

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of RENEE CHAPMAN, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

WILLIAM BROWN and PEGGY BROWN,

Respondents-Appellants

UNPUBLISHED

April 28, 2000

No. 221095

Midland Circuit Court

Family Division

LC No. 97-010062-NA

Before: Owens, P.J., and Murphy and White, JJ.

PER CURIAM.

Respondents-Appellants (“respondents”) appeal as of right from the order terminating their parental rights to the minor child under MCL 712A.19b(3)(b)(i), (c)(i), (g) and (j); MSA 27.3178(598.19b)(3)(b)(i), (c)(i), (g) and (j). We affirm.

Respondent-mother (Peggy Brown) gave birth to daughter Jamie Chapman on November 2, 1981. Children’s Protective Services initially worked with respondent-mother beginning before the baby went home from the hospital. Prevention Services then worked with respondent-mother off and on for the next fifteen years until the filing of the initial petition in this case in 1997. Renee Chapman was born to respondent-mother and respondent-father (William Brown) on February 11, 1990. Jamie, age fifteen and Renee, age seven, were placed in foster care in May of 1997 following the filing of a petition by the Family Independence Agency alleging that fifteen-year-old Jamie was pregnant by an adult male who respondent-mother permitted to have sexual relations with Jamie, that Jamie had missed a significant amount of school, and that both Jamie and Renee have had chronic head lice problems. An amended petition was filed June 8, 1997, adding allegations about Jamie’s father, Patrick Lumbert. At the trial on September 12, 1997, Lumbert entered a plea to the portion of the petition concerning him and following a bench trial, the court found that the material allegations of the amended petition

regarding respondents had been proven by at least a preponderance of the evidence. As a result, the court found that the children came within the jurisdiction of the court.

The dispositional hearing was held immediately after the trial. The children were made temporary awards of the court and continued in out-of-home placement under the supervision of the FIA. Respondents were ordered to attend parenting classes and were granted supervised visitation with the children.

At a review hearing held December 9, 1997 the court found that respondents had complied with all of the case service plan requirements, that they had benefited somewhat from the services offered, that visitation had occurred, but that progress toward alleviating or mitigating the conditions that caused the children to be placed in foster care had not been made. The court continued the children in out-of-home placement and ordered counseling for Renee.

At the review hearing held March 10, 1998 it was reported to the court that Renee had disclosed that she had been sexually abused by the same man who had impregnated her sister Jamie. The court found that respondents had complied with all of the case service plan requirements, that they had benefited somewhat from the services offered, that visitation occurred, and that progress toward alleviating or mitigating the conditions which caused the children to remain in temporary foster care had been made. The court continued the children in out-of-home placement and ordered respondents to participate in counseling for individuals with developmental disabilities.

At the review hearing held June 9, 1998, the court did not make findings regarding respondents' compliance with the case service plan but did find that visitation had occurred and that progress toward alleviating or mitigating the conditions that caused the children to remain in temporary foster care had not been made. The court continued the children in out-of-home care, continued the order for counseling for the children, continued the order for parenting classes for respondents and continued the order for respondents to attend counseling through Services for People with Developmental Disabilities.

At the permanency planning hearing held September 11, 1998, the court found that respondents had complied with all of the case service plan requirements, that they had benefited from the services offered, that visitation had occurred, but that progress had not been made toward the children's return home. The court also found that returning the children home would cause a substantial risk of harm to the children's life, physical health, or mental well being, that the agency had demonstrated that initiating termination of parental rights was clearly not in the children's best interest, and that it was in the best interest of the children for them to continue in foster care on a long-term basis.

At the review hearing held March 16, 1999, the court found that respondents had complied with part of the case service plan, that they had not benefited from the services offered, that visitation

had occurred, and that progress toward alleviating or mitigating the conditions that caused the children to remain in temporary foster care had not been made. The court rescinded the order for respondents to attend parenting classes and ordered the FIA to file a petition for termination of parental rights within the following forty-two days.

On May 5, 1999 a petition was filed requesting termination of the rights of respondents to Renee.¹ The termination hearing was held May 18, 1999.

The petition alleged that respondents' parental rights should be terminated under the following provisions of MCL 712A.19b(3); MSA 27.3178(598.19b)(3):

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under either of the following circumstances:

* * *

(ii) A parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

(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 lead to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child.

(ii) Other conditions exist that cause the child to come within the jurisdiction of the court, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice, a hearing, and been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child.

* * *

(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 age of the child.

* * *

(j) There 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.

Five witnesses testified at the termination hearing: petitioner, respondent-mother, respondent-father, respondent-mother's mother, and respondent-mother's step-father. The Court admitted several exhibits into evidence and took judicial notice of the entire file, which included psychological evaluations of both respondents and Renee. Taking judicial notice of the file was appropriate since "evidence admitted at any one hearing is to be considered evidence in all subsequent hearings." *In the matter of LaFlure*, 48 Mich App 377, 391; 210 NW2d 482 (1973).

Patricia Walker, respondent-mother's mother, testified to the strong bond and loving relationship between respondents and Renee. She believed that respondents were no longer living together and that respondent-mother could adequately protect and care for Renee. She admitted that she had been unaware that Renee had been sexually involved with a man who had been living in the home and that after Renee told her mother, her mother did nothing. She testified that she would be willing to assist her daughter in the care of Renee, although she believed that respondent-mother did not need any help.

Leroy Bass, respondent-mother's step-father, testified that he was aware that respondent-mother was mentally retarded, but claimed that she had gotten smarter in the last few years.

Respondent-mother testified that she did not have a mental impairment of any kind and that while she had suffered from epilepsy since birth, it did not affect her ability to parent Renee. She stated that in the future she would not allow men in the house and in that way would protect Renee from further sexual abuse. She testified that she did not believe that a sexually molested child would be harder to raise because she had helped raise a niece who had been molested by her father. She stated that she would be sure to send Renee to school every day and would feed her. She claimed that Jamie's head lice were not her fault. She testified that the basic problem in the family was that Jamie did not want to listen to her and that it was Jamie's fault that the children were in foster care.

Respondent-father testified that he would protect Renee by making sure there were no "guys" in the home, that Renee would attend school, and that she would be fed properly. He testified that the fault for the case being started was Jamie's and not his or respondent-mother's. He stated that he was a strong believer in education, that he was ready to have Renee back or, alternatively, that respondent-mother was ready to have Renee back, but that since education was in Renee's best interest, he believed that she should stay in the foster home until the school year ended the following month and then be returned to one of her parents. He stated that respondent-mother had been a good mother in the past. He testified that he would keep Renee in counseling for sexually abused children because it would help her.

Petitioner, Mary Pat Bagrosky, testified at length concerning the family's history and her work with the family as Renee's foster care worker. She was qualified as a child welfare specialist expert by the court at the stipulation of the parties. She testified about the lack of interaction between respondents and Renee during visitations, and that during one visitation Renee told her she did not want to go home because she would not be safe there. She testified that one of her biggest concerns was the inability of either parent to set appropriate and safe boundaries for Renee. She related that Renee's use of baby talk had been eliminated except during visitations with her parents. She testified that, in her opinion, neither parent accepted responsibility for the men in their home and that she felt that respondent-mother did not believe Renee was sexually molested in the home and that respondent-father was not sure. She testified that respondent-mother believes she could parent Renee and that respondent-mother had received a great deal of assistance from Services for People with Developmental Disabilities. She testified that if respondent-mother were no longer working with Services for People with Developmental Disabilities, "she would not be able to protect herself, either financially or emotionally or physically. That she might not get to medical appointments that she needs." She testified that she did not think that respondent-mother could live alone. Perhaps most importantly concerning respondent-mother, petitioner testified that in her opinion, no additional amount of time would help her overcome her disability.

As to respondent-father, petitioner testified that it was not his IQ level that was of concern, but his immaturity and lack of good insight and decision-making with respect to Renee. She stated that she believed respondent-father would not allow men to live in his home again, nor let strangers come in the home, although in her opinion, he would allow family members to live with him.

Petitioner testified that Renee needed safety, boundaries, good solid parenting, discipline with consequences, reinforcement for good things, and permanency. She testified that she really liked respondents a lot and that it had been very hurtful for them during the last two years. While she testified that respondents had "complied beautifully" with the services offered to them and that they did things requested of them immediately upon request, and that she did not question the respondents' love for Renee, she believed that respondent-mother could not protect Renee from future sexual molestation and that if Renee were returned to the home of either parent, she would be harmed, possibly physically or sexually, and she could be subject to inadvertent abuse or neglect. She acknowledged the bond between the child and respondents but stated that that bond would not keep Renee safe. She also testified that neither parent understood just how difficult it could be to parent a child who has been sexually molested.

Petitioner detailed the plethora of services which respondents had received. Notwithstanding those services, she believed that respondents could not adequately parent and protect their daughter Renee. She therefore requested that respondents' parental rights be terminated.

The trial court issued an opinion and order making findings of fact and conclusions of law on May 29, 1999, in which it terminated the rights of respondents to their daughter Renee. In its opinion, the trial court acknowledged respondents' eager participation in every service Midland County had to offer. The court agreed with the West Midland Family Center that respondents "just didn't get the gist of what we were trying to accomplish." The court found that respondents "took no responsibility for the environment they chose to provide for their children: no responsibility for men living in their home who were willing to have sex with the children nor did [respondents] take any responsibility for guiding their daughter Jamie in the choices she made including the decision to have sex." The court agreed with the report concerning respondent-mother's psychological condition that concluded that respondent-mother "believes she has done nothing that caused the children harm, believing that the problems with head lice, problems with school attendance and the pregnancy have occurred, but have been out of her control." In addition, the psychological report stated that:

Peggy has limited abilities to form appropriate judgment and insights due to low cognitive functioning. Although she appears to be bonded to her children and to want what is best for them, she is not able to do so and may inadvertently harm them. In that Peggy's husband, Bill Brown, also is immature and has problems with insight and judgment, the Brown children are at risk for inadvertent abuse.

The court stated that "even Renee understands her parents cannot set boundaries." In conclusion, the court stated:

Without even realizing or acknowledging the problems, the parents will not learn or improve. The Court cannot return Renee to either parent or if they remained together [sic]. Renee needs to be protected and a chance to develop to her potential in a safe, stable, and nurturing environment. It is Renee's best interest to terminate the rights of Peggy and Bill Brown.^[2]

In its conclusions of law, the court found that the statutory grounds under MCL 12A.19b(3)(b)(i), (c)(i), (g) and (j); MSA 27.3178(598.19b)(3)(b)(i), (c)(i), (g) and (j) had been proven by clear and convincing evidence.

Respondents have strictly limited the issues on which they appeal. With regard to MCL 712A.19b(3)(b)(ii); MSA 27.3178(598.19b)(3)(b)(ii), respondents do not challenge the court's finding that Jaime and Renee suffered sexual abuse and that respondents had the opportunity to prevent the sexual abuse of at least Jaime, but failed to do so. Rather, they allege the trial court erred by finding clear and convincing evidence that there was a reasonable likelihood that Renee would suffer abuse in the foreseeable future if placed with either parent.

Similarly, with regard to MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i), respondents do not contest that they were respondents in a proceeding brought under the Juvenile Code, that 182 or more days had elapsed since the issuance of the initial dispositional order, and that

the court found, by clear and convincing evidence, that the conditions that led to the adjudication continued to exist. Rather, they allege that the court erred in finding that there was clear and convincing evidence that after two years of services, there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the age of Renee.³

With regard to MCL 721A.19b(3)(g); MSA 27.3178(598.19b)(3)(g), respondents do not contest the court's finding that without regard to intent, they failed to provide proper care or custody for Renee. Rather, they allege that the trial court erred in finding clear and convincing evidence that there was no reasonable expectation that they would be able to provide proper care and custody within a reasonable time considering the age of Renee.

Finally, with regard to MCL 712A.19b(3)(j); MSA 27.3178(598.19b)(3)(j), respondents allege that the court erred by finding clear and convincing evidence that there was a reasonable likelihood, based on the capacity of the parents, that Renee would be harmed if she were returned to the home of either parent.

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 the witnesses. *Id.* Once the statutory ground for termination of parental rights has been proven by clear and convincing evidence, the trial court must terminate parental rights unless it finds that termination of parental rights to the child is clearly not in the child's best interest. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470, 472; 564 NW2d 156 (1997). In this case, respondents do not allege that the trial court erred in determining that there was insufficient evidence that termination of respondents' parental rights to the child was clearly not in the child's best interest.⁴

We find that the trial court did not clearly err in finding clear and convincing evidence that there was a reasonable likelihood that Renee would suffer sexual abuse in the foreseeable future if placed with either parent, that there was no reasonable likelihood that the conditions that brought Renee to the court's attention would be rectified within a reasonable time considering her age, or that there was no reasonable expectation that the parents would be able to provide proper care and custody within a reasonable time considering her age. In addition, we find that the court did not clearly err in finding clear and convincing evidence that there was a reasonable likelihood, based on the capacity of the parents, that the child would not be protected if she were returned to the home of either parent.

In none of the four grounds for appeal do respondents contest the court's findings as to the past or present; they contest only the court's findings with respect to the future, and then not with respect to

the child's best interest or lack thereof. We find that the court had abundant evidence from which it could determine that Renee would be at risk of harm in the future if placed with either parent. Due to respondent-mother's serious intellectual limitations (I.Q. of 55), her emotional functioning at the level of an eight year old, and her lack of minimally adequate judgment and reasoning, and due to respondent-father's problems with immaturity, comprehension, inappropriate judgment and unmet dependency needs, neither parent has the capacity to obtain adequate parenting skills within a reasonable time considering the age of Renee. Based on over fifteen years of child neglect prevention services for the mother and seven years of such services for the father, the last two of which were very intensive, and the lack of meaningful progress therefrom, we find that the court was fully justified in finding that there was no chance of significant improvement in the foreseeable future.

In the case of *In re Gass*, 173 Mich App 444; 434 NW2d 427 (1988), this Court upheld the termination of a mother's parental rights in very similar circumstances, although under a prior version of the statute. This Court was troubled by the termination because the mother demonstrated a genuine motivation to keep her son, as well as good housekeeping and excellent personal hygiene skills. However, this Court found that her

pronounced intellectual deficits . . . severely affect her ability to make appropriate judgments. Her continuing inadequacies in this area render her unable to identify and respond to the changing needs of her child. Although highly motivated to keep Kevin, it is abundantly clear that respondent does not possess the parenting skills with which she can provide for the physical, emotional and safety needs of her child. [*Id.* at 450.]

In addition, this Court found that "[t]here is also a serious concern that respondent has an inability to appreciate her own limitations, thus making the potential for successful treatment in the near future improbable. Indeed, testimony was consistent that respondent can not and would not be able to adequately parent a child in the near future, if at all." *Id.*

The mother in *Gass* suffered from epilepsy and a personality disorder. A psychiatrist/neurologist testified that the mother's "organic personality problems and her epilepsy are the result of underlying damage to the brain." *Id.* at 449.

In the present case, the psychologist found respondent-mother to suffer from epilepsy, a personality disorder, and a mild cognitive delay (IQ of 55). She also found her to be bonded to her children and want them home. The psychologist stated that the respondent-mother is

an individual who is functioning in the mild range of cognitive delay. Her difficulties may further be complicated by epilepsy. Although Peggy reports she takes medication, she continues to have seizures. Seizure activity is known to cause brain damage and may increase cognitive delay. . . . Peggy has limited abilities to form appropriate judgment and insights due to low cognitive functioning. Although she appears to be bonded to her children and to want what is best for them, she is not able to do so and may inadvertently harm her children. Individuals such as Peggy generally function best as a

parent when surrounded by extended family members who will manage as necessary and make decisions which are appropriate for parenting.

Also, like the mother in *Gass*, respondent-mother does not have the ability to appreciate her own limitations.

In the case of *In re Dahms*, 187 Mich App 644; 468 NW2d 315 (1991), the mother had made progress in therapy, unlike in the present case. In addition, also unlike the present case in which the expert testified that she did not think any additional amount of time would help the respondent-mother overcome her disability, the expert in *Dahms* testified that “with therapy [the mother] would be fairly capable of rearing her children after two to three years.” *Id.* at 645.

While the expert witness in this case did not make a projection as to how long, if ever, it would be before the respondent-father could properly care for the child, the psychologist reported that:

He appears to be aware that his wife, Peggy, has difficulty managing the children and this may be due to low cognitive ability. However, he does not appear to attempt to manage and direct the children even though he is aware of Peggy’s limitations. This difficulty appears to be due to Bill’s unmet dependency needs where he can be expected to give up or give in rather than place himself in a position with his wife where he might experience rejection or abandonment.

As with the expert witness, the psychologist was unable to project when the respondent-father might achieve minimally adequate parenting skills.

In addition, as in the *Dahms* case, Renee has special needs as a result of the sexual abuse and neglect which she has suffered in her young life. Such a child would require more than minimally adequate parenting skills. In the *Dahms* case, this Court stated:

[W]e do not believe that the two to three years of therapy necessary for her to reach an acceptable level of parenting skill is reasonable considering the ages of the children and their unique needs resulting from the abuse and neglect. [*Id.* at 647.]

The prognosis in this case is even bleaker than in the *Dahms* case. Therefore, termination was clearly warranted.

We acknowledge the respondents’ efforts. They did everything asked of them. Unfortunately, while complying fully with the case plan was necessary, it was not sufficient. A parent must do more than merely participate in services designed to rectify the conditions which brought the child to the court’s attention; a parent must benefit from those services and make the changes necessary to “reach an acceptable level of parenting skill.” *Id.* at 647. The trial judge did not clearly err in finding that that did not happen in this case. While one may have sympathy for intellectually and emotionally limited parents, see *In re Hankston*, ___ Mich App ___; ___ NW2d ___ (Docket No. 214617, issued 2/29/2000), slip op at 5; *Gass*, *supra* at 451-452; and *Dahms*, *supra* at 647, the lack of capacity to

care for and protect a child is no bar to the termination of parent rights. *In re Sterling*, 162 Mich App 328, 337; 412 NW2d 284 (1987).

Affirmed.

/s/ Donald S. Owens

/s/ William B. Murphy

/s/ Helene N. White

¹ The FIA worker decided not to file a petition requesting termination of parental rights to Jamie Chapman because Jamie was almost eighteen years of age.

² In finding that termination of parental rights was in the child's best interest, the court went beyond the requirement of the statute. All that is required to terminate parental rights is that the court not find that that termination of parental rights is clearly not in the child's best interest. Finding that termination is in the child's best interest necessarily includes the lack of a finding that termination is clearly not in the child's best interest.

³ The court made no finding regarding MCL 712A.19b(3)(c)(ii); MSA 27.3178(598.19b) (3)(c)(ii).

⁴ In fact, the judge found to the contrary – that termination of respondents' parental rights to Renee was in her best interest.