g) which provide as follows:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds . . . the following:

(i) The 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.

* * *

(g) The 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.

The failure to fulfill the requirements imposed as conditions for reunification is an indication of continued neglect. See *In re Ovalle*, 140 Mich App 79, 83; 363 NW2d 731 (1985). In this case, the failure to provide a residence in acceptable condition was both a condition leading to the initial adjudication and a basis for the allegation that respondent failed to provide proper care and custody; thus, the analysis concerning the condition of Nelson's household is identical for both statutory provisions.

There is no dispute that respondent's parent-agency agreement called for her to attend all weekly visits with her child and that respondent failed to attend five of fourteen such visits between June and September 1997. Moreover, it is undisputed that at the time of the hearing, respondent's residence lacked hot water and had a septic problem in the basement that may have been raw sewage. Indeed, before respondent entered her plea, the trial court questioned her about the particulars in the petition and respondent confirmed, as alleged in the petition, that she had in fact missed the visitations, that her home did not have hot water, and that there was "some kind of septic problem, possibility of sewage." The trial court then sought verification from the prosecutor that those were the allegations concerning respondent, received it, and found that the statutory bases for termination existed.

We find no clear error in the trial court's conclusion. *Miller, supra*. Respondent's admitted failure to attend over one-third of her scheduled visits from June through September 1997, coupled with the two deficiencies in her household, of such magnitude as to call the fitness of the residence into question and raise serious health concerns, suggests that respondent would not be able to improve the situation within a reasonable time. Under the circumstances, we are not left with a definite and firm conviction that a mistake has been made. *Id.* The allegations for which respondent admitted responsibility in her plea provided a sufficient factual basis for the trial court's conclusion that clear and convincing evidence justified the termination of respondent's parental rights pursuant to the applicable statutory provisions.

III

Having reviewed respondent Nelson's remaining issues set forth on appeal, we find no merit to the challenges raised therein.

I

Docket No. 214856

Respondent Ardito first contends that the trial court's decision terminating his parental rights is not supported by clear and convincing evidence. We disagree.

Respondent waived trial and pleaded no contest to the charge that he failed to follow the requirements of the parent-agency agreement, through his failure to attend all weekly visits with the child, to obtain and maintain suitable housing, and to complete individual counseling or a substance-abuse assessment.

Failure to fulfill the requirements imposed as conditions for reunification is an indication of continued neglect. *Ovalle, supra* at 83. In this case, the record clearly supports the trial court's finding that respondent had failed to rectify a condition that led to the original adjudication and would not be able to do so within a reasonable time, MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i), and that he failed to demonstrate that he could provide proper care and custody, or that he could do so within a reasonable time, § 19b(3)(g).

Respondent nonetheless insists that in light of the fact that he is mildly retarded, the services provided to him were inadequate and a guardian ad litem should have been appointed for him. However, because this issue is unpreserved and does not raise the specter of a miscarriage of justice, see *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999), we decline to consider respondent's argument in this regard. In so doing, we note that the record indicates that Ardito, while mildly retarded, was not "legally incapacitated." See MCL 700.24(1); MSA 27.5024(1). Respondent had no difficulty speaking for himself before the court. Moreover, a review of the record indicates that respondent's interests were otherwise effectively protected and advanced; respondent had the benefit of appointed counsel throughout these proceedings, and, in apparent recognition of his limitations, his mother was allowed to participate to an unusual degree.

We therefore conclude that the trial court did not clearly err in concluding that respondent would not be able to provide the child with proper care and custody within a reasonable time considering the child's age.

II

Contrary to respondent Ardito's assertions, we next conclude that the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests. The trial court recognized respondent Ardito's progress and his love for the child. However, the court nonetheless stated that "to continue this matter further and not take permanent wardship over the youngster would keep this youngster's life in chaos." The trial court further found that continued temporary wardship "would be tragic for [the child] and not provide her with the stability all professionals and providers believe she needs," concluding that such continuing uncertainties "would present a substantial risk of harm to [the child's] present and future well-being."

Respondent's argument that he made sufficient efforts to comply with the court orders fails to rebut the court's findings. *In re Hamlet, supra*. As discussed above, respondent failed in large part to comply with his parent-agency agreement. According to the evidence, his pattern of visitation was spotty, he did not develop a strong bond with the child, and he was ill-equipped to deal with the child's special needs. For these reasons, the trial court did not clearly err in finding that termination of respondent Ardito's parental rights was in the child's best interests. *In re Hall-Smith, supra*.

Affirmed.

/s/ Roman S. Gribbs
/s/ William B. Murphy
/s/ Richard Allen Griffin