

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of Heather McQueen and Tara Risner,
Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

UNPUBLISHED
March 23, 2001

v

SHERRY RISNER,

Respondent,

No. 228156
Allegan Circuit Court
Family Division
LC No. 98-023093-NA

and

LARRY RISNER,

Respondent-Appellant.

Before: Saad, P.J. and Fitzgerald and O'Connell, JJ.

PER CURIAM.

Respondent, Larry Risner, appeals from the family court's order terminating his parental rights to his two minor children, Heather McQueen and Tera Risner.¹ We affirm.

¹ FIA also petitioned to terminate the parental rights of the children's mother, Sherry Risner, who resided in Florida when the children were removed. Sherry Risner failed to appear for any of the termination proceedings, but spoke to a protective services employee over the telephone in August or September 1998 and, according to FIA foster care worker Linda Hartman, she chose not to return to Michigan because she feared arrest and jail for failing to pay fines for a prior offense. The record reflects that FIA made several additional attempts to contact Risner by mail and newspaper publication, without success. Accordingly, on February 14, 2000, the court terminated Risner's parental rights to the children pursuant to MCL 712A.19(b)(3)(a)(ii); MSA 27.3178(598.19b)(3)(a)(ii), MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i), and MCL

(continued...)

On August 6, 1998, Family Independence Agency (FIA) filed a petition to terminate respondent's parental rights after police arrested and jailed him for violating his parole. Defendant was on parole for a July 25, 1997, assault with a deadly weapon conviction.² FIA learned that authorities expected respondent to remain in jail for ten months to one year and that relatives were unwilling or unable to care for the children in his absence.

At an adjudicatory hearing on November 17, 1998, respondent admitted that he had a substance abuse problem which interfered with his ability to parent and the children became temporary wards of the state.³ The court subsequently ordered respondent to comply with an FIA agreement to take anger management classes, meet with a private therapist, undergo substance abuse counseling and meet his counselor's goals, attend weekly Alcoholics Anonymous meetings, attend parenting classes and comply with FIA rules for visitation. The court further ordered that visitation could expand to overnight visits if respondent first participated in family therapy and took more parenting classes.

Following a two-day hearing on May 8 and 10, 2000, the court terminated respondent's parental rights. Respondent contends that the court lacked clear and convincing evidence to support any statutory ground for termination. We disagree.

In a termination hearing, the petitioner bears the burden of proving by clear and convincing evidence at least one statutory basis for termination. MCR 5.974(F)(3); *In re Trejo Minors*, 462 Mich 341, 350; 612 NW2d 407 (2000). Once a statutory basis for termination is shown, the trial court shall terminate the respondent's parental rights unless it finds that 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 341, 352-353; 612 NW2d 407 (2000).

We review a trial court's termination decision for clear error. MCR 5.974(I); *Trejo, supra*, 462 Mich 356-357. A decision is clearly erroneous if, although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i); MSA 27.3178 (598.19b)(3)(c)(i) and MCL 712A.19b(3)(c)(ii); MSA 27.3178 (598.19b)(3)(c)(ii) which provide:

(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:

(...continued)

712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g). Sherry Risner has not appealed the court's ruling.

² Respondent testified at the termination hearing that he violated his parole when he tested positive for drugs during a screening.

³ The petition also asserted that respondent "has three substantiated cases of child abuse and/or neglect with Protective Services."

(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:

(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.

(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 evidence of his anger management problems did not constitute sufficient evidence to terminate his parental rights. Respondent admitted that violent episodes occurred in the family home because of his own alcohol abuse and his wife's drug use, but he ultimately blamed his wife for initiating the physical confrontations. Respondent also admitted that his attempted felonious assault conviction, for which he was on probation when the children were removed from his custody, involved a fight stemming from his alcohol problem. Although he claimed self defense, respondent stated that he was arrested after he kicked the victim in the throat with his booted foot. Further, David Green, respondent's anger management instructor, testified that respondent admitted to three convictions for domestic violence.

Several witnesses also testified regarding respondent's confrontation with the foster family taking care of the two minor children. Both respondent and his mother, Ida Walton, denied that respondent lost control and claimed that the foster father caused the fight. However, FIA foster care worker Linda Hartman testified that the foster parents reported an angry episode initiated by respondent and respondent himself testified that the foster parents reported that he was "totally out of control" when he confronted them in a parking lot during a visit with the children. The children's counselor, Kathleen Witkowski, testified that the girls told her that respondent was yelling at the foster parents and that Walton was nervously trying to coax respondent back into her car during the confrontation. Also, because of that episode, FIA changed respondent's parenting time to supervised visits.

Though respondent's visits generally went well, supervisor Susan Harris testified that, during one visit, respondent confronted the children in public for failing to corroborate a statement he made to FIA. Harris indicated that the girls were very upset and worried about respondent's anger. Testimony also established that Heather told FIA workers about respondent's excessive physical discipline and that both girls feared for their safety in respondent's home. Heather even wrote a letter to the court to express her knowledge of and concern about respondent's anger management problem.

The court ordered respondent to undergo anger management counseling because of this history of violent behavior. However, throughout the proceedings, respondent denied having an anger control problem and made no progress in addressing or managing the behavioral concerns. Green testified regarding respondent's hostility toward him during anger management classes and said that respondent could not make progress to correct his problem if he continued to deny its existence. Green observed that respondent not only failed to admit to a problem, he continued to blame others for all the episodes of violence in his past. It also appears that respondent failed to progress in his anger therapy with Dr. Chavoya because he refused to return after only four sessions. Further, when he attended parenting classes, respondent deliberately invalidated two of his examinations, preventing the instructor from determining the level of dysfunction in respondent's behavior toward his children and any progress he may have made during the class. Moreover, on the part of the test he did complete, respondent was rated "defensive responding" and, nonetheless, failed to attend many of the parenting classes and only completed four out of thirteen assignments.

As respondent correctly notes, the record indicates that he successfully completed substance abuse treatment and participated in follow-up care. The witnesses who testified about respondent's treatment plan agreed that he appeared to maintain sobriety and that he did not test positive for alcohol. Though respondent did not comply with continued treatment between March and July 1999, no evidence indicated that he relapsed into drug or alcohol use at that time. Accordingly, it appears that respondent complied with that aspect of his treatment plan. However, evidence showed that respondent's parenting problems stemmed from his violent behavior and it does not appear that his anger management problems improved with his sobriety. Further, it is clear that respondent made every effort to avoid addressing or even admitting to his anger problem throughout this case.

These reasons constitute clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(c)(i); MSA 27.3178 (598.19b)(3)(c)(i) and MCL 712A.19b(3)(c)(ii); MSA 27.3178 (598.19b)(3)(c)(ii). There is ample evidence of respondent's violent behavior toward his family and others and, through his own testimony, it is clear that respondent is unwilling to address those issues. Further, while some witness testimony differed regarding respondent's behavior toward his children and his actions during some of his confrontations with others, "deference must be accorded to the probate court's assessment of the credibility of the witnesses before it." *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991).

The children entered foster care in August 1998 and, as of the date of the termination hearing in May 2000, respondent failed to address his anger management problem. Given respondent's adamant refusal to correct the behavior that caused numerous family problems before and during this case, given the ages of these children, twelve and eight at the time of the termination hearing, there is no reasonable likelihood that this condition will be corrected within a reasonable time. Accordingly, the trial court did not clearly err in terminating respondent's parental rights.

Plaintiff contends that the court erred by finding that termination of respondent's parental rights would be in the best interests of the children. We disagree.

If a trial court finds clear and convincing evidence to support a statutory basis for termination, it must terminate the respondent's parental rights unless it finds evidence on the record as a whole that termination is not in the child's best interests. *Trejo, supra*, 462 Mich 353-354. This Court reviews the trial court's decision regarding the child's best interests for clear error. *Id.* at 356-357.

Here, the trial court did not clearly err by finding that termination was in the best interests of the children. As discussed above, respondent has unresolved anger management issues that have led to criminal convictions for violence both inside and outside the home. Further, the record reflects that respondent's behavior has significantly impacted his children. The counselors who spent time with Heather and Tera reported their extreme anxiety and "hypervigilant" behavior. Not only did the girls show concern about their safety in respondent's home, they expressed anxiety and confusion about respondent's violent behavior toward their mother and about seeing respondent taken away by police. As a result, Witkowski testified that when the girls entered foster care, they suffered from various emotional and behavioral problems, had various problems at school, experienced nightmares, fought with others and had low self esteem.

While the children improved with the foster family, Tera, the younger child, developed a strong attachment to her foster mother and exhibits a generalized fear of men. Tera also has behavioral problems at school and has difficulty coping with frustration. Harris testified that respondent appeared to bond with the children during visits and respondent maintained that he had a close relationship with the girls. However, in the observation of the children's counselor, Jodi Sweetman, the girls never bonded with a primary caregiver and she noted that the girls simply did not talk about respondent without direct questioning. Sweetman testified that the girls' failure to bond was also apparent because they tended to become attached to any new adult much too quickly and because they tended to start calling new adults "mom" or "dad" immediately, before any bonding could take place.

Thus, contrary to respondent's assertions, the children do not appear to be so attached to him that termination would harm them emotionally. In addition to the myriad of emotional problems they suffered because of respondent's behavior, the children expressed ambivalence about returning to respondent's care. Heather stated in her letter to the court that respondent continues to have an anger management problem and that she simply wanted the court to do what was best for the girls. Moreover, according to Sweetman, when asked whether they wished to return to respondent or to remain in foster care, the girls simply shrugged and gave no opinion, yet still expressed anxiety about their safety in respondent's home.⁴

⁴ Hartman, Sweetman and Witkowski testified that the girls need permanency and respondent contends that Witkowski testified that the children would have difficulty handling the termination of his parental rights. However, while Witkowski testified that the girls might have difficulty adjusting to a change in placement, she maintained that if respondent was not ready to assume custody at the termination hearing, it might be best in the long run to keep the girls in a preadoptive home.

This evidence, along with respondent's history of violent behavior and his refusal to undergo treatment, supports the trial court's finding that termination is in the children's best interests. Moreover, respondent has pointed to no clear evidence, based on the whole record, that indicates that termination would not be in the children's best interests. *Trejo, supra*, 462 Mich 353-354. Accordingly, the trial court did not clearly err in terminating respondent's parental rights.

Affirmed.

/s/ Henry William Saad

/s/ E. Thomas Fitzgerald

/s/ Peter D. O'Connell