STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JAMES MICHAEL ELLIOTT, KEYALA LARAE ELLIOTT and KEITH DAVID HARPER, II, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MICHELLE ELLIOTT,

Respondent-Appellant,

and

KEITH HARPER,

Respondent.

UNPUBLISHED
September 22, 2000

No. 217521
Wayne Circuit Court
Family Division
LC No. 97-352524

Before: Cavanagh, P.J., and Saad and Meter, JJ.

PER CURIAM.

Respondent appeals as of right the termination of her parental rights to her minor children, James Michael Elliott (DOB 3/2/90), Keyala Larae Elliott (DOB 5/27/92), and Keith David Harper II (DOB 4/6/95), pursuant to MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i) [conditions that led to adjudication continue to exist and are not likely to be rectified within a reasonable time], (g) [parent, without regard to intent, fails to provide proper care or custody for the child], and (j) [reasonable likelihood of harm if child is returned to parent's home]. 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).

Petitioner filed a petition to have the court take temporary custody of the children on March 25, 1997. The petition was based on allegations that respondent had neglected the children by abusing alcohol and illegal substances in front of the children, failing to provide the children with food, and having too many people living in the house with the children. The petition also alleged that respondent was violent towards the children. At a hearing held on May 7, 1997, respondent admitted that she had a history of substance abuse, including alcohol and crack cocaine abuse. She further admitted that her refrigerator was empty and not working, there were too many people living in her home, and she had alcohol on her breath when protective services came to her home in response to allegations that she was frequently intoxicated and abused the children. Respondent also admitted that she had spanked the children with a belt. On May 28, 1997, the family court issued an order taking temporary custody of the children.

The family court held dispositional review hearings on August 28, 1997, November 19, 1997, and February 13, 1998. At the November 19, 1997, hearing, the court suspended respondent's visitation with the children for failure to comply with her treatment plan. The court ordered that visitation would be reinstated when respondent had fully complied with the treatment plan, including taking weekly drug screens, for six consecutive weeks. At the February 13, 1998, hearing, the court ordered that respondent's visitation with the children remained suspended because respondent failed to comply with her treatment plan.

On February 24, 1998, petitioner filed a petition seeking permanent custody of the children because of respondent's inconsistent adherence to her treatment plan. On June 2, 1998, the family court held a hearing on petitioner's request. At the hearing, Rita Chichitti, the supervisor at Orchard's Children's Services, testified that respondent was attending therapy and Alcoholics and Narcotics Anonymous meetings. Chichitti further stated that respondent had also obtained employment and housing. The petition for permanent custody was dismissed because respondent was attempting to comply with her treatment plan and the court reinstated respondent's visitation with the children.

On September 22, 1998, petitioner again filed a petition requesting that respondent's parental rights be terminated. On November 6, 1998, and December 18, 1998, the family court held hearings on petitioner's request. Tracey Ventula, a child and family worker at Orchard's

Children's Services, testified that she was the worker assigned to this case for the previous two months and that she was familiar with the case history. Ventula testified that the parent/agency agreement in this case required respondent to (1) undergo substance abuse assessment, (2) participate in substance abuse treatment, (3) submit to weekly random drug screens, (4) participate in Alcoholics Anonymous or Narcotics Anonymous, (5) visit the children weekly, (6) obtain employment, (7) complete parenting classes, (8) obtain suitable housing, (9) maintain contact with the caseworker, and (10) attend all hearings.

According to Ventula, respondent was given referrals for substance abuse assessment during four consecutive months and finally completed the assessment on November 13, 1997. Ventula stated that respondent needed drug treatment and was given referrals for outpatient treatment; respondent completed outpatient treatment by March 17, 1998. Ventula testified that respondent was then required to attend ongoing aftercare treatment with an individual therapist twice a week. Ventula stated that respondent began aftercare in March 1998; between March 1998, and November 1998, respondent attended thirty-two of the fifty-seven required appointments and provided no explanation for missed appointments. On cross-examination, Ventula testified that respondent had attended twelve out of twenty-four aftercare appointments since June 1998.

Ventula further testified that between September 1997, and December 1997, respondent was asked to do eighteen drug screens and she completed four screens, all of which were negative; in 1998 respondent was asked to do fifty-eight screens and completed thirty-one, all of which were negative. Ventula stated that respondent was provided with bus tickets to the location of the screens upon request. On cross-examination, Ventula testified that since the June 1998, trial respondent completed seventeen of the thirty-three requested drug screens. However, there was evidence that respondent had receipts for twenty-three screens. At the December 18, 1998, hearing, Ventula testified that respondent had missed only one drug screen since the November 6, 1998, hearing and that all of the screens were negative. However, Ventula also testified that respondent came to a visit with the children on November 18, 1998, smelling of alcohol and explained to the workers that she had consumed four forty-ounce beers at a party the previous evening. Furthermore, there was evidence that on November 11, 1998, respondent went to a hospital regarding treatment for one of her children and she was not allowed to sign a consent form because she smelled of alcohol.

According to Ventula, respondent was required to attend Alcoholics Anonymous or Narcotics Anonymous meetings twice a week. Ventula stated that respondent attended none of the required sixty-four meetings in 1997 and sixty of the eighty required meetings in 1998. Ventula agreed with respondent's counsel that from early August 1998, to early November 1998, respondent attended twenty-eight meetings.

Regarding respondent's visitation with the children, Ventula testified that in 1997 respondent attended nineteen of the thirty-four visits offered and was late five times. Ventula stated that respondent attended nineteen of the twenty-two offered visitations, and was late four times, after her visitation was reinstated in June 1998. Ventula testified that she had concerns

regarding respondent's parenting abilities because during the visits respondent yelled a lot, related to the older children as a peer rather than a parent, and was seen spanking the youngest child during a visit. Ventula stated, however, that there is bonding between respondent and the children. At the December 18, 1998, hearing Ventula testified that since the November 6, 1998, hearing respondent missed only one visitation and that she explained that she could not come because she was baby-sitting and the parent had not picked the child up yet.

Ventula testified that although respondent was given referrals for housing, she failed to obtain suitable housing; rather, respondent lived with various friends and relatives. At the December 18, 1998, hearing Ventula testified that respondent had informed Ventula that she thought she had found suitable housing; however, when Ventula paged the landlord she received no response. Ventula further testified that respondent only provided proof of employment for the period between January 1, 1998, and February 28, 1998, and the period between August 29, 1998, and September 26, 1998. According to Ventula, respondent completed parenting classes, after two failed attempts, in April 1998.

According to Ventula, the children had special needs. Ventula testified that the oldest of the three children was diagnosed with attention deficit disorder and hyper-activity and that he was learning disabled. Ventula testified that the second oldest child was struggling in school and in her foster home, could not comprehend things well, and was six years old and not yet toilet trained. Ventula testified that the youngest child was very small for his age. Ventula further testified that the two youngest children were born with fetal alcohol syndrome. Ventula recommended that respondent's parental rights be terminated because the children had been in foster care almost two years and respondent only minimally complied with the parent/agency agreement.

At the hearings, respondent introduced letters from her therapist. Ventula agreed that the letters dated April 22, 1998, and June 1, 1998, indicated that all respondent's drug screens were negative and that she was making satisfactory progress. Ventula further testified that she spoke with respondent's therapist approximately two weeks before the December 18, 1998, hearing and the therapist told Ventula that respondent attended all of their weekly sessions; however, the therapist was aware that respondent had a relapse.

The family court found that "[s]ince the children were placed with [petitioner], [respondent] has failed to substantially and consistently comply with the case plan or make sufficient progress to allow the children to be safely returned to her care . . . ." The court noted that respondent was given several opportunities to comply with the parent/agency agreement and warned of the necessity of compliance; however, respondent continued to miss visits, drug screens, and aftercare treatment appointments. Furthermore, respondent admitted using alcohol between the November 6, 1998, and December 18, 1998, hearings and she failed to obtain suitable housing and employment. The family court found that termination of respondent's parental rights was clearly not contrary to the children's best interests because they had been in foster care almost two years, they had special needs, and respondent evidenced little intention or ability to comply with the parent/agency agreement in order to properly care for the children in the future. Therefore, the family court terminated respondent's parental rights on January 14, 1999.

On these facts, we conclude that the family court did not clearly err in terminating respondent's parental rights in this case. The court's findings on the statutory factors were not clearly erroneous. Furthermore, the family court's findings regarding the children's best interests were not clearly erroneous. See MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *Trejo, supra*.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Henry William Saad
/s/ Patrick M. Meter