

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MEGAN, TRAE, and TAYLER
BRADFORD, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner - Appellee,

V

RICHARD BRADFORD,

Respondent - Appellant.

UNPUBLISHED

September 22, 2000

No. 224675

Midland Circuit Court

Juvenile Division

LC No. 98-000231-NA

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

PER CURIAM.

Respondent appeals as of right from the decision of the circuit court to terminate his parental rights to the three minors, Megan Bradford (DOB 7/20/91), Trae Bradford (DOB 12/16/92), and Tayler Bradford (DOB 12/26/97). The trial court found two statutory bases for termination established, MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g) (failure to provide proper care or custody and no reasonable expectation of ability to do so within a reasonable time), and MCL 712A.19b(3)(j); MSA 27.3178(598.19b)(3)(j) (reasonable likelihood that children will be harmed if returned to home of the parent). We affirm.

The trial court's involvement in this case began with the April 14, 1998, filing of a neglect/abuse petition by the Midland County Family Independence Agency (FIA). The court took jurisdiction over the children and released them to the custody of their mother, respondent's then wife, Julie Bradford. The court ordered respondent out of the home and ordered Julie to comply with the recommendations of the FIA, which included services and the requirement that respondent be kept away from the children.

At a June 25, 1999, review hearing, FIA case worker Cheryl Fisher testified that Julie was not following through with the court ordered services. She also testified that respondent had participated in only two visitation sessions over the last three months, and that respondent had likewise not followed

through with the services ordered. Fisher explained that respondent had been incarcerated, because of various incidents involving Julie, for much of the intervening time. At the conclusion of this hearing the court entered an order finding that Julie had complied with part of the plan, but that respondent had complied with none of the plan. The previous orders were maintained, with visitations to be arranged if respondent chose to request them on his release from jail. One addition to the case service plan was made, on the basis of newly acquired information that Julie had a boyfriend staying with her, requiring that no unrelated adults live in her home.

Subsequent events necessitated the July 26, 1999, filing of a supplemental petition charging further abuse along with disregard of the court's orders. According to Fisher's testimony at a preliminary hearing on this petition, FIA workers had recently become aware that Julie was living with a boyfriend, Jason Sian. Fisher testified that respondent, in violation of various court orders, was in contact with his children and Julie on July 23, 1999, and learned that Sian had repeatedly hit the children and had recently put a cigarette out on Megan's bare foot. Respondent immediately took Megan to an emergency room, where she was treated for the burn and an additional injury to the bottom of her foot was diagnosed. Apparently, Megan cut herself by stepping on a piece of a broken glass that Sian had thrown in anger. The FIA was made aware of these circumstances following the hospital treatment and Fisher immediately drafted the supplemental petition. Fisher not only included the allegations of these various injuries and the children's reports that Sian hit them, but also detailed charges concerning respondent's unauthorized contact and Julie's violation of the residence restriction. Following the preliminary hearing, the trial court authorized the petition for filing and entered an order removing the children from Julie's custody and placing them in appropriate out-of-home placement under FIA supervision.

On September 22, 1999, Fisher amended the supplemental petition by including additional allegations and requesting termination of the parental rights of Julie and respondent. An October 5, 1999, adjudication bench trial was then held. At the conclusion of the hearing, finding the allegations in the amended supplemental petition proved by a preponderance of the evidence, the trial court entered an adjudication order maintaining the children's out-of-home placement. A dispositional/termination hearing was scheduled for December 3, 1999.

On December 3, 1999, immediately before the dispositional/termination hearing was to begin, Julie Bradford released her parental rights to all four of her children. The hearing then commenced with respect to respondent's parental rights. On December 14, 1999, the trial court issued its findings and an order terminating respondent's parental rights to Megan, Trae, and Tayler. Respondent now challenges the trial court's findings that statutory grounds for termination were proved by a preponderance of the evidence.

A two-prong test applies to a decision of the circuit court to terminate parental rights. First, the trial court must find that at least one of the statutory grounds for termination, 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). We review the trial court's decision for clear error. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding is clearly erroneous if, although there is evidence to support it, this Court

is left with a definite and firm conviction that a mistake had been made. *Miller, supra*. Once a statutory ground for termination of parental rights is established, the court must terminate parental rights unless it finds that termination of parental rights to the child is clearly not in the child's best interest. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); MCR 5.974(E)(2); *In re Trejo*, ___ Mich ___; ___ NW2d ___ (Docket No. 112528, issued 7/5/00), slip op pp 10-11.

Respondent challenges only the court's findings with regard to the statutory grounds for termination, no argument is made concerning the issue of the children's best interests. The applicable statutory subsections, MCL 712A.19b(3)(g) and (j); MSA 27.3178(598.19b)(3)(g) and (j), provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(g) The parent, without regard to intent, 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 and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Subsection (3)(g) requires clear and convincing evidence of both a failure and an inability to provide proper care and custody. *In re Hulbert*, 186 Mich App 600, 605; 465 NW2d 36 (1990). With regard to the potential for improvement, the determination of what is "a reasonable time" properly includes both how long it will take for the parent to improve conditions and how long the child can wait for the improvement. *In re Dahms*, 187 Mich App 644, 647-648; 468 NW2d 315 (1991).

We find that clear and convincing evidence supported termination under subsection 3(g). The evidence demonstrates that while the children lived with respondent and his ex-wife they were consistently exposed to every undesirable element of an abusive relationship. In addition to tangible instances of domestic abuse suffered by Julie, evidenced by her hospitalization on one occasion and respondent's original jail term for a domestic abuse conviction, the testimony also demonstrates a severe psychological impact on the children. According to both the FIA worker and the foster care worker, Megan suffered extreme mental distress attributable to her parents' frequent verbal arguments. Moreover, even at the time of the dispositional hearing, Megan still expressed concern that respondent would exhibit his temper and had little faith that he would keep any promises to the contrary. Trae, meanwhile, had himself experienced one instance of physical abuse at the hands of respondent. Notwithstanding respondent's acceptance of his responsibility for this event, and his seemingly sincere remorse for its occurrence, the ramifications of the event were clear. In conversations to the social workers Trae appeared to believe that he was in part at fault, stating that respondent only hit him because he was listening to his mother instead of respondent. Trae also expressed the belief that it was

okay for respondent to so discipline him. As the trial court noted in its opinion, that respondent allowed his children to be exposed to this violent and abuse relationship until agency intervention separated the parents is, on its own, clear and convincing evidence that the home was unfit and that respondent failed to provide proper care and custody. See *In re Miller*, 182 Mich App 70; 451 NW2d 576 (1990).

With regard to whether there existed a reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time, the weight of the evidence again supports the trial court's finding. Respondent essentially argues that he was not given a fair chance to demonstrate his parenting ability with the children in his sole custody. In part this argument is based on his claim that having secured a divorce from Julie, respondent will no longer have reason to express his temper and also will not run the risk of spending inordinate amounts of time in jail. While the record does demonstrate some merit to the argument that Julie was partly responsible for respondent's continuing legal problems while the children were in her custody, ultimately respondent must be held singularly accountable for his own conduct.

Both the agency workers and the court made it clear to respondent that any hopes of avoiding termination rested on his compliance with the various court orders. Through respondent's own actions, he violated the orders prohibiting contact with Julie and limiting contact with the children to supervised visitation. This led to respondent's various periods of incarceration during the twenty months the court maintained jurisdiction, which in turn partly led to respondent's failure to satisfy the requirements that he complete parenting and anger management classes. Notwithstanding the belated progress respondent appeared to be making in these classes, each of his counselor's informed the agency workers that he still had a long way to go before he could effectively parent without significant assistance.

In addition, although over a year and a half had passed since the court initially took jurisdiction over the children, at the time of the final hearing respondent could only testify that he hoped to have suitable housing and full-time employment within the week. Further, though respondent testified that he had family members willing and able to assist him by providing daycare, no definite arrangements existed. Considering the length of these proceedings, and the time respondent had been afforded to show improvement in his problem areas, we are not left with a definite and firm conviction that the trial court erred in concluding that satisfactory solutions to respondent's deficiencies in these areas could not be achieved in a reasonable time. *Miller, supra* at 337.

Given this conclusion, we need not address the trial court's additional finding that termination was appropriate under subsection 3(j).

Affirmed.

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