

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ASHLEY GRAHAM, JAMES
GRAHAM, JAZZMA GRAHAM, AILYHA
PIERCE and KEIARAH CAMPBELL, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TANYA GRAHAM,

Respondent-Appellant.

UNPUBLISHED
February 27, 2001

No. 227060
Oakland County Circuit Court
Family Division
LC No. 98-612042 NA

Before: Hood, P.J., and Doctoroff and Kelly, JJ.

PER CURIAM

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

I. Basic Facts and Procedural History

On September 3, 1998, respondent phoned protective services and advised that she was living in a motel with her five minor children and requested that child protective services pick the children up and place them in foster care. At first, the child protective services worker indicated that respondent had money management problems and offered her assistance in that regard and respondent agreed to accept those services. However, on September 9, 1998, respondent contacted protective services and renewed her request for them to take the children and place them into foster care indicating that the manager at the motel advised that she could not keep all of the children with her in a single room. Because respondent lived in a motel, her children that were of school age were not enrolled for the 1998-1999 school year.

The children came into care on September 16, 1998 and on September 21, 1998, the children became temporary wards of the court. The Parent/Agency Agreement that respondent signed in November of 1998 required respondent to secure and maintain permanent and stable housing, for six consecutive months, participate in and complete a psychological evaluation,

attend weekly one hour visits with the children, notify the caseworker of current address and telephone numbers, attend and complete a parenting skills training class, attend individual counseling for money management and participate in individual therapy.

Respondent had difficulties with visitations throughout the pendency of the case. Respondent completed her parenting skills training classes, but she failed to derive any benefit therefrom. After respondent visited with her children, the children's negative behavioral patterns increased. Respondent usually did not stay for the entire hour. At best, respondent would only stay for 45 minutes.¹

Respondent also had significant difficulty finding any housing, appropriate or otherwise. Respondent testified that she looked for housing all day, every day but despite all of respondent's efforts, she could not locate suitable housing for her five children. In fact, respondent admitted that she experienced housing problems since 1991. Respondent refused to visit Wayne County FIA for housing referrals pursuant to the case manager's suggestion even though respondent stated a clear preference for Wayne County over Oakland County. Respondent did not follow up on all of the referrals provided and that the agency's request for section 8 housing was denied because of respondent's criminal history.

On July 20, 1999, the FIA filed a permanent wardship petition on behalf of the five children. Trial was held on October 21, 1999, the testimony established that respondent entered into a Parent/Agency Agreement and that respondent failed to substantially comply therewith, and respondent constantly moved and that she failed to provide notification of her current address and telephone number. Further, despite all of the referrals, respondent failed to obtain and maintain suitable housing. The psychologist testified that respondent had a dependent personality and that respondent is a passive individual and that it is her hope that someone will find housing for her so that her children can be returned with little or no effort in her part.

The family court terminated respondent's parental rights on two separate grounds. First, the matter was adjudicated and 182 days have elapsed since the issuance of the dispositional order and that the conditions leading to the adjudication continue to exist and there is no reasonable likelihood that the conditions will change in the foreseeable future considering the children's age.² Second, clear and convincing evidence established that without regard to intent, respondent failed to provide proper care and custody for the children and there remained no reasonable expectation that respondent would be able to do so within a reasonable time period considering the children's ages.³

In making its findings of fact, the family court focused on respondent's inability to secure stable housing after one and a half years of searching and that respondent's visits with her children were "strained at best." The court indicated that respondent's failure to attend therapy

¹ The case manager testified that on one occasion, Respondent indicated that she had to leave the visitation early because some of her friends were picking her up to go out.

² MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i).

³ MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g).

on an ongoing basis negatively impacted the quality of respondent's visits with her children. The court concluded that on the evidence presented, respondent was not any closer to finding permanent housing at the close of the proceedings than she was in September of 1998 when her five children came within the court's jurisdiction. Accordingly, the family court entered an order terminating respondent's parental rights to her five children.

II. Standard of Review

This court reviews a trial court's factual findings in an order terminating parental rights for clear error.⁴ A finding of fact is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made.⁵ Pursuant to this standard, the appellate court must give due deference to the trial court's determinations regarding the credibility of the witnesses that testified before it.⁶ Once a trial court finds that a statutory ground for termination of parental rights exists by clear and convincing evidence, the court must terminate parental rights unless it finds, based on the entire record before it, that termination is clearly not in the best interests of the child.⁷

III. Grounds for Termination

The family court terminated Appellant's parental rights pursuant to MCL 712A.19b(3)(c)(i) and (g) which provide in pertinent part that:

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 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.

⁴ MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Vasquez*, 199 Mich App 44, 51; 501 NW2d 231 (1993). In Respondent-Appellant's brief on appeal, Respondent correctly states that the proper standard of review in termination of parental rights cases is the clearly erroneous standard. However, Respondent thereafter submits that the trial court "abused its discretion" by terminating Respondent's parental rights. The abuse of discretion standard does not apply in this case. Termination cases are reviewed for clear error not abuse of discretion.

⁵ *In re Miller*, *supra*.

⁶ MCR 2.613(C); *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991).

⁷ MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000).

* * *

(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.

Termination of respondent's parental rights was proper under subsection 19b(3)(c)(i). The children were made temporary wards of the court on October 19, 1998 because of respondent's inability to provide suitable housing for the children. At the bench trial in January 2000, respondent still could not secure proper housing for the minor children. Therefore, 182 days had elapsed since the original dispositional order was entered and the same conditions that led to the adjudication continued to exist. Consequently, termination of respondent's parental rights pursuant to subsection 19b(3)(c)(i) was not clearly erroneous.

Additionally, termination was proper under subsection 19b(3)(g). This subsection provides that termination is proper where a parent, regardless of intent, fails to provide proper care and custody for the child and there is no reasonable expectation that the parent will be able to do so within a reasonable amount of time considering the age of the child.

In the case at bar, respondent failed to provide suitable and appropriate housing for her five children. At trial, respondent admitted that she had difficulty with housing since 1991. The children in the instant case were in foster care for 15 months and during that 15-month period, respondent was not able to obtain any housing despite the efforts of Catholic Social Services (CSS) and FIA. Although respondent argues on appeal that FIA and CSS did not do enough to assist her in finding suitable housing, the record is clear that both CSS and the FIA made many referrals for housing, made phone calls on respondent's behalf, and provided respondent with free bus tickets to follow up on the housing referrals.⁸ Despite these efforts, respondent failed to follow up on these referrals.

The testimony adduced at trial established that respondent's clinical assessment indicated that she was a passive individual and that she hoped that someone would find housing for her and that she would have her children returned without any effort on her part. Consistent with this personality assessment, **all** of respondent's arguments on appeal shift the primary burden for this family's reunification from respondent, the mother, to the two social service agencies involved. A review of the record in this case belies Respondent's assertions. The record is replete with testimony regarding all of the services offered to respondent in an effort to reunify her with her children. Respondent's failure to secure adequate housing is not CSS's or FIA's failure. Therefore, her claim in

⁸In fact, testimony at trial indicated that when respondent was living at the Pontiac Rescue Mission for two weeks, Respondent's caseworker gave her a referral to Lighthouse and FIA in Oakland County because both were *within walking distance* of the rescue mission.

this regard is wholly without merit and accordingly, termination was proper under subsection 19b(3)(g).

IV. Best Interests of the Children

The trial court did not err by finding and concluding that termination of respondent's parental rights was consistent with the best interests of the children. As noted above, respondent consistently failed to secure suitable and appropriate housing for the children. Additionally, the testimony at trial indicated that respondent did not interact well with her children during visitations. Respondent verbally abused her children and on occasion, completely ignored them when the children tried to engage her during visitations.⁹ Testimony established that after visitations with respondent, the children experienced increased distress and their acting out behaviors intensified.

Perhaps most telling, is respondent's **own** request to reduce her visitation from once every week to once every two weeks because visiting every week was simply too hectic for her. And, when CSS changed the visitation pursuant to respondent's request and scheduled three visits within six weeks, respondent canceled all but one of those visits.

The trial court noted that it would not be fair to the children to give respondent additional time to secure housing. The court also indicated that what these children need is more than just a physical structure in which to live, but moreover, they need a nurturing environment in which they can thrive.

We agree. The trial court's finding that termination of respondent's parental rights served the children's best interests, was not clearly erroneous.

Affirmed.

/s/ Judge Harold Hood
/s/ Judge Martin M. Doctoroff
/s/ Judge Kirsten Frank Kelly

⁹ In fact, the case manager testified that when she confronted respondent about her parenting skills, respondent advised that, "[s]he had been beaten growing up and that's the way she was going to raise her children."