STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of SAVANAH GARCIA, RACHEL GARCIA, and DESARAE GARCIA, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

RAINALDO J. GARCIA,

Respondent-Appellant,

and

DORTHEA WEGENER,

Respondent.

UNPUBLISHED
September 22, 2000

No. 222948
Bay Circuit Court
Family Division
LC No. 97-006087-NA

Before: Murphy, P.J., and Griffin and Wilder, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the family court's order terminating his parental rights to Savanah (d/o/b 10/13/90), Desarae (d/o/b 12/31/88) and Rachel (d/o/b 12/20/87), pursuant to MCL 712A.19b(3)(c)(*i*) and (g); MSA 27.3178(598.19b)(3)(c)(*i*) and (g). We affirm.

In order to terminate parental rights, the court must find that at least one of the statutory grounds for termination has been established by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). Once the court makes this finding, the court must terminate parental rights unless it determines that termination is clearly not in the children's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Trejo*, ___ Mich ___; ___ NW2d ___ (Docket No. 112528, issued 7/5/00), slip op at 14. The court's findings and ultimate decision are reviewed for clear error. MCR 5.974(I); *Trejo, supra*, slip op at 17; *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). In order for a decision to be clearly erroneous, it must strike this Court as more than just

maybe or probably wrong. *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). Rather, this Court must be left with the definite and firm conviction that a mistake has been made. *Miller*, *supra* at 337.

Respondent-appellant's parental rights were terminated under §§ 19b(3)(c)(*i*) and (g). Section 19b(3)(c)(*i*) provides that termination is appropriate where the conditions that led to adjudication continue to exist and there is no reasonable likelihood that they will be rectified within a reasonable time, considering the ages of the children. The conditions that led to adjudication may fairly be summarized as respondent-appellant's alcoholism and sexual deviancy. Section 19b(3)(g) provides that termination is appropriate where a parent fails to provide proper care or custody for the children and there is no reasonable expectation that the parent will be able to do so within a reasonable time, considering the ages of the children. We affirm the trial court's order of termination because we are not left with a definite and firm conviction that the family court erred in finding that grounds for termination pursuant to § 19b(3)(c)(*i*) were established by clear and convincing evidence.

We first note that the condition of respondent-appellant's alcoholism arguably did not continue to exist at the time of the termination proceedings. Respondent-appellant had been alcohol-free for a substantial period of time and had been regularly attending Alcoholics Anonymous and addiction therapy. In addition, respondent-appellant's addiction therapist testified that respondent-appellant's prognosis for remaining alcohol-free was very good, although there were never any guarantees. We need not issue a definitive ruling on this close question, however, because although respondent-appellant appeared to be making good progress in addressing this problem, the condition of his sexual deviancy did continue to exist at the time of the termination proceedings.

The issue of sexual deviancy is evidenced by the fact that respondent-appellant pleaded no contest to charges that he engaged in inappropriate sexual contact with a eleven-year-old friend of one of his daughters, charges that were pending at the time of adjudication. At the time of the incident that led to these charges, respondent-appellant lived with his three daughters. Although there was no evidence that respondent-appellant had similarly acted inappropriately toward his own daughters, at the termination hearing foster-care workers testified that they nevertheless held concerns about respondent-appellant's conduct during some visits with his daughters. Two foster-care workers testified that on one occasion during a visit they observed respondent-appellant in a sexually aroused state while he snuggled with Desarae, aged ten at the time. Although respondent-appellant disputed this particular incident when confronted by the workers, it was not the only time respondent-appellant had to be advised that he was violating the condition of visitation limiting physical contact with his daughters.

The evidence regarding respondent-appellant's treatment also raised concern. Respondent-appellant had not yet completed sex-offender group therapy, and two sex-offender counselors testified that he would need at least another year of progress before they would feel comfortable with his daughters being returned to him. Respondent-appellant had initially been resistant to therapy and manipulative during counseling sessions. Although he had subsequently progressed and opened up, his progress had tapered off approaching the termination hearing. One of the counselors testified that this reversal was possibly due to stress as the prospect of termination became imminent.

Most relevant to the decision to terminate respondent-appellant's parental rights is the additional time it would take to satisfactorily complete this treatment. At the time of the termination hearing, respondent-appellant's daughters were aged eight, ten and eleven, and had already been out of the home for two years. Although testimony indicated a reasonable likelihood that respondent-appellant could successfully rectify the condition with an additional year of diligent adherence to treatment programs, under the circumstances we simply are not left with the definite and firm conviction that the family court clearly erred by finding that this was an unreasonable time considering the ages of the children. *Miller, supra* at 337.

Given our finding with respect to § 19b(3)(c)(*i*), we need not address the family court's conclusion that § 19b(3)(g) was also established by clear and convincing evidence. However, we do respond to respondent-appellant's challenge to the family court's finding that termination was in the best interests of the children.

Although respondent-appellant's children all expressed a desire to be returned to their father, we consider compelling the family court's findings with respect to their best interests. The court stated:

> The father's sexual act was committed on an 11 year old girl. His daughters are now Rachel, 11; Desarae, 10; and Savanah, 8. Within a few months ago, the father was noticeably sexually aroused by physical contact with his 10 year old. Mr. Garcia testified that his sexual feelings for young girls is baggage left over from his Viet-Nam experiences of over 20 years ago. The fact that he was convicted of molesting an 11 year old in 1997, and the fact that he has not completed sexual offender treatment, and the fact that he recently experienced sexual arousal while visiting Desarae, and the fact that there is no diligent protector in his home whose first loyalty is to his girls, are all factors which place the Garcia children at risk. It is not in their best interests to place them back into a home where their physical and emotional safety would be jeopardized.

We hold that the family court did not clearly err in making its best interests analysis and conclusions. The facts presented at the time of termination evidenced significant risk of harm to the children were they to be returned to respondent-appellant as a primary and potentially sole caregiver. The circumstances of respondent-appellant's prior transgression and his still evident misdirection of sexual feelings are neither normal nor acceptable characteristics for a parent and caregiver to three young girls.

Affirmed.

/s/ William B. Murphy
/s/ Richard Allen Griffin
/s/ Kurtis T. Wilder