

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MICHAEL SANDORA, CARL
ANTHONY SANDORA, and ROBERT J.
SANDORA, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ANDY SANDORA,

Respondent-Appellant.

UNPUBLISHED

May 19, 2000

No. 222730

Cass Circuit Court

Family Division

LC No. 97-000139

Before: Bandstra, C.J., and Jansen and Whitbeck, JJ.

PER CURIAM.

Respondent Andy Sandora appeals as of right from an order terminating his parental rights to his three sons. The petition alleged three grounds for termination: MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i), failure to correct conditions leading to adjudication; MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g), improper care or custody; MCL 712A.19b(3)(j); MSA 27.3178(598.19b)(3)(j), risk to children if returned to the home.¹ The trial court terminated Sandora's parental rights pursuant to the first two of these three statutory grounds. We affirm.

I. Basic Facts And Procedural History

The FIA most recently became involved with Sandora and his children after Joe Whitley, a young man living in Sandora's house who helped look after the children, was seen kissing one of the boys in an inappropriate manner. FIA had received a referral regarding Whitley and possible neglect by Sandora only seven months earlier, in November 1996, and a protective services worker had instructed Sandora to have Whitley leave the house, but Sandora had not complied. Officer James Kusa, a police officers investigating the case, learned that Whitley has characteristics often found in pedophiles. For instance, Whitley has a history of working in daycare centers, he tended to seek out young children as

companions, and played with young boys. However, no one was ever able to substantiate that Whitley sexually abused the boys.

Shortly before the FIA removed the children from Sandora's home, one of the boys attempted to kiss a classmate and referred both to masturbation and homosexual acts while on a school field trip. When Officer Kusa interviewed the boys, the boys reported that they had been sleeping in the same bed as Whitley, one of the boys said that they had seen videotapes of naked men and women, and another boy reported that Whitley said that he loved and wanted to adopt him. FIA case workers were also concerned for the boys because they were dirty, smelly, and appeared to be under emotional stress, and their home was dirty and dangerous. Sandora ultimately admitted the allegations in the petition recounting these facts.

The FIA first placed the boys in foster care with an unrelated individual for approximately two months. However, Katina Price, Sandora's adult daughter and the boys' older sister, and her husband learned about their predicament. In response, the Prices became fully licensed to provide foster care and took the children into their home in July 1997.

While the children were in foster care, Sandora was allowed to have progressively longer, unsupervised visitation with the children to the point where the boys could stay with him for a weekend. There was some evidence that Sandora did not make good decisions regarding the children during this time. For example, Sandora allowed one of his sons to sleep in his car one night when he had to work rather than calling his daughter to care for the child. On a different occasion, one of the boys was hit by a snowball in the eye during a visit with Sandora. Sandora did not notify Price about the injury nor did he take his son to a doctor, even though the injury was serious. Price also noted that the boys, when they returned from visitation, were hard to calm for more than a day, were not clean, and had not been consistently fed. Ultimately, the court revoked these visitation rights because of concern for the children's safety.

The trial testimony in this case was lengthy. Sandora's intellect and decision-making capabilities were of major concern to the therapist, social worker, foster care worker, court appointed special advocate for the children, Sandora's daughter, and two psychologists. Evidently, Sandora's IQ is somewhat below what is considered "normal" on standardized tests. These witnesses, including John Berez, Ph.D., the psychologist who testified on Sandora's behalf as an expert, almost uniformly concluded that Sandora's ability to make appropriate decisions for the boys would not improve over time even though he had received a number of social services. All but Dr. Berez, Sandora, and Sandora's former fiancée supported terminating his parental rights because, in their opinions, Sandora was never going to be able to improve his parenting skills to the extent that he would be able to care for them safely and independently. Dr. Berez, however, did not advocate returning the boys to Sandora. Instead, he favored long-term foster care.

When the trial court issued its ruling from the bench, it noted that Sandora clearly loved his boys but was not able to discern when they were at risk. Furthermore, the court was of the impression that Sandora was not completely truthful and he tended to minimize or rationalize what occurred with the boys, often blaming his situation on his former wife, the boys' mother.

With regard to MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i), failure to correct conditions leading to adjudication, the trial court found clear and convincing evidence that Sandora was not able to improve the boys' cleanliness, nor had he improved his decisions regarding caretakers for the boys. That Sandora had failed to make any progress on these conditions leading to the adjudication despite receiving considerable help and social services, led the court to believe that "this [situation] is not going to change, it continues to exist today, and therefore, I find there is no reasonable likelihood that those conditions will change, given the ages of the children." Concerning MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g), improper care or custody, the trial court stated:

The improper care and custody is even an easier finding, given that it's a no-fault provision, and I don't believe that Mr. Sandora is intentionally doing this, I think that he has poor judgment. And, given what's been outlined by both Drs. Schirado and Berecz, that it's not a matter of intent on his part, but that he cannot provide proper care or custody, and therefore, there's no reasonable expectation that he'll be able to do that within a reasonable time and, therefore, I find that 19b(3)(g) is the most appropriate [ground for termination], given the natures [sic] of Mr. Sandora's psychological makeup as outlined.

The trial court specifically declined to address whether the FIA had provided clear and convincing evidence under MCL 712A.19b(3)(j); MSA 27.3178(598.19b)(3)(j).

Turning its attention to the best interest factor, the trial court compared and contrasted the relevant trial testimony regarding the likely effect of long-term foster care on the children and their need for permanence. The court observed that Dr. Berecz was "philosophically against termination," and unaware that the Legislature had made a conscious decision to make termination mandatory if the statutory grounds were proven by clear and convincing evidence and the parent failed to sustain his or her burden of proving that termination was not in a child's best interest. Commenting that this was a "very difficult" issue, the trial court concluded, "Given that the burden is placed on Mr. Sandora, given the testimony of Dr. Schirado and Ms. Gillespie,^[2] I – I find that the Respondent did not meet their [sic] burden. It is clearly not in the best interest. Termination is appropriate."

II. Termination

A. Standard Of Review

Sandora first contends that the trial court erred in terminating his parental rights under the statutory grounds alleged in the petition. This Court reviews a trial court's findings of fact supporting termination of parental rights for clear error. MCR 2.613(C); *In re Hall-Smith*, 222 Mich App 470, 473, 564 NW2d 156 (1997).

B. Analysis

Sandora's chief argument on appeal is that the witnesses who supported termination at trial did not provide any significant examples of the boys suffering actual harm because of his conduct and that

some of the allegations, such as Whitley's supposed abuse, were never substantiated. To a lesser extent, Sandora contends that he is not responsible for everything that happened to the boys because he had to work, lacked a support network, and was a "victim" of discrimination by Cauffman, the foster care worker, who had "no understanding of a single, male parent raising young boys."

Sandora's argument does not focus on the statutory grounds for termination. As a result, he blurs the concept of harm to the children with whether there was clear and convincing evidence that he failed to remedy the conditions leading to the adjudication or if he failed to provide proper care and custody for the children. Neither subsection (c)(i) nor subsection (g) of MCL 712A.19b(3); MSA 27.3178(598.19b)(3) specifically require the FIA to prove that Sandora "harmed" his sons, or allowed them to be "harmed."

If harm were relevant under subsections (c)(i) and (g), the record in this case clearly shows that the children did suffer harm from Sandora's conduct. This harm ranged from the physical injuries one boy sustained to his eye, which Sandora left untreated, to the emotional harm three boys' generalized fearfulness and anxiety revealed. Although there is no evidence that Sandora physically abused his sons, and there was ample evidence that he loved them, his failure to supervise or to provide appropriate caregivers for them did negatively affect the way they relate to Sandora and other parental figures, which will likely become more severe as they grow older, according to one psychologist's testimony.

As easy as it would be to focus on this harm argument, we cannot be distracted from our primary task of determining whether there was clear and convincing evidence of at least one statutory ground to terminate Sandora's parental rights. See *In re SD*, 236 Mich App 240, 246; 599 NW2d 772 (1999). MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i) permits termination of parental rights if "[t]he 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" that "[t]he 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." Sandora does not dispute that he falls under the first part of this statutory grounds, and that the FIA waited long enough to petition the court to terminate his parental rights. Concerning the second part of this statutory grounds, there was a substantial amount of evidence that the conditions leading to adjudication, the children's poor hygiene and Sandora's inability to secure appropriate caregivers, had persisted and would persist beyond a reasonable time. Although Sandora had received services, such as counseling and parenting classes, when he had visitation with his boys he still allowed strangers to take care of them, it is unclear whether he promptly removed Whitley from his house, and he left one of his boys alone in the car overnight. Price also testified that when the children returned to her home from a visitation, they were not clean and sometimes had not been fed.

Furthermore, the evidence suggests that Sandora is unlikely to change his approach to parenting in these two areas within a reasonable time given the boys' ages. Even at trial he maintained that Whitley was not a threat to his children. Although Sandora had apparently learned to say that he was supposed to "check out" people before allowing his children to stay with them, there was no evidence that he had ever followed through on that principle. Sandora also continued to display a pattern of attempting to seek out virtually anyone else available to help care for the children. For instance, when

testifying at trial, he made a point of emphasizing that the trial court permitted him to have his former fiancée help him with the children, although that is not clear from the record. The experts basically agreed that, even though Sandora had received help, his intellect limited his ability to change his parenting techniques, making it unlikely that he could change within a *reasonable* amount of time. Compare *In re Newman*, 189 Mich App 61, 65-67; 472 NW2d 38 (1991) (intellectually “limited” mother had not received appropriate instruction in housekeeping; therefore, it was inappropriate for court to terminate parental rights because her house was dirty and it was not likely that she would be able to rectify that condition in a reasonable time).

MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g) permits a trial court to terminate an individual’s 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 child’s age.” Many of the pieces of evidence that supported termination under subsection (c)(i) also support termination under this statutory provision. The record suggests that the heart of Sandora’s problem as a parent is his inability to take responsibility for the daily duties necessary to raise children. While it is commendable that he is somewhat cognizant of his limitations, which may be why he seeks out help from others, he has not shown any significant improvement in his ability to determine who would provide appropriate care and custody for the boys. The social worker, who saw some minor improvements in Sandora, did not see a high likelihood that Sandora would be able to make good choices for the children in the future. Even Dr. Berezc, who testified on Sandora’s behalf, did not support returning the children to Sandora because Sandora’s judgment would never be very good.

The trial court, when making its lengthy ruling from the bench, commented on these and other factors that supported termination in this case. As a result, there is no support in the record for Sandora’s argument that the trial court clearly erred in finding clear and convincing evidence for termination under MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i) and MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g).

III. Best Interests

A. Standard Of Review

Sandora contends that the trial court abused its discretion by determining that it was in the best interests of his children to terminate his parental rights. However, whether to terminate parental rights is not a decision entrusted to the trial court’s discretion. *In re Hall-Smith, supra* at 72-73. Accordingly, a “decision regarding termination is reviewed in its entirety for clear error.” *In re Hamlet*, 225 Mich App 505, 515; 571 750 (1997).

B. Analysis

Sandora correctly points out that some of the witnesses at trial, such as counselor Gloria Gillespie, stated that they believed terminating Sandora’s parental rights would have a negative emotional effect on the boys. Sandora fails to acknowledge, however, that Gillespie concluded that

terminating his parental rights was in the boys' best interests, even though she was aware that it would cause them some emotional pain. Sandora also argues, again, that he is being discriminated against because of his intellect and points out that he had cared for the children for seven years before FIA became involved. Yet, Sandora does not recognize the boys' emotional and educational improvements during their time with the Prices or their need for a permanent home, all of which suggests that terminating Sandora's parental rights are in their best interests.

To the extent that Sandora argues that the trial court erred in relying on Gillespie, Dr. Schirado, and others' opinions expressed at trial, he still fails to make an argument with merit. The trial court, as the factfinder in the proceeding below, was entitled to listen to the evidence and weigh the credibility of the witnesses. See *In re Gass*, 173 Mich App 444, 452; 434 NW2d 427 (1988). That the court found these witnesses testifying for the FIA persuasive does not, in itself, warrant reversing the trial court's decision. Furthermore, the trial court took pains to make clear on the record that it heard all the evidence, including Sandora's evidence opposing termination, which it considered when making its ultimate decision that termination was in the children's best interests. The trial court even conceded that this was a difficult issue but, nevertheless, was able to show that Sandora failed to sustain his burden of rebutting the presumption in favor of termination. See MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hamlet*, *supra* at 423. Consequently, it is impossible to say that the trial court clearly erred when it determined that termination was in the children's best interests.

Affirmed.

/s/ Richard A. Bandstra

/s/ Kathleen Jansen

/s/ William C. Whitbeck

¹ The statutory citations are incorrect in the individual petitions (5/18/99) to terminate Sandora's parental rights to each of his sons. However, based on the allegations made in this case and the trial court's ruling from the bench, these appear to be the actual statutory grounds for termination in this case.

² They are, respectively, a psychologist and counselor who both determined that termination was in the boys' best interests.