

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ANGELICA LICETTE
MARTINEZ, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ARMANDO MANUEL MARTINEZ,

Respondent-Appellant,
and

LIDIA CRUZ,

Respondent.

UNPUBLISHED
December 1, 2000

No. 220564
Wayne Circuit Court
Family Division
LC No. 97-353,895

Before: Kelly, P.J., and White and Wilder, JJ.

MEMORANDUM

Respondent appeals by leave granted from the March 25, 1999 order terminating his parental rights to his minor child, Angelica Licette Martinez, under MCL 712A.19b(3)(c)(i); MSA 27.3178(598.196b)(3)(c)(i),(g) (conditions leading to adjudication continue to exist), and (g) (unable to provide proper care and custody).¹

We review the trial court's determination that a statutory ground for termination has been proven by clear and convincing evidence for clear error. *In re Trejo Minors*, 462 Mich 341; 356; 603 NW2d 787 (2000). The petitioner bears the burden of proving at least one ground for termination under MCL 712A.19b(3); MSA 27.3178(598.19b)(3). *In re Trejo, supra* at 355. Subsection 19b(5) of the statute mandates termination once a petitioner establishes at least one statutory ground for termination, unless clear evidence exists, on the whole record, that termination is not in the child's best interests. *Id.*, at 354. Termination is not automatic; the trial

¹ The child's mother, Lidia Cruz, had earlier released her parental rights and is not a party to this appeal.

court may consider evidence introduced by any party or may conclude, based on a review of the entire record, that termination is clearly not in the children's best interest. *Id.*, at 353-354. We review the trial court's decision regarding the child's best interest, where appropriate, for clear error. *Id.*, at 356-357.

While we are troubled by the referee's finding that respondent's giving a certain address on leave papers undermined his credibility because he did not in fact stay at this address,² and by petitioner's failure to assure that a home assessment was conducted, there was evidence, as recognized by the family court judge, that although respondent's ability to develop a relationship with his daughter was limited by his military service, he failed to maintain the minimal contact via telephone that was required. In light of this evidence, and evidence that the child did not really know respondent as a father, despite occasional contacts, visits and a trip, we conclude that the family court did not clearly err in finding clear and convincing evidence that respondent failed to provide proper care and custody and that there is no reasonable expectation that respondent will be able to provide proper care and custody within a reasonable time considering the child's age and the length of time the child had been a ward of the court. Nor did the court err in concluding that the record did not support that termination is clearly not in the child's best interest.

Affirmed.

/s/ Michael J. Kelly
/s/ Helene N. White
/s/ Kurtis T. Wilder

² The referee's determination that respondent lied by stating on leave papers that he stayed at a certain house while on leave is erroneous. The leave paper asks for an address at which he can be reached, not an address at which he slept overnight.