STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of BRANDY SMITH-WILLIAMS,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ROYNELL R. WILLIAMS,

Respondent-Appellant,

and

TONETTA D. SMITH,

Respondent.

UNPUBLISHED
August 18, 2000

No. 214464
Wayne Circuit Court
Family Division
LC No. 94-315264

Before: White, P.J., and Doctoroff and O'Connell, JJ.

MEMORANDUM.

Respondent-appellant appeals by delayed leave granted from a family court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i) and (g); MSA 27.3178(598.19b)(3)(c)(i) and (g).[1] We affirm.

[1] In a prior appeal, this Court determined that it was "unclear whether respondent Williams' parental rights to Brandy were properly terminated under subsection (3)(g) based upon the existing record." Therefore, without retaining jurisdiction, this Court remanded for "additional testimony regarding how frequently Brandy was improperly cared for during home visits with respondent." *In re Williams*, unpublished opinion per curiam, released March 20, 1998 (Docket No. 201549). In an order dated June 22, 1998, this Court amended its prior opinion with instructions on remand "to determine if the lower court considered terminating respondent-appellant's parental rights pursuant to MCL
(continued…)

The family court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974; *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Contrary to respondent-appellant's position that termination under § (3)(c)(i) was improper because the condition that led to the adjudication was anticipatory neglect and it was impossible to prove that anticipatory neglect no longer existed, the condition that led to the adjudication was an abusive home environment, which resulted in severe and permanent injuries to the minor's half-brother. Respondent-appellant could have proven that the abusive home environment no longer existed by showing that he addressed the issues leading to the abusive environment through counseling. However, the evidence showed that respondent-appellant failed to attend counseling and never addressed the issues that led to the abusive environment. We therefore find no clear error in the trial court's finding that termination was appropriate under § (3)(c)(i).

Similarly, we find no clear error in the trial court's finding that termination was proper under § (3)(g), which provides for termination of parental rights where the parent 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 or custody within a reasonable time. There was testimony that the majority of the time the child returned from visitation she had a wet diaper, had dried feces on her, and she was hungry and thirsty. Further testimony indicated that the child was not fed nutritious food while in respondent-appellant's home, that she was dressed in shoes and clothing that were much too small for her, that respondent-appellant and the child's mother did not have an adequate car seat, and that the child once returned from visitation with a severe diaper rash that required prescription medication. On one occasion, the foster mother was called to pick up the child early from visitation because respondent-appellant and the child's mother were arguing and were each tugging at the child during the argument. In addition, the evidence indicated that respondent-appellant failed to attend counseling to address the issues affecting his ability to properly care for the child.

Although respondent-appellant argues that the testimony of the foster care mother was biased due to the foster care mother's desire to adopt the child, we defer to the trial court's superior ability to judge the credibility of the witnesses. MCR 2.613(C). Accordingly, we find no clear err or in the trial court's conclusion that termination was proper under § (3)(g).

Moreover, we find no clear error in the trial court's finding that termination was in the best interests of the child. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Trejo*, __ Mich

(…continued)

712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i).

__; __ NW2d __ (2000).[2] Thus, the family court did not err in terminating respondent-appellant's rights to the child. *Id.*

Affirmed.

/s/ Helene N. White
/s/ Martin M. Doctoroff
/s/ Peter D. O'Connell

[2] We note that in finding that termination of respondent-appellant's parental rights was in the child's best interests, the trial court went beyond the best interest inquiry required by MCL 712A.19b(5); MSA 27.3178(598.19b)(5), which does not require that the court affirmatively find that termination is in the child's best interest, but allows the court to deny termination despite sufficient proof of a statutory ground for termination upon a finding that termination is clearly not in the child's best interest. *Trejo, supra*, n 19.