STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of DEVON PAGE and ANDREW PAGE, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SHANE PAGE,

Respondent-Appellant.

UNPUBLISHED
May 26, 2000

No. 222644
Midland Circuit Court
Family Division
LC No. 98-000224-NA

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

PER CURIAM.

Respondent appeals as of right from the family court order terminating his 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).[1] We affirm.

I

Respondent first contends the evidence was insufficient to terminate his parental rights. In an appeal from an order terminating parental rights, the trial court's findings of fact are reviewed for clear error. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Vasquez*, 199 Mich App 44, 51; 501 NW2d 231 (1993). A finding of fact is clearly erroneous if, although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake has been made. *Id*. Consistent with this standard, deference must be accorded to the trial court's assessment of the credibility of the witnesses before it. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991). Once the trial court finds at least one statutory ground for termination by clear and convincing evidence, the court must terminate parental rights unless it finds there has been a showing by the respondent that doing so 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, 472-473; 564 NW2d 156 (1997).

Respondent contends the trial court erred in finding the conditions leading to the adjudication continued to exist at the time of the termination hearing and there was no reasonable likelihood that the conditions would be rectified in a reasonable time considering the ages of the children, MCL 712A.19(b)(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i), and in finding he failed to provide proper care or custody for the children and there was no reasonable expectation he would do so within a reasonable time considering the ages of the children, MCL 712A.19(b)(3)(g); MSA 27.3178(598.19b)(3)(g). Specifically, respondent maintains that although the initial petition alleged he was then incarcerated at Camp Lake Cassidy in Chelsea and had a criminal record consisting of several felonies, by the time of the termination hearing he was on parole, working in a highly paid job, and thus able to support his children and make payments on his unpaid court fines.

However, the record indicates that respondent's criminal record dates back to June of 1993. As of the date of the termination hearing, respondent remained on circuit court probation in at least three different counties and had pending in Midland County a driving with suspended license charge which constituted a potential parole violation. The evidence of record further indicates respondent held six different jobs since the case began. At the time of the termination hearing, he had not paid any support for the care of the minor children even though there was a court order for payment of a mere twenty dollars per month. Respondent admitted at the hearing that he likewise was not current on his fines and costs arising out of his convictions in the Saginaw and Midland circuit courts. The evidence also showed respondent had four residences during the period from initiation to termination. At the time of the trial, he was residing in a two-bedroom duplex with his girlfriend, who was expecting his child and had two children of her own. Despite representations that he would find a larger home in which to house his girlfriend, her children, and the minor children at issue if necessary, respondent had not done so at the time of the termination hearing.

Moreover, although respondent argues the evidence presented showed that he would be able to parent the minor children within a reasonable time considering the age of the children, the pertinent testimony warrants a contrary conclusion. Witnesses who observed respondent's visitations with the minor children testified that such meetings were typically chaotic and unproductive. The witnesses noted respondent was hesitant to show physical affection and became highly frustrated as a result of his inability to effectively discipline the children. During these visitations, respondent evidently ignored safety issues and persistently discussed forbidden topics such as the status of the case with the boys. The witnesses further testified respondent had a roughhouse relationship with one of the boys, to the point where it was necessary to intervene on several occasions. Respondent was frequently late for visitations and visibly anxious to leave. Although some improvement was noted in the quality of the visits, the witnesses agreed there was limited bonding between respondent and the boys; they rarely referred to him as "dad" and separated easily from him at the end of the visits. Based on their observations, the witnesses ultimately concluded these visitations were not positive for the children.

Respondent nonetheless maintains that his progress through counseling was ignored by the trial court. However, the record indicates that although a litany of support services were offered, it was only shortly before the termination hearing began that respondent began to participate in such services. Respondent attended three parenting classes and was a half hour late for one. Because of the low

number of classes he had attended, the parenting instructor was unable to assess whether respondent had internalized the material. Significantly, witnesses to respondent's visitations with the children opined that respondent had not incorporated, on any consistent basis, the lessons learned in the parenting class into the visitations.

In terminating respondent's parental rights, the trial court noted respondent had attended an orientation session at Alternatives to Violence, but the report with regard to his participation concluded that because of the limited number of sessions he had attended, assessment of his progress was not possible. A psychological evaluation indicated respondent had a personality disorder which involved passive, aggressive traits; he had many problems of anger, reactivity and impulsivity, and a distrust of others. Furthermore, he lacked insight regarding the effects of an unstable life on young children. The trial court further noted in its findings of fact that, based on the evidence adduced at the hearing, respondent blamed the mother of his children for his difficulties that landed him in jail, blamed his attorney for not doing a better job for him (the court appointed another attorney), blamed the foster parents for the boys' bad behavior, blamed petitioner's foster care worker for his lack of progress, and always had an excuse for not completing services that were offered to him.

In light of these proofs, and giving due deference to the special ability of the trial court to judge the credibility of the witnesses, *Newman*, *supra*, we find no clear error in the trial court's ultimate determination that

> [t]hese children have been out of home for seventeen months, first with relatives, then in a foster home that had difficulty managing them and now another foster home. We can no longer wait for Shane to get a home and to complete and benefit from services. It is time these children have a permanent, stable and caring home. They are young enough that with proper care they can develop into productive citizens. It is in their best interest that the parental rights be terminated and they be placed for adoption.

The termination of respondent's parental rights pursuant to subsections (3)(a)(i) and (g) was supported by clear and convincing evidence. Respondent has failed to rebut the mandatory presumption that termination was clearly in the best interests of the minor children. MCL 712A.19b(5); MSA 27.3178(598.19b)(5).

II

Defendant next argues that because petitioner filed the supplemental petition for termination of parental rights more than forty-two days after the permanency planning hearing, exceeding the time limits set forth in MCR 5.974(F)(1)(a), the trial court no longer had jurisdiction to conduct the termination hearing. This precise issue has been previously addressed by this Court in *In re Kirkwood*, 187 Mich App 542, 545-546; 468 NW2d 280 (1991), and found to be without merit. Since *Kirkwood* is dispositive of respondent's claim, we therefore conclude the trial court had jurisdiction to conduct the termination of parental rights proceeding.

Affirmed.

/s/ Jane E. Markey
/s/ Roman S. Gribbs
/s/ Richard Allen Griffin

[1] The mother of the minor children released her parental rights to the minor children on the first day of the termination trial and is not participating in this appeal.