

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of LMS, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ASEEM SINGH,

Respondent-Appellant,

and

JUDITH KORTAS,

Respondent.

UNPUBLISHED

November 27, 2001

No. 225911

Macomb Circuit Court

Family Division

LC No. 96-042766-NA

Before: Whitbeck, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

Respondent-appellant Aseem Singh appeals as of right from the family court order terminating his parental rights to the minor child.¹ We decide this case without oral argument pursuant to MCR 7.214(E). We affirm.

I. Basic Facts And Procedural History

In May 1996, Macomb County Protective Services received a telephone call in which the caller reported doubts about Singh's ability to care for his two-month-old infant. Judith Kortas, LMS's mother, had been diagnosed with a schizo-affective disorder and had ceased taking her psychotropic medication. Discussions with relatives revealed that Singh had a history of illegal drug use, mental health problems, and domestic violence. Protective Services worker Roberta Schweitzer investigated the complaint in a home visit in May 1996.

¹ See MCL 712A.19b(3)(c)(i) and (g).

Later in May 1996, police officers responded to an incident in which Kortas drove her vehicle into a parked car while transporting LMS. Officers described Kortas as incoherent. She had just had an argument with Singh.

At a home visit in early June 1996, a protective services worker described Kortas as paranoid and delusional. She was separated from Singh at that time. A petition for temporary custody was authorized and the child was briefly placed with a maternal aunt, then placed in foster care, where he remained throughout the three years these child protective proceedings were pending. Kortas and Singh pled no contest to an amended petition which alleged that the home environment lacked the necessary nurturing elements to support and engender complete physical and mental welfare and growth for LMS. The family court assumed jurisdiction following the trial in July 1996.

Following the trial, the family court required Singh to comply with the terms of the September 1996 parent-agency agreement, which included weekly supervised visits with his child, a substance abuse assessment, mental health counseling, and parenting classes. He also had to maintain stable housing and a legal source of income. Singh was later ordered to undergo a psychological evaluation as well.

Singh obtained a substance abuse assessment in October 1996. Singh reported that he did not use any substances, and the assessment did not rely on any other source of information. Therefore it did not substantiate Singh's substance abuse and he was not referred for treatment. However, Singh later admitted himself to a psychiatric hospital for mental health issues and marijuana rehabilitation. The family court also ordered Singh to undergo random drug screens and attend Narcotics Anonymous (NA), but Singh did not comply with these requirements. Though Singh stated he had attended NA meetings of his own volition, he did not provide the FIA with documentation of his attendance.

With respect to housing and employment, Singh testified that he rented one room in a boarding house. He had moved from Macomb County to Wayne County, but the FIA admitted that his housing had been fairly stable. He testified that he expected to graduate from Wayne State University with a business management degree in May 2000 and was currently employed at Lowe's Theatres working in the box office, concessions, and acting as an usher. He received SSI benefits, which the foster care caseworker believed were because of an emotional or mental disability.

Singh completed parenting classes, and said that he had attended a second series of parenting classes because the first one did not relate to caring for an infant. He reported that he was currently in a third parenting class. The foster care caseworker, Marsha DeLonge, testified that Singh did not benefit from the parenting classes he completed in 1997. Singh was never able to calm LMS at visits, he overstimulated LMS by putting objects directly in the child's face despite repeated reinstruction, and would not allow others to hold or interact with LMS.

Singh attended eight therapy sessions with psychotherapist social worker Sheila Fox. These sessions did not deal with parenting issues, but rather with Singh's depression, sleep problems, and lack of proper hygiene. Fox testified that there was some improvement in Singh's hygiene, and he slept less, but his employment goals were unrealistic and he blamed his current situation on Kortas. Fox also monitored Singh's case from October 1996 to October 1997 to

ensure that Singh maintained his medication for manic and bipolar disorders. Singh testified that Fox terminated his therapy sessions because his therapy was complete, but Fox testified that therapy ceased at Singh's request. DeLonge did not know whether Singh had met his counseling goals, but Fox had indicated to her that Singh was not really working toward his goals, had unrealistic beliefs about himself, denied responsibility for problems, and needed more therapy. Shortly after he made progress in hygiene and sleeping issues, Singh was hospitalized for an attempted suicide overdose. After moving to Wayne County, Singh commenced therapy through Wayne County Community Mental Health. He was hospitalized for mental illness twice in 1998, and for ten days in February 1999.

Under a court order, Singh was referred to Dr. Patrick Ryan for a psychological evaluation in early 1998. Singh requested information on Dr. Ryan's relationship with the FIA and copies of other evaluations performed or the tests that would be performed so that he, Singh, could look at them before he took them. Dr. Ryan refused to provide copies of other evaluations, and the parties attempted to communicate through voice mail and pager, but were unable to schedule a session. Dr. Ryan finally suggested that Singh find his own examiner. Singh did complete one psychological evaluation with Dr. Ryan in May 1999, and Dr. Ryan testified that Singh appeared to understand and absorb some concepts taught in the parenting classes. Dr. Ryan concluded that Singh had elevated paranoia, and difficulty with societal norms, cooperating and following a program. In his opinion, Singh was always in conflict with someone over something and had an obsessive-compulsive paranoid quality to his disorder, which was being managed with medication. Dr. Ryan testified that Singh was a little "scatterbrained," and he might know what to do in an emergency situation but not be able to act. He believed that Singh was not able to have LMS returned to his care at that time. If LMS were returned to Singh for a period of time, Dr. Ryan indicated that Singh should be watched "like a hawk."

Singh admitted marijuana use to Dr. Ryan. He also testified that he had used marijuana off and on since age thirteen, and had last used it in February 1999. He admitted that his hospitalizations to adjust his medication could certainly have been related to his marijuana use.

Singh consistently visited LMS weekly over the three years of these child protective proceedings, missing visits occasionally when hospitalized. Initially, when LMS was six to nine months old, he screamed through each visit. Subsequently, the foster father was required to stay and comfort him during visits. Even at twelve to eighteen months, LMS did not want to stay in the room with Singh. DeLonge testified that all the case workers tried to assist Singh in bonding with LMS, but no bonding ever took place. Singh was unable to calm LMS, did not know about LMS's development, and spoke to LMS in language more suitable for an older child. According to DeLonge, FIA case workers continually instructed Singh on how to calm LMS and change his diaper, but Singh did not "get it."

DeLonge also recalled that, during visitation, Singh wandered into other cubicles and interacted with others. DeLonge did not remember Singh acting confused, but testified that he engaged in unusual behavior, such as examining LMS's hands because a gypsy had told him that they had the same lifeline, and stating that he would take LMS to the police department to have him fingerprinted. Singh at one time requested that another woman attend visitation because she had been present when LMS was conceived.

DeLonge testified that there was tension between Singh and the foster father. According to the foster father, Raymond Hill, Singh brought items to visitation that were inappropriate for LMS. Singh always carried three to four bags with him to visits: a duffel bag, garbage bags, paper bags, and the like. They contained toys, rubber gloves, a stethoscope, bubbles, and other objects. Singh sprayed LMS and himself with perfume, blew bubbles in LMS's face, and allowed LMS to drink the bubble liquid. Singh allowed LMS to play with the stethoscope. He brought karate sticks, which LMS was unable to play with. Near Christmas 1996, Singh brought a bag for the child containing two fuzzy toys, a tie, an apron, and women's underwear soiled with urine and feces. Hill testified that LMS would bite, kick, slap, and hit in refusing to go to visits when he reached eighteen months to two years of age. At that age, LMS experienced night terrors following visits.

Dr. Thomas Lee, Hill's friend and LMS's pediatrician, observed LMS's behavior. Although he had no special experience in sleep disorders, Dr. Lee prescribed Atarax to calm LMS, and encouraged Hill to have LMS tested by a child psychologist. LMS was never tested because the FIA did not think it necessary in light of his young age. However, Dr. Ryan testified that Atarax is often prescribed for night terrors and that night terrors should not result from a one-hour weekly visit unless the interaction was somehow traumatic. He suggested that such behavior could be a facet of LMS's temperament. Visits were easier while LMS was taking Atarax, and LMS was more willing to interact with Singh. The last visit between Singh and LMS occurred in late February 1999.

DeLonge concluded that Singh's parental rights should be terminated because he had never established a bond with LMS despite weekly visits, and did not understand the dynamics of raising a child. She concluded that returning LMS to Singh would be "horrendous" for LMS.

Singh, however, explained that he was never able to establish a bond with LMS because Hill interfered with visits either by being present in the cubicle or in a hallway where LMS could see or hear him. He stated that he brought unusual objects that LMS would not otherwise be able to play with, denying that the soiled underwear incident occurred and that LMS had consumed the bubble water. Singh clarified that the karate sticks were soft ones suitable for ages three and under and that he carried several bags to visits because he traveled to visits from Wayne County or, occasionally, Grand Rapids, taking his clothing and books with him. He hoped to develop LMS's vocabulary by speaking to him in a more adult manner.

The family court read its findings of fact and conclusions of law into the record on November 15, 1999. The family court terminated both Singh's parental rights under MCL 712A.19b(3)(c)(i) and (g).

II. Grounds For Termination

A. Standard Of Review

Singh argues that the family court erred in terminating his parental rights because there was insufficient evidence to support termination. In order to terminate parental rights, the family court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3)

has been met by clear and convincing evidence.² This Court reviews the family court's findings of fact under the clearly erroneous standard.³

B. Clear And Convincing Evidence

After review of the whole record, set out at length above, we conclude that the family court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence.⁴ Parental rights may be terminated under MCL 712A.19b(3)(c)(i) when the parent has been a respondent in the proceedings for 182 or more days, the conditions leading to the adjudication have not been corrected, and will not be corrected within a reasonable time given the child's age. There is no question that Singh was a respondent in the proceedings for the requisite period. The reasons for the adjudication ran the gamut of mental instability and questionable parenting, to substance abuse. While Singh had attended parenting classes, whether he benefited was questionable in light of his erratic and inappropriate behavior at visits with LMS. Further, Singh had yet to show consistent progress in controlling his psychological problems and there was no firm evidence that he had stopped using illicit drugs. When considered as a whole, we cannot say that the family court erred in finding clear and convincing evidence of the grounds for termination in MCL 712A.19b(3), especially because the proceedings had been underway for a long time and LMS showed no bond with Singh.

Affirmed.

/s/ William C. Whitbeck
/s/ Joel P. Hoekstra

I concur in result only.

/s/ Janet T. Neff

² *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993).

³ MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

⁴ *Id.*