

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BYRON ABNER II, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

BARBARA ANN SPIVEY,

Respondent-Appellant,

and

BYRON ABNER, SR.

Respondent.

UNPUBLISHED

January 26, 2001

No. 226865

Wayne Circuit Court

Family Division

LC No. 99-383914

Before: Neff, P.J., and Holbrook, Jr., and Jansen, JJ.

PER CURIAM.

Respondent appeals as of right from an order of the circuit court terminating her parental rights to the minor child under MCL 712A.19b(3)(g) and (j); MSA 27.3178(598.19b)(3)(g) and (j). We affirm.¹

Once a trial court determines that one or more grounds for termination has been established by clear and convincing evidence, the trial court must terminate parental rights unless “there exists clear evidence, on the whole record, that termination is not in the child’s best interests.” *In re Trejo Minors*, 462 Mich 341, 354; 612 NW2d 407 (2000).

Respondent argues that the family court erred in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). We disagree. We review the family court’s findings

¹ Respondent Byron Abner Sr. has not appealed the termination of his parental rights.

under the clearly erroneous standard. *Id.* at 358. “A finding is clearly erroneous where the reviewing court is left with a firm and definite conviction that a mistake has been made.” *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993).

After carefully reviewing the record, we conclude that the trial court did not clearly err in finding that the statutory grounds for termination had been established by clear and convincing evidence. Respondent failed to provide proper care or custody for the minor child when she placed the boy in the home of Byron Abner Sr., a man she herself described as being violent. Further, Byron Abner Sr. admitted to having beaten another child in his care so severely, that the child died of the resulting head wounds. Respondent also admitted to having beaten the minor child at issue in the case at hand. The fact that respondent claimed no personal knowledge that Byron Abner Sr. had ever been violent with a child does not excuse her decision to leave her son in this unsuitable environment.

Further, evidence was presented that respondent has a long lasting and on-going substance abuse problem. Respondent admitted at trial that for two years another of her children had been living with respondent’s mother due to this problem. Although respondent claimed to have stopped using crack cocaine a few months prior to trial, she was still using marijuana and alcohol as of trial. Respondent admitted that she was not receiving any professional treatment for her substance abuse problem.

The record also establishes that respondent had not taken adequate steps to either maintain her relationship with her son or to monitor his care while the boy was living with his father. Respondent’s testimony showed that she kept in minimal and irregular contact with the minor child. Indeed, the record shows that respondent had not seen her son for about two months prior to the beating death of the other child Byron Abner Sr. had been caring for.

The grounds for termination having been established by clear and convincing evidence, and given the lack of any evidence that termination is not in the best interest of the minor child, we conclude that the termination of respondent’s parental rights should be affirmed.

Affirmed.

/s/ Janet T. Neff
/s/ Donald E. Holbrook, Jr.
/s/ Kathleen Jansen