

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CARLOS C. COWART, JAMAR K.
COWART, BRITTANY K. COWART, and
STACEY C. COWART, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

VANESSA WHEAT,

Respondent-Appellant,

and

DERRICK COWART,

Respondent.

UNPUBLISHED

June 20, 2000

No. 219126

Oakland Circuit Court

Family Division

LC No. 97-063530-NA

Before: Hoekstra, P.J., and Cavanagh and White, JJ.

PER CURIAM.

Respondent appeals as of right the termination of her parental rights to her minor children, Carlos (DOB 4/27/90), Jamar (DOB 4/21/91), Brittany (DOB 1/9/93), and Stacey Cowart (DOB 3/19/94), pursuant to MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g) [parent, without regard to intent, fails to provide proper care or custody for the child]. We affirm.

Respondent argues that the family court erred in terminating her parental rights. A two-prong test applies to a family court's decision to terminate parental rights. First, the court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b; MSA 27.3178(598.19b) has been met by clear and convincing evidence. *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). This Court reviews the findings of fact under the clearly erroneous standard. MCR

5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding of fact is clearly erroneous where the reviewing court is left with a definite and firm conviction that a mistake has been made. *Jackson, supra* at 25.

Once a statutory ground for termination has been met by clear and convincing evidence, the parent against whom termination proceedings have been brought has the burden of going forward with some evidence that termination is clearly not in the child's best interest. If no such showing is made and a statutory ground for termination has been established, the family court is without discretion; it must terminate parental rights. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Huisman*, 230 Mich App 372, 384; 584 NW2d 349 (1998).

Petitioner filed a petition to have the court take temporary custody of the children on September 24, 1997. The petition was based on allegations that respondent had neglected the children by failing to provide a proper home environment and adult supervision. At that time, the children were placed with petitioner. On October 6, 1997, the petition was amended to add additional allegations of neglect, including allegations that respondent lived in four different places during the previous month, that the children had mental and behavioral problems that respondent failed to address, and that the attendance and school performance of two of her children was terrible. On December 3, 1997, the family court issued an order taking temporary custody of the children.

On December 17, 1998, and February 4, 1999, the family court held a hearing on petitioner's request that respondent's parental rights be terminated. Barbara Lund, the case worker, testified that respondent signed a parent-agency agreement that required her to obtain stable employment and housing, attend regular therapy sessions, attend weekly visits with the children, take domestic violence classes, get a psychological examination and follow its recommendations, and work with her case worker. Lund stated that she reviewed the agreement with respondent monthly and on a weekly basis she spoke with respondent regarding these goals and the consequences of non-compliance.

Lund testified that she made referrals to respondent for domestic violence classes; however, respondent provided no documentation that she attended those classes. According to Lund, although respondent obtained employment, she had five jobs since October, 1997, with most lasting only two months. Furthermore, although Lund helped respondent create a budget to save money for housing and made several referrals regarding agencies to aid respondent's housing search, respondent continuously stated that she had moved and she failed to obtain suitable housing. Lund testified that respondent also failed to receive regular therapy and follow the recommendations of her psychological examination.

Lund stated that respondent attended the visitations with the children on a fairly regular basis. However, she testified that respondent did not interact with the children very much. Lund recommended that parental rights be terminated based on the length of time the children had been in foster care, respondent's lack of progress, and the lack of bonding between respondent and the children. Lund believed that respondent would be unable to care for the children in the foreseeable future.

Kay Deloney, Carlos's foster mother, testified that Carlos had several mental, physical, and psychological disorders, including psychotic disorder, tics, seizures, dysthymic disorder, and a learning disorder. She also testified that Carlos was taking several types of medication, attended therapy once a week, and saw a psychiatrist once a month. She stated that Carlos was in the second grade, although he should have been in the third grade, and was constantly in trouble at school; however, Carlos was calmer and doing better in school than when he first went to live with her. According to Deloney, Carlos was never excited about respondent's visits, he was only excited about the treats that respondent brought.

Margie Phinisee, Jamar's foster mother, testified that Jamar was emotionally impaired, attended second grade special education classes where he did first grade work, was on medication, and saw a therapist once a week. According to Phinisee, Jamar was totally out of control, he was disruptive, he could not concentrate, he did not comprehend a lot, and he talked to himself and acted out what he said. Phinisee further testified that Jamar had no reaction to respondent's visits, other than being excited about the treats she brought, and that he told her that he liked her home and did not want to return to respondent.

Emma Ivory, Brittany and Stacey's foster mother, testified that both children attended therapy once a week and acted excited about their visits with respondent, but spoke mainly of the treats they would receive. The children told Ivory that they were not going back to respondent and they wanted to live with her. Ivory further testified that Brittany was behind in school, but Stacey was doing well in her pre-kindergarten class, and they were well-behaved in school but fought with each other at home.

Carol Beauchamp, Jamar, Brittany, and Stacey's therapist, testified that she worked with the children because they were developmentally behind and had trouble with language skills. According to Beauchamp, Jamar preferred to speak with his back to other people, verbalized what he was thinking, had attention deficit disorder, and required her to keep her distance from him. She testified that he would need therapy to help him with basic life skills in the future. Beauchamp stated that Brittany was mentally impaired and had a thought disorder; Stacey had impulse control disorder, a sleeping disorder, and a thought disorder; and they would need therapy to help them through changes in their lives, but it would not cure their developmental problems.

Beauchamp witnessed some of respondent's visits with the children and noted that she was not in touch with the children and they did not seem to have a strong bond with her. She recommended that parental rights be terminated because the children needed structure in their daily routines, continuity, and close monitoring. According to Beauchamp, they had more needs than the average child. Beauchamp did not think that the circumstances would change in the future because respondent already had several months to make improvements and had not shown any progress.

Respondent testified that she had been working thirty to forty hours per week at Wal-Mart since September 13, 1998, and she was looking either for a higher paying job or a second job. She stated that she went to two therapists, making approximately three to four visits to each, and was attending counseling with her pastor. Respondent further testified that she continuously looked for appropriate housing; however, it was difficult because there were long waiting lists for most apartments,

few apartments had three or more bedrooms, and many of the houses were in neighborhoods in which she did not wish to live. According to respondent, she paid an \$850 deposit on a five-bedroom home in November, 1998, and she owed the landlord, who had agreed to hold the house for respondent, another \$500 and then she would be able to move in. Respondent testified that she used her own money to pay the deposit and she had not had the rest of the deposit because she had medical and transportation expenses to pay. According to respondent, the rent for the house would be between \$500 and \$750 per month. Respondent further testified that she loved her children and that she thought she was able to care for them.

The case worker testified that she first learned that respondent found potential housing on December 17, 1998, while she was testifying at the first half of the termination hearing and respondent's attorney showed her a letter regarding the deposit. According to the case worker, respondent then showed her the letter, which was dated during November, 1998, on February 3, 1999. The case worker testified that the letter was on OSHA letterhead and stated that the deposit had been paid to the landlord on behalf of respondent and if respondent was not living in the house in the following sixty days the deposit would revert back to the agency. The case worker believed that the sixty days had already expired. Furthermore, even if respondent had obtained housing, it would not have changed the case worker's recommendation that parental rights be terminated because there would still be no showing of consistency by respondent.¹

The family court found that until recently, respondent had failed to keep a stable job and in the past 1½ years she secured no legitimate housing options that would enable the court to believe the children would have a stable home for a significant period of time. Due to the children's special needs and the fact that they did not deal well with change, it was imperative that the children have a stable living environment, which respondent was not able to provide. Therefore, the court found that respondent failed to provide adequate care and custody for the children and it was in their best interests that respondent's parental rights be terminated.

On these facts, we conclude that the family court did not clearly err in finding that the statutory grounds for terminating respondent's parental rights had been established. See MCR 5.974(I); *Miller, supra*. Because respondent did not present any evidence that termination of her parental rights would not be in the children's best interest, the court properly terminated her parental rights. See MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *Huisman, supra*; see also *In re Hamlet (After Remand)*, 225 Mich App 505, 512-513, 523; 571 NW2d 750 (1997).

Affirmed.

¹ On February 22, 1998, the date set for the court to decide the matter and after the parties had closed the proofs and given closing arguments, respondent attempted to submit a lease for the house. However, the court would not admit the lease because the proofs were closed. Respondent does not challenge the court's decision on appeal.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Helene N. White