STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ADAM LUCAS KRULL, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CINDY MAIER,

Respondent-Appellant,

and

JONATHON ALFRED KRULL,

Respondent.

UNPUBLISHED
August 24, 2001

No. 225163
Saginaw Circuit Court
Family Division
LC No. 97-024925-NA

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

PER CURIAM.

Respondent-mother appeals as of right from an order of the circuit court terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i) and (j). We affirm.[1]

Respondent-mother 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 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. Although respondent-mother did participate in the services offered and their was

[1] Respondent-father has not appealed the termination of his parental rights.

evidence of some improvement in her parenting skills, the evidence showed that she made no progress on the issue that was of primary concern to the family court, i.e., minor child's fractured arm. Two years after the child's left humerous was broken into two separate pieces, respondent-mother still had no credible explanation on how the arm was injured and why respondent-mother delayed in seeking medical treatment. Further, we do not believe "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).

Finally, we reject respondent-mother's argument that the family court erred in denying her motion to dismiss the termination petition because the petition was not timely filed. MCR 5.973(C)(2) states that the family "court must conduct the permanency planning hearing no later than 364 days after entry of the original order of disposition." The record shows that the court met this deadline. To the extent that there is a conflict between MCR 5.973(C)(2) and the current version of MCL 712A.19a(1), the court rule prevails. *People v Strong*, 213 Mich App 107, 112; 539 NW2d 736 (1995)("In resolving a conflict between a statute and a court rule, the court rule prevails if it governs practice and procedure."). Accord Const 1963, art 6, § 5.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Henry William Saad

McDonald, J., did not participate.