

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of ALLISON POMEROY, RYAN C.  
POMEROY, and KELSEY N. POMEROY, Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CONSTANCE M. FALING, a/k/a CONNIE  
FALING,

Respondent-Appellant,

and

BRIAN FALING,

Respondent.

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UNPUBLISHED

March 10, 2000

No. 217536

Jackson Circuit Court

Family Division

LC No. 97-019258-NA

Before: Holbrook, Jr., P.J., and Smolenski and Collins, JJ.

PER CURIAM.

Respondent-appellant Constance M. Faling (“appellant”) appeals as of right from an order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i) and (g); MSA 27.3178(598.19b)(3)(c)(i) and (g). We affirm in part and reverse in part.

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 (1991). 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).

The family court terminated appellant’s parental rights pursuant to MCL 712A.19b(3)(c)(i) and (g); MSA 27.3178(598.19b)(3)(c)(i) and (g), which provide in pertinent part:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

\* \* \*

(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 either of 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.

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(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.

Here, the condition leading to the initial adjudication was appellant's educational neglect of her children, which arose from the children's excessive absenteeism from school. Chronic absenteeism is a form of educational neglect. See, e.g., *In re Nash*, 165 Mich App 450, 456; 419 NW2d 1 (1987). Because educational neglect is one statutory ground granting the trial court jurisdiction over minors, MCL 712A.2(b)(1); MSA 27.3178(598.2b)(1), a parent's failure to rectify this condition after an initial dispositional order can result in termination of parental rights. See MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i).

The record shows that all four of appellant's children were removed from appellant's custody in December 1997 on the basis of educational neglect.<sup>1</sup> In July 1998, Allison Pomeroy was returned to appellant's custody. A foster care worker testified that only Allison was returned to appellant because "Allison was seen as the most difficult child for her to handle, and we wanted her to be able to focus attention on Allison." However, on September 16, 1998, because Allison had attended school only twice since the first of that month, the court ordered Allison back into foster care. Given that Allison's chronic absenteeism continued after she was returned to appellant's custody, we find that the family court did not clearly err in finding that MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i) was established by clear and convincing evidence with respect to Allison Pomeroy. Because the family court found clear and convincing evidence to support termination of appellant's parental rights as to Allison under MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i), we need not address appellant's contention that the court erred in terminating her rights to Allison pursuant to MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g). Further, appellant has failed to show that termination of her parental rights to Allison was clearly not in Allison's best interests. MCL 712A.19b(5); MSA 23.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997). Accordingly, we find that the family court did not err in terminating appellant's parental rights as to Allison Pomeroy.

We conclude, however, that the trial court erred in terminating appellant's parental rights as to Ryan Pomeroy and Kelsey Pomeroy. MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i) was not established by clear and convincing evidence with regard to the two youngest Pomeroy children. Although educational neglect is a ground for granting the circuit court jurisdiction over minors, MCL 712A.2(b)(1); MSA 27.3178(598.2b)(1), once Ryan and Kelsey were removed from appellant's custody, appellant never had the chance to demonstrate that she could get them to school. Appellant testified that the younger children had missed school because of head lice or illness. The court did not express doubts concerning appellant's testimony in this regard. The evidence shows that appellant maintained a clean and safe home and that she has completed parenting classes, attended visits with her children regularly, generally cooperated with case workers, and remained under medical care for her mental illness. To the extent that appellant was given the chance to demonstrate her ability to rectify the conditions that led to the initial adjudication, i.e., educational neglect, it was with Allison alone, the most difficult child. Because appellant had no opportunity after Ryan and Kelsey were removed from her custody to demonstrate an improved ability to get them to school, with or without Allison being in the home, it is premature to conclude that reform is not likely in this regard within a reasonable time. See *In re Newman*, 189 Mich App 61, 68-69; 472 NW2d 38 (1991).

Moreover, MCL 712A.19b(3)(c)(g); MSA 27.3178(598.19b)(3)(c)(g) was not established by clear and convincing evidence with regard to the two youngest children. Although the evidence shows that appellant suffers from a mental illness for which she takes medication, that she sometimes handles anger inappropriately, and that a clinical psychologist found her to be immature, oppositional, verbally aggressive, irresponsible, and manipulative, there were no allegations or evidence of abuse, and it is undisputed that appellant's home was clean and stocked with food. With regard to the evidence of educational neglect, as discussed above, because appellant was not afforded the opportunity, after Ryan and Kelsey were removed from her custody, to show that she could get them to school, it is premature to conclude that she would not be able to do so within a reasonable time.

The family court's order is affirmed with regard to the termination of appellant's parental rights to Allison Pomeroy, and it is reversed with regard to the termination of appellant's parental rights to Ryan Pomeroy and Kelsey Pomeroy.

/s/ Donald E. Holbrook, Jr.

/s/ Jeffrey G. Collins

<sup>1</sup> In accordance with petitioner's position, the trial court did not terminate parental rights as to appellant's eldest child, Beth Marie Pomeroy.