STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of LARRY DAVIS, JR., DANIEL S. DAVIS, CANDACE L. DAVIS, and SIERRA D. DAVIS, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CHARLA DAVIS,

Respondent-Appellant,

and

LARRY DAVIS,

Respondent.

UNPUBLISHED
March 20, 2001

No. 225112
Ogemaw Circuit Court
Family Division
LC No. 95-010026-na

Before: Griffin, P.J., and Neff and White, JJ.

PER CURIAM.

Respondent-appellant Charla Davis (hereinafter "respondent") appeals as of right from the family court's order terminating her parental rights pursuant to MCL 712A.19b(3)(b)(ii), (c)(i), and (g); MSA 27.3178(598.19b)(3)(b)(ii), (c)(i), and (g). We affirm.

Because the minor children were Indian children, a dual burden of proof was required in order to terminate respondent's parental rights. 25 USC 1912(f); MCL 712A.19b(3); MSA 27.3178(598.19b)(3). As this Court explained in *In re Elliott*, 218 Mich App 196, 209-210; 554 NW2d 32 (1996):

> [T]he [trial] court must find beyond a reasonable doubt that "continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical harm to the child," *and* the court must also find that clear and convincing evidence supports termination under the applicable state statutory ground.

Our review of the record convinces us that the family court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. Additionally, the court credited and accepted the testimony of Martha Snyder, an American Indian expert under the Indian Child Welfare Act, 25 USC 1901 *et seq.*, who testified that she had "absolutely no doubt, beyond any doubt," that "[t]hese children would be at risk, definitely at risk," if returned to the parents. The court expressly found that the risks included emotional, physical and spiritual dangers. Accordingly, we conclude that the family court did not err in finding that the dual burden of proof for Indian children was met.

Finally, because the ICWA contains no prohibition against the use of hearsay in termination proceedings, and because, pursuant to MCR 5.974(F)(2), the court was free to consider all relevant and material evidence,[1] even though such evidence may not be legally admissible at trial, the family court's consideration of hearsay evidence was not error. Further, the requisite finding based on evidence beyond a reasonable doubt that continued custody of the children by respondent will likely result in serious emotional or physical damage to the children was supported by the expert's admissible testimony, which may be based on hearsay information in accordance with MRE 703 and MRE 704. *Thomas v McPherson Center*, 155 Mich App 700, 708-709; 400 NW2d 629 (1986).

Affirmed.

/s/ Richard Allen Griffin
/s/ Janet T. Neff
/s/ Helene N. White

[1] Respondent concedes that the challenged evidence was relevant.