

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CALVIN MICHAEL PHILLIPS,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TINA MARIE VOELKER,

Respondent-Appellant,

and

RODNEY WAYNE PHILLIPS,

Respondent.

UNPUBLISHED

August 29, 2000

No. 218850

Genesee Circuit Court

Family Division

LC No. 95-103642-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 child, Calvin Michael Phillips (DOB 2/1/91), pursuant to MCL 712A.19b(3)(b)(ii); MSA 27.3178(598.19b)(3)(b)(ii) [parent who had the opportunity to prevent physical injury to child failed to do so] and (c)(i) [conditions that led to adjudication continue to exist and are not likely to be rectified within a reasonable time]. 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 court must terminate parental rights unless “there exists clear evidence, on the whole record, that termination is not in the child’s best interest.” *In re Trejo*, ___ Mich ___, ___; 612 NW2d 407 (Docket No. 112528, issued 7/5/00), slip op p 14; see also MCL 712A.19b(5); MSA 27.3178(598.19b)(5). The trial court’s ultimate decision regarding termination is reviewed in its entirety for clear error. *In re Hall-Smith*, 222 Mich App 470, 472; 564 NW2d 156 (1997).

After carefully reviewing the record and respondent’s brief, we conclude that the family court did not clearly err in terminating respondent’s parental rights in this case.

The child was extremely frightened of respondent’s ex-husband, Timothy Voelker, who physically and mentally abused the child. It was respondent’s failure to protect her son from Voelker’s abuse that led to petitioner’s involvement. The evidence demonstrates that respondent was dependent on Voelker, notwithstanding her statements to the contrary. Respondent failed to adequately address her codependent personality, despite repeatedly being instructed to do so in order to learn to protect the child from Voelker. Respondent’s testimony that she does not have a relationship with her ex-husband is belied by the evidence, which establishes that their relationship is beyond that which is necessary to facilitate the required visitation between Voelker and his daughters. After weekend visitation was permitted and attempts were made to address the child’s fear of Voelker through family counseling, the child’s fearful behavior drastically increased. The evidence establishes that if the child was returned to respondent there was a reasonable likelihood of injury, which was the reason for the initiation of these proceedings. Accordingly, the family court’s findings on the statutory factors were not clearly erroneous.

Furthermore, the family court’s finding regarding the child’s best interests was not clearly erroneous. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *Trejo, supra*. Respondent established a mutual love between herself and the child. However, in light of respondent’s relationship with Voelker and the child’s extreme fear of him, we cannot hold that the court clearly erred in holding that termination was in the child’s best interests. Therefore, the family court did not clearly err in terminating respondent’s parental rights.

Finally, respondent argues that the court, by terminating her parental rights at a review hearing, violated her right to due process. Because respondent has failed to provide authority supporting her argument, this issue is not preserved for appellate review. *In re Hamlet (After Remand)*, 225 Mich App 505, 521; 571 NW2d 750 (1997). Furthermore, respondent’s complaints that she had neither notice that petitioner sought termination nor an opportunity to present witnesses are not supported by the record.

Affirmed.

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