

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

In the Matter of ELISHA DAVISON and JAMILL JACKSON, Minors.

---

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

KIMBERLY ANDERSON,

Respondent-Appellant.

---

UNPUBLISHED

February 23, 2001

No. 228604

Washtenaw Circuit Court

Juvenile Division

LC No. 98-024726-NA

Before: Holbrook, P.J. and McDonald and Saad, JJ.

PER CURIAM.

Respondent appeals as of right from the juvenile court's order terminating her parental rights to two minor children pursuant to MCL 712A.19b(3)(b)(i); MSA 27.3178 (598.19b)(3)(b)(i), MCL 712A.19b(3)(c)(i); MSA 27.3178 (598.19b)(3)(c)(i), MCL 712A.19b(3)(c)(ii); MSA 27.3178 (598.19b)(3)(c)(ii), MCL 712A.19b(3)(g); MSA 27.3178 (598.19b)(3)(g) and MCL 712A.19b(3)(j); MSA 27.3178 (598.19b)(3)(j). We affirm.

This Court reviews for clear error a court's finding that a statutory basis for termination has been met. MCR 5.974(I); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). In a termination hearing, the petitioner bears the burden of showing by clear and convincing evidence a statutory basis for termination. MCR 5.974(F)(3). Once a statutory basis for termination is shown, the trial court shall terminate parental rights unless it finds that the termination of those rights is clearly not in the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *Trejo, supra*, 462 Mich 354-356. Here, the court did not clearly err by finding clear and convincing evidence supporting termination pursuant to the five statutory grounds.

On August 12, 1998, Children's Protective Services representative Linda Turbin, filed a petition for the court to take temporary custody of Elisha Davison, born June 20, 1987, and Jamill Jackson, born September 11, 1992. The agency filed the petition after Elisha reported physical abuse by respondent. The petition, as amended on September 17, 1998, alleged that,

during the 1997-1998 school year, respondent hit the children with her hands, a belt and a flashlight, kicked them and repeatedly threatened them with physical abuse. The petition also indicated that respondent used drugs in the home and in the presence of the children. The referee found probable cause to believe respondent abused and/or neglected the children and ordered the children to stay with Carol Anderson, respondent's mother. The parties later agreed to move the children to the home of Joy Croel, Jamill's paternal grandmother.

On September 17, 1998, respondent admitted to the allegations in the amended petition, including the episode of physical abuse and admitted to using marijuana and alcohol to the point of intoxication in front of the children. The court allowed respondent supervised visits with the children but later suspended her visits after reports of erratic delusional behavior. The court also ordered respondent to: (1) appear at all hearings, (2) maintain contact with the caseworker and keep all appointments, (3) keep FIA informed of changes to address, phone number, legal status, employment, persons living in home and dependents, (4) sign releases for information for services, (5) not abuse, neglect or mistreat the children, (6) not violate the law, (7) visit regularly when allowed, (8) attend a program for aggression and/or parenting classes, (9) complete a psychiatric evaluation and follow recommendations for therapy and medication (10) maintain a legal source of income (11) secure and maintain suitable housing.

On August 19, 1999, case manager Sean Foster recommended the permanent termination of respondent's parental rights because of respondent's failure to fully comply with the court's order and because of her mental health problems and marijuana use. Respondent testified at the termination hearing on April 3, 2000 and acknowledged that she was "told" she has a mental illness, and acknowledged that she was paranoid and very irrational when her children were removed. Respondent stated that she failed to submit to drug screens because she was already aware of her drug problem. Further, she admitted that she did not call Foster regularly and that she stopped sending cards and letters to her children or calling Croel about their welfare. Respondent testified that she has greatly improved, but acknowledged that she needs to overcome her continuing marijuana habit.

After respondent left the stand, Joy Croel testified that she received a letter from respondent dated March 7, 2000, and respondent admitted to the court that she wrote and signed the letter. The record reflects that the letter states in part:

I do not have a mental illness. Personally I want to sue the hospital for putting me on some medication based on a lie. The medication could have killed me. I don't need it.

The trial court terminated respondent's parental rights in a written opinion and order entered May 15, 2000. Respondent contends that the trial court clearly erred in finding clear and convincing evidence to support the termination of her parental rights under all five factors cited by the court.

The court found clear and convincing evidence to support termination under MCL 712A.19b(3); MSA 27.3178(598.19b)(3) which provides, in pertinent part:

(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:

\*\*\*

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

\*\*\*

(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.

Children's Protective Services removed Elisha and Jamill after Elisha reported respondent's physical abuse and respondent admitted to that abuse. At the time, respondent suffered from delusional behavior that doctors later diagnosed as paranoid schizophrenia. Further, respondent admitted to abusing alcohol and marijuana to the point of intoxication when the abuse occurred. Although respondent claimed she stopped drinking alcohol at the time of the termination hearing, she admitted that she continued to smoke marijuana, three joints per day, at least three times per week.

Psychologist Olivia Manconi testified that, although respondent made excellent progress, she had "a long way to go" in her stabilization and would relapse if she stopped taking her medication. Manconi also testified that the use of marijuana may reduce the effectiveness of psychotropic medications and that its use slows down the recovery process in paranoid schizophrenic patients.

Respondent appears to assert that her improvement on her mental illness medication alone precluded the trial court from finding that the children would remain at risk in her care. However, the above evidence established that respondent's continued use of marijuana might adversely affect the positive impact of the very medication improving her mental stability. We also note that respondent failed to obtain a substance abuse assessment as ordered by the court, even though Manconi told her that marijuana use slows down recovery. Her failure to even assess the magnitude of her drug abuse problem places in doubt the extent of her progress on her medication and raises questions about the actual risk of relapse based on her continued drug use.

Respondent's refusal to obtain treatment to overcome her addiction not only increases the risk of recurring mental problems, her continued abuse of a mind and mood-altering drug increases the risk that she will stop taking her medication or will take it improperly. Respondent's claim that she made excellent progress in controlling her paranoid schizophrenia while continuing to use marijuana ignores the fact that, less than a month before her termination hearing, respondent denied having any mental illness and asserted that she did not need to take medication. Whether respondent's refusal to acknowledge her illness and her need for medication is the result of her continued marijuana use or her lack of progress in controlling her paranoid schizophrenia, the evidence clearly indicates that respondent does not have her mental

health problems under control and strongly suggests that she will discontinue using her medication. This places respondent at risk of relapsing into the mental state which led to her physical abuse of Elisha and her threatened abuse of both children. Therefore, the trial court correctly observed that “[s]o long as any of these negative factors remains untreated, there is a reasonable likelihood that the children will suffer physical abuse and violent treatment if they are left in [respondent’s] control in the future.” Accordingly, the trial court did not clearly err in terminating respondent’s parental rights on either statutory basis.

Although the court need only find clear and convincing evidence to support one statutory ground for termination, the court also terminated respondent’s parental rights pursuant to MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i) which provides, in pertinent part:

The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

While respondent acknowledges that she continues to use marijuana, one condition that led to the initial adjudication, she argues that the court gave her insufficient time to overcome her drug addiction. Respondent bases her argument on Manconi’s statement that health care workers generally try to stabilize a patient on medication for mental illness before addressing a drug addiction problem. However, respondent fails to acknowledge that she was referred by the court and by Manconi to a “dual diagnosis” program to address both her paranoid schizophrenia and her marijuana use. Respondent was offered services designed to address both problems, yet Manconi and Foster both testified that respondent’s participation in dual therapy was sporadic and uncooperative.

Assuming that Manconi’s assertion applied to respondent and that respondent needed to take one step at a time, the record indicates that respondent’s medication change occurred prior to August 1999 and that the change significantly improved her mental condition. On August 19, 1999, after the medication change, respondent asked the court for three more months to follow through with dual treatment so that she could address her marijuana problem. Respondent failed to do so. She dropped out of the Holly Gardens treatment program after three days in October 1999 and admitted she continued to use marijuana at the termination hearing. Moreover, respondent’s failure to undergo a drug assessment to even discover the extent of her addiction calls into question her intent to even begin the recovery process.

As the prosecutor correctly notes, respondent had seventeen months, well beyond the statutory period, to address her marijuana addiction and did not. While Manconi’s assertion may be true, that addressing a drug abuse problem must follow maintaining some control over a mental health problem, respondent had ample time and services to make progress with both. After seventeen months, respondent failed to treat or to even assess the extent of her drug addiction. This constitutes clear and convincing evidence that there is no reasonable likelihood

that respondent's drug use will be rectified within a reasonable time considering the ages of the children, twelve and seven years old at the time of the termination hearing.

The trial court also found clear and convincing evidence to support termination pursuant to MCL 712A.19b(3)(c)(ii); MSA 27.3178(598.19b)(3)(c)(ii) which provides, in pertinent part:

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:

\*\*\*

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

\*\*\*

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

Respondent contends that the trial court wrongly found that her recovery from paranoid schizophrenia would be "impossible" with her continued use of marijuana. This misstates the court's findings. As discussed above, the trial court relied on Manconi's testimony that marijuana use may reduce the effectiveness of paranoid schizophrenia medication and slows down the recovery process. The court's conclusion clearly follows that respondent's "dependency on marijuana ... has a destabilizing effect on her health and on the effectiveness of her anti-psychotic medications." Despite respondent's improvement while taking Risperdal, the trial court's finding that her drug use has hindered her progress in controlling her illness was bolstered by respondent's continued denial of any mental illness and her emphatic assertion that medication is unnecessary. For these reasons, as well as those discussed above, the court did not clearly err in finding clear and convincing evidence that her mental illness will be rectified within a reasonable time considering the ages of the children.

Further, the trial court found grounds for termination pursuant to MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g) which provides, in pertinent part:

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.

The trial court again relied on the Manconi's statement regarding the negative impact of marijuana on medication and in stabilizing paranoid schizophrenia to conclude that there is no reasonable expectation that respondent will be able to provide Elisha and Jamill proper care and custody within a reasonable time. We address above the evidence regarding the impact of marijuana on persons suffering from mental illness and on respondent in particular. However, respondent raises an additional argument, that the trial court wrongly commented on her "attitude" toward marijuana in finding clear and convincing evidence under this statutory factor. Respondent appears to argue that, because Ann Arbor punishes marijuana possession with only a civil fine, her "attitude" toward marijuana is shared by city officials and her community.

Respondent's reliance on the Ann Arbor city ordinance is misplaced for two reasons: (1) the punishment imposed by the city has no bearing on the juvenile court's order that respondent stop using marijuana to regain custody of her children, and (2) the city's fine has no bearing on the effect of marijuana on respondent's mental illness, her medication or her ability to care for her children. Clear and convincing evidence showed that respondent's continued drug use contributed to her failure to control or even acknowledge her paranoid schizophrenia. As discussed above, despite many months and offered services, respondent failed to even address her drug habit. The only "attitude" to which the court referred was respondent's own adamant refusal to seek treatment while knowing she needed to do so to stabilize her mental condition and to regain custody of her children.

Respondent appears to be making the dubious argument that Ann Arbor's ordinance somehow sanctions her continued drug use and alone justifies the return of her children. Respondent's argument is entirely without merit. For the reasons discussed above, respondent's failure to address her drug problem and her mental health condition constituted clear and convincing evidence that there is no reasonable expectation that she will be able to provide proper care and custody within a reasonable time considering the ages of the children.

The trial court was required to terminate respondent's parental rights if it found clear and convincing evidence under any one of the above factors. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *Trejo, supra*, 462 Mich 341, 354; 612 NW2d 407 (2000). As discussed above, the court terminated respondent's parental rights based on clear and convincing evidence under all five factors. Accordingly, the trial court had no discretion in terminating respondent's parental rights unless it found "clear evidence, on the whole record, that termination is not in the child's best interests." *In re Trejo, supra*. Respondent does not argue that the record indicates termination would not be in the best interests of the children and merely contends that the trial court had insufficient and unreliable evidence to support the statutory grounds for termination. For the reasons discussed above, respondent's argument is without merit.

Affirmed.

/s/ Donald E. Holbrook, Jr.  
/s/ Gary R. McDonald  
/s/ Henry William Saad