

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

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In the Matter of CR and RR, Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DANIELLE REAVES,

Respondent-Appellant

and

ROY TAYLOR

Respondent.

UNPUBLISHED

August 8, 2000

No. 221007

Wayne Circuit Court

Family Division

LC No. 96-338606

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Before: O'Connell, P.J., and Kelly and Whitbeck, JJ.

PER CURIAM.

Respondent Danielle Reaves appeals by right.<sup>1</sup> She challenges Wayne Circuit Judge Frances Pitts' March 19, 1999 order terminating her parental rights to her fraternal twins, CR (a girl) and RR (a

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<sup>1</sup> The trial court also terminated Roy Taylor's parental rights to CR and RR. However, he is serving a life sentence without the possibility of parole for murder and does not appeal. Additionally, Reaves gave birth to two other children, TT and DT, whose father is Terrell Truitt, while the instant matter was in the trial court. They were originally placed in foster care, but the trial court did not terminate Reaves' and Truitt's parental rights to TT and DT. Therefore, the issues on appeal relate solely to Reaves' parental rights to her twins.

boy), pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (c)(ii), (g), and (j); MSA 27.3178(598.19b)(3)(a)(ii), (c)(i), (c)(ii), (g), and (j). We affirm.

## I. Facts And Procedural History

When eighteen-year-old Reaves gave birth to the twins in March 1996, she was participating in an FIA independent living program that provided her with some income, but was unemployed and did not have her own home. The FIA filed the petition for temporary custody in this case before the twins, who were born prematurely but healthy, left the hospital. The petition alleged Reaves' history of an attempted suicide and failure to complete therapy, and her status as a ward of the court. The petition recommended that the trial court take temporary custody of the twins "due to the dependency of the minor babies." A hearing referee authorized the petition at the preliminary hearing on April 2, 1996. As a result, the twins went straight from the hospital to foster care.

When the first trial in this case commenced on June 6, 1996, Reaves briefly conceded to the facts alleged in the temporary custody petition. Reaves also pointed out that she had started attending weekly therapy sessions. The parenting agreement Reaves entered into following the bench trial required her to find suitable housing, attend parenting classes, participate in counseling, cooperate with the FIA, attend all court hearings, and have weekly, supervised visitation as well as unsupervised visitation at her case worker's discretion.

Between trial in June 1996 and October 1998, when the FIA filed the final petition for termination in this case, the parties met for no less than ten hearings. Although some of these hearings were very brief, the testimony and reports introduced at them reveal that Reaves substantially complied with the parenting agreement and court orders during some periods and at other times she failed to comply with them at all. There were long stretches of time when Reaves went to ninety percent of the scheduled visits with the twins and had a home. However, there were other periods when she lost contact with the twins and was living with friends or in shelters. Moreover, she never completed therapy or counseling, obtained a job, or enrolled in a GED program. Reaves went from one extreme to the other to the extent that the FIA filed a petition to terminate her parental rights in fall 1997, withdrew the petition in March 1998 because she was doing so well, but filed another petition for termination in October 1998.

The bench trial, which Reeves did not attend, on the final petition to terminate her parental rights to all four of her children took place on March 17, 1999. Patricia Walker, the foster care worker who had been assigned to Reaves as soon as the twins were born, had not seen Reaves in person since September 1998. She had not spoken with Reaves since November 1998 because Reaves did not have a telephone. Walker passed messages to Reaves through her family and Reaves left messages for Walker. She did manage to speak with Reaves to get permission for a medical procedure for one child. However, Walker did not discuss any other issues with Reaves at that time because she was focused on obtaining Reaves' consent and she was speaking on a borrowed telephone.

Walker also said that she attempted to visit Reaves at an address on Chelsea Street, but learned that she had moved to her mother's home on Parker Street. Walker did not attempt to visit Reaves at

her mother's home on Parker Street because Reaves had been removed from that home as a child and Walker presumed that that home was unsuitable because one of Reaves' siblings was still a court ward. Walker did not write letters to Reaves at the house on Parker Street, although she did leave telephone messages for Reaves there, because Reaves was scheduled to meet with her weekly and they could have discussed visitation and other issues at those meetings; Reaves did not keep the meetings. Walker did not attempt to help Reaves obtain housing once she moved to Parker Street because FIA's housing referrals required a legal source of income to pay rent and Reaves did not have a job. Walker did suggest that she might have gone to the house on Parker Street if Reaves had been there when she called, but thought the trip would be useless because Reaves never was there when she called.

When asked about Reaves' compliance with the parenting agreement and court orders, Walker noted that Reaves had tested positive for cannabinoids, she had not informed FIA about her address changes, and she had not found a job. Walker explained that Reaves had not fully complied with individual or domestic violence counseling despite referrals for those services and that her therapist had not been able to contact her once Reaves moved to Parker Street; Reaves had never completed any of her therapy or counseling programs, even though some of her counselors had been visiting her at her house. Walker stated that the last time Reaves visited the twins was in September 1998 and that Reaves, who had previously been consistent about visiting her children, did not tell her why she broke off the contact. Walker never told Reaves that she could not visit the twins and Reaves had not even asked about them when she spoke with Walker on the telephone. Reaves' six or eight drug screens, which she performed without prompting, from December 1998 until the March 1999 trial were negative.

Walker noted that RR had special needs because he had asthma and was having seizures and recommended terminating Reaves' parental rights. She believed that Reaves had had sufficient time to comply with the parenting agreement and had failed to do so. Reaves had shown improvement for a short time around March 1998 and even had custody of her daughter TT at that time, but the situation began "falling apart" in April 1998. Walker eventually removed TT from Reaves' custody, not because of abuse or neglect, but because Reaves was not complying with the parenting agreement and treatment plan. Walker believed that termination was in the twins' best interest "so they can be adopted and live a normal life."

Rosetta Jackson, Roy Taylor's cousin and the twins' foster mother, testified that Reaves had never visited the twins at her home in the year they had been living there. She did not make a recommendation concerning termination. Terrell Truitt explained that Reaves' failure to visit the twins was due to her difficult pregnancy, a fire had driven them from their home, and Reaves stated "that she couldn't have no more visits." He had never seen Reaves with the twins, but he had observed Reaves with his children and thought that Reaves was a good mother. Truitt believed that Reaves had quit using marijuana after October 1998 and that she was concerned about their housing situation. He also stated that they had never been informed that they were eligible for housing assistance because he was employed. Even though he had not spoken with Reaves since January 1999, Truitt opposed terminating Reaves' parental rights.

The trial court made only a few factual findings. Those findings include: (1) a brief overview of the procedural history in this case; (2) the twins' lifelong status as court wards; (3) Walker's last telephone contact with Reaves was in November 1998; (4) that Reaves had not visited the twins in 1999; (5) that the twins' father is incarcerated; (6) that TT was dismissed from the petition because Truitt was planning for her needs; (7) that each of the statutory grounds alleged in the petition were proven by clear and convincing evidence; and (8) that termination was in the twins' best interests.<sup>2</sup> The trial court did not terminate her parental rights to TT and DT.

## II. Arguments On Appeal And Standard Of Review

Reaves essentially claims that FIA had a duty to assist her and it failed in its duty. This argument fits most naturally into a challenge to the evidence supporting termination under MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i) because it relies on evidence that the parent has not improved his or her ability to be a good parent and will not be able to improve within a reasonable time. Reaves' argument concerning FIA's assistance is, therefore, logically relevant to the parent's capacity to improve. We review the record for clear error.<sup>3</sup>

## III. Failure to Correct Conditions

MCL 712A.19b(3)(c); MSA 27.3178(598.19b)(3)(c) provides:

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.

No one disputes that Reaves has been a respondent in a proceeding under this chapter for more than 182 days. By the time of trial in March 1999, Reaves had been a respondent for almost three years. The parties do contest, to a limited extent, what conditions originally led to adjudication in this case. Reaves emphasizes her homelessness as the reason for adjudication while the FIA contends that homelessness was only one part of a larger picture, in which Reaves had no job, no training, and emotional problems.

The original petition for temporary custody does not give a great deal of detail regarding why the FIA commenced the proceedings. Although it alleged Reaves' history with the courts as well as her suicide attempt, the only part of the petition that specifically asserted why it had been filed stated that it

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<sup>2</sup> The trial court did not make individualized findings for each statutory ground alleged in the petition, but Reaves does not specifically challenge the accuracy or absence of the trial court's individual findings.

<sup>3</sup> *In re Hamlet*, 225 Mich App 505, 515; 571 750 (1997).

was “due to the dependency of the minor babies.” In fairness to Reaves, it seems apparent that *all* babies are dependent when born and, if the Court were to look no further, it would be virtually impossible for Reaves to have taken steps to correct what is a natural condition. The petition for permanent custody appears to support Reaves’ argument that the only reason the FIA instituted these proceedings was because she lacked housing.

However, looking at Reaves’ problems as identified in the transcripts as well as the parenting agreement in this case, the FIA’s broader view of the conditions originally leading to adjudication is accurate. The facts of this case as set out above show that, despite a temporary improvement in March 1998, Reaves’ circumstances had not improved by the time of trial in March 1999, and were not likely to improve given her history. Moreover, by failing to attend the trial in March 1999, Reaves did not create a record indicating that she was willing and able to take additional steps necessary to find stable housing and a job, and undergo therapy and drug testing on a regular basis. Consequently, there is no basis from which to conclude that she would be able to cure these problems within reasonable time given the twins’ age.

As Reaves contends, the FIA does have an obligation to make reasonable efforts to reunite a family if doing so would be safe for the children. See MCL 712A.18f(4); MSA 27.3178(598.18f)(4); MCL 712A.19a(4); MSA 27.3178(598.19a)(4).<sup>4</sup> As this Court said in *In re Springer*,<sup>5</sup> “It is the policy of this state to keep children with their natural parents whenever possible.” Providing reasonable services attempts to carryout this policy. *Id.* at 474-475.

The record in this case, however, contradicts Reaves’ argument that the FIA, and specifically Walker, failed to provide the investigation, services, and referrals necessary to help Reaves reunite with her twins by correcting the original conditions leading to adjudication. Walker did refer Reaves to counseling and therapy, which Reaves did not consistently attend, much less complete. Walker also made appointments with Reaves and attempted to follow-up with her over the telephone, but Reaves either was not available or failed to give Walker the information necessary for them to make contact. There is no evidence that Walker was responsible for Reaves’ failure to attend GED classes, therapy, counseling, or scheduled visits with the twins, all of which she arranged for Reaves.

Reaves’ unstable housing situation was quite troubling, and not necessarily all her fault. At the beginning of this case Reaves did show remarkable motivation in finding an apartment without FIA help. Walker also helped Reaves participate in a program that provided a housing allowance soon after the twins were born and so long as Reaves still met the age eligibility requirement. FIA case workers also visited various homes she lived in to determine whether they were suitable for her children. These appear to be reasonable efforts in light of the evidence in the record suggesting that the FIA simply did not have money to pay for housing on an ongoing basis, which is why the FIA could only pay for first

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<sup>4</sup> See also *In re Terry*, \_\_ Mich App \_\_; \_\_ NW2d \_\_ (2000), slip op at 6; *Tallman v Milton*, 192 Mich App 606, 614-615; 482 187 (1992).

<sup>5</sup> 172 Mich App 466, 474; 432 NW2d 342 (1988).

and last month's rent for individuals who had a legal income. There is no evidence on the record that Reaves ever had a legal income at any time during the proceedings below. Although she argues on appeal that Truitt had a job and would have qualified for what little housing assistance was available, the record does not clearly indicate that they were still together after their home was fire bombed in October 1998. Even if they were still together after the fire, Truitt is neither the twin's father nor Reaves' husband. Aside from the absence of evidence in the record that he would have been willing to share his new home with Reaves and the twins, we know of no law that would have required him to do so. Thus any aid to Truitt would not necessarily have helped Reaves correct the conditions leading to adjudication.

#### IV. Conclusion

We must note that the trial court clearly erred when it found clear and convincing evidence of *every* ground alleged in the termination petition without any relevant factual findings and contradictory evidence in the record. Termination under MCL 712A.19b(3)(a)(ii); MSA 27.3178(598.19b)(3)(a)(ii) was improper because the trial court only found that Reaves had abandoned the twins for seventy-six, rather than ninety-one, days. Termination under MCL 712A.19b(3)(c)(ii); MSA 27.3178(598.19b)(3)(c)(ii) was not proper because Reaves had improved the conditions that arose after the original petition was filed. We question how the trial court could find clear and convincing evidence to terminate her parental rights to the twins under MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g) when the twins went into foster care immediately following their births. Moreover, contrary to the trial court's conclusion, there was no evidence that the twins would be harmed if returned to Reaves, which is necessary for termination under MCL 712A.19b(3)(j); MSA 27.3178(598.19b)(3)(j). Although we do not condone these erroneous conclusions in any way, there was clear and convincing evidence of at least one statutory ground for termination, which is all that is necessary for us to affirm the trial court's order. *In re Sours*, 459 Mich 624, 640-641; 593 NW2d 520 (1999).

Affirmed.

/s/ Peter D. O'Connell  
/s/ William C. Whitbeck

I concur in result only.

/s/ Michael J. Kelly