# STATE OF MICHIGAN

# COURT OF APPEALS

In the Matter of C.A.V., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

GARY JOSEPH VASILE,

Respondent-Appellant.

UNPUBLISHED
January 22, 2002

No. 231313
Wayne Circuit Court
Family Division
LC No. 97-354511

Before: Cooper, P.J., and Griffin and Saad, JJ.

PER CURIAM.

Respondent appeals as of right the family court's order terminating his parental rights to C.A.V. pursuant to MCL 712A.19b(3)(a)(ii), (b)(i), (c)(i), (g) and (j). We affirm.

## I. Facts and Procedural History

C.A.V. was born on October 3, 1989, to Jonnie Vasile and Gary Vasile (respondent).[1] When respondent and Jonnie Vasile divorced, C.A.V. and the couple's two other children remained with respondent in Florida.[2] Respondent married his third wife in 1994.

There were substantiated reports of abuse of C.A.V. by both respondent and his wife in 1994. These reports included allegations that C.A.V. was beaten with a hairbrush, causing bruising and welts on her buttocks. After a report was made to Florida protective services, C.A.V. became a temporary ward of the court.[3] Respondent admitted during the instant proceedings that he had inflicted the marks on C.A.V. Respondent also testified that he completed the parenting classes ordered by the Florida court to regain custody of C.A.V.

[1] Jonnie Vasile voluntarily relinquished her parental rights to C.A.V. on December 17, 1998, and is not involved in this appeal.

[2] This case only involves respondent's parental rights to C.A.V.

[3] The record is devoid of any evidence that respondent's two sons were abused and they remained in his custody.

However, the record indicates that C.A.V. was never returned to respondent because respondent requested that she be placed in the custody of her maternal grandmother in Florida. Respondent explained to the court that he was trying to get things "settled" with his wife, who had just had a baby girl at that time, and that his wife did not get along with C.A.V.

C.A.V. lived with her maternal grandmother in Florida from September 1994 until June 1996. During the trial, Diane Powell[4] testified that C.A.V.'s grandmother kept a record of respondent's visitations and phone calls while C.A.V. was in her care. Ms. Powell testified that according to the log, respondent phoned or visited C.A.V. only twenty times during the two years that C.A.V. was in her grandmother's care and that the visits were sporadic and irregular. Jackie Morris, a caseworker with the Saint Vincent Sarah Fisher Center (the Center),[5] testified that in June 1996 the maternal grandmother sent C.A.V. to live with Jonnie Vasile in Michigan because she could no longer handle C.A.V.'s behavior.[6]

This case first came to petitioner's attention in April 1997, when Jonnie Vasile left C.A.V. at community care services stating that she could no longer care for C.A.V. Jonnie Vasile testified that she had specific concerns that C.A.V. would harm her other son who suffered from cerebral palsy. On April 29, 1997, C.A.V. was placed in foster care and made a temporary ward of the court.

During the initial hearings concerning C.A.V.'s mother, respondent was contacted by Ron Williams[7] and asked if he would be pursuing custody. According to Mr. Williams' testimony, respondent indicated that he would not be seeking full custody of C.A.V. at that time. Rather, Mr. Williams testified that respondent informed him that he would like to arrange a two-week visit with C.A.V. at his home to see if she could behave and fit in. Respondent did not sign a parent agency agreement at that time. During the year and a half course of the proceedings concerning C.A.V.'s mother, there was no documented contact between respondent and the Center to discuss C.A.V.'s welfare.

Respondent has not visited C.A.V. since she moved to Michigan to live with her mother. However, respondent testified that he did place between thirty or forty phone calls to Jonnie Vasile since C.A.V. went to live with her.[8] Respondent further maintained that he made direct phone contact with C.A.V. at her foster home. However, according to Erin Laire's[9] testimony, C.A.V.'s foster mother reported that these phone calls were sporadic and that long periods of

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[4] Ms. Powell was a foster care case manager with the Family Independence Agency (FIA) that was assigned to this case.

[5] The Center was the foster care agency contracted by the FIA to handle C.A.V.'s case.

[6] At one time C.A.V. was diagnosed with having Attention Deficit Hyperactive Disorder (ADHD). There are reports that C.A.V. throws tantrums and acts out in other ways.

[7] Mr. Williams was a foster care case worker with the FIA that was assigned to this case.

[8] Respondent further testified that some of these calls were related to his other two sons that he had with Jonnie Vasile.

[9] Ms. Laire was a case worker with the Center that was assigned to this case.

time elapsed without any contact. The record further reveals that respondent did not offer any financial support for C.A.V. during this time.

Throughout these proceedings, respondent was employed as a civilian in the Army National Guard. Respondent's position with the National Guard was full-time and he was subject to leave restrictions. In addition to these restrictions, respondent was on call at all times. We further note that while C.A.V. was in foster care, respondent divorced his third wife and married Cheryl Vasile in February 1998.[10]

Petitioner initially filed for termination of respondent's parental rights on August 25, 1998. Ms. Morris stated at trial that she contacted respondent on October 26, 1998, to see if respondent wanted to make a plan to regain custody of C.A.V. According to Ms. Morris' testimony, respondent indicated to her that he planned to seek custody of C.A.V. at that time. Thereafter, Ms. Laire testified that respondent contacted the Center to arrange a visit with C.A.V. while he was in Michigan for the November 5, 1998 hearing. However, respondent was not allowed to visit C.A.V. at that time because a petition for permanent custody had been filed.

During the proceedings, petitioner alleged that respondent should not have custody of C.A.V. due to his abandonment and failure to actively plan for C.A.V. However, respondent testified that he had been in contact with his former wife and C.A.V. Respondent further indicated that a FIA worker had promised him a home study and that this study was not completed. Additionally, respondent claimed that he telephoned the Center on several occasions to discuss C.A.V.

The court held that respondent was "consistent in the last twelve months with his desire to reunite himself with his child" and that petitioner should make further efforts to assist him. Additionally, the court noted numerous shortcomings and failures on the part of FIA and used the lack of a home study as an example. The court indicated that these problems were due to the fact that there were several different workers on the case. For these reasons, the court decided that C.A.V. should remain in foster care and that respondent was entitled to a parent agency agreement and visitation with his daughter. The court further stated that respondent deserved an opportunity to "vigorously" try to improve his relationship and visitations with C.A.V. The court concluded that there was insufficient evidence to support the termination of respondent's parental rights.

A parent agency agreement was subsequently entered into between petitioner and respondent. The provisions of the agreement required respondent to: (1) attend scheduled visits with C.A.V.; (2) participate in weekly supervised phone contacts; (3) attend parenting classes; (4) receive a psychological evaluation; (5) participate in individual and family therapy; (6) maintain biweekly contact with the case manager; (7) sign any necessary papers to provide for C.A.V.'s needs; and (8) cooperate with any court orders. A court order was subsequently issued requiring respondent to seek domestic violence counseling.

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[10] Cheryl has a son from a prior relationship that continues to reside in respondent's home.

The record indicates that respondent complied with most of the requirements in the parent agency agreement. Both respondent and his wife completed parenting classes. Respondent also underwent a costly psychological evaluation for which he had to wait a lengthy period of time before being reimbursed by petitioner. Additionally, respondent maintained bi-weekly contact with the agency and, with a few exceptions, called C.A.V. on a weekly or bi-weekly basis.

However, despite this partial compliance, respondent failed to visit his daughter. Respondent testified that he was unable to visit C.A.V. for financial reasons, health problems, and an inability to obtain leave from work. In March of 1999, respondent suffered a heart attack and was allowed to travel only in the local area until an Army medical board lifted this restriction. Respondent further testified that he attempted to take leave in September 1999, but that it was cancelled due to Hurricane Floyd. Respondent failed to offer into evidence any documentation of these leave restrictions. Respondent also explained that he did not visit C.A.V. during 1997 or the first ten months of 1998 for financial reasons. Respondent, however, did not accept petitioner's offer to purchase a bus ticket for him in December 1999. Respondent also explained at trial that he had a new relationship with his fourth wife during this time and that he wanted to solidify that before C.A.V. came back.

Moreover, respondent refused to attend any individual or family therapy sessions until C.A.V. was in his home. According to respondent, his family did not have any problems that required counseling. Respondent testified that he and his wife "couldn't see going there talking about potential problems when [C.A.V.] wasn't even present . . . ." Respondent also failed to attend domestic violence counseling as required by the court's order. Rather, respondent testified that domestic violence counseling was unavailable in his county of residence. However, Laura Friedman[11] testified that respondent also failed to attend alternative church counseling that was suggested in place of the formal domestic violence counseling.

The Hart County Department of Family and Children Services in Georgia completed a study of respondent's home on August 30, 1999. In their evaluation, the Georgia agency stated that respondent and his wife provided a "nice, safe home" for their children. The Georgia agency also recommended that C.A.V. visit respondent's home for a weekend before final placement. The Georgia agency concluded that respondent and C.A.V. should not be penalized because of the long distance between them.

During the review hearings, Ms. Laire indicated that C.A.V. was very anxious about her future. Indeed, Ms. Friedman testified during trial that C.A.V. informed her that she did not want to live with respondent. According to Ms. Friedman's testimony, C.A.V. wrote a letter to the court in this regard.

At the conclusion of the second termination of parental rights hearing, the court found that there was sufficient evidence to terminate respondent's parental rights. The court recognized that respondent had been given an opportunity after the February 22, 1999 hearing to show that he could be a "proper parent." However, the court noted that despite respondent's

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[11] Ms. Friedman was a foster care case manager with the Center that was assigned to this case.

partial compliance with the parenting agreement, there were serious deficiencies in terms of respondent's relationship and visitations with C.A.V. In this regard, the court indicated an awareness of respondent's health and employment but found that the circumstances keeping respondent from developing a relationship with C.A.V. were unlikely to change in the near future. The court indicated that as an eleven-year old, C.A.V. had been in foster care for some time and that "[s]he has steadfastly refused to reunite herself with the father." The court also noted that while domestic violence counseling was unavailable in respondent's county it may have been available in another county. In all, the court held that respondent's progress was insufficient to return C.A.V. to his care.

## II. Analysis

Respondent argues that the trial court clearly erred in finding that the statutory grounds for termination were established by clear and convincing evidence. We disagree. This court reviews a family court's decision to terminate parental rights for clear error. MCR 5.974(I); *In re Powers*, 244 Mich App 111, 117; 624 NW2d 472 (2000). "A finding of fact is clearly erroneous where the reviewing court is left with a definite and firm conviction that a mistake has been made." *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). We give deference to the family court's special ability to judge the credibility of its witnesses. MCR 2.613(C); *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991).

Respondent's parental rights were terminated under MCL 712A.19b(3)(a)(ii), (b)(i), (c)(i), (g) and (j), which provide as follows:

> (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:
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> (a) The child has been deserted under any of the following circumstances:
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> (ii) The child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period.
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> (b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:
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> (i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.
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> * * *
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> (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 . . . 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.

* * *

(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.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The record indicates that respondent has not lived with his daughter since 1994, or even seen her since 1996. Moreover, between 1994 and 1996, respondent only sporadically visited and telephoned C.A.V. at her grandmother's house in Florida. When C.A.V. moved in with her mother in Michigan, respondent's visits stopped completely and he spoke to C.A.V. only on occasion. After C.A.V. was placed in foster care, but before termination proceedings began, respondent's calls grew more infrequent. Further, there is no evidence that respondent provided any financial support for C.A.V.'s care.

Indeed, it was not until after termination proceedings began that respondent called C.A.V. on a more regular basis and sent some care packages. However, this Court finds it significant that respondent still failed to attend any visitations with his daughter. We are aware of respondent's health and job restrictions, but cannot say, based on the facts presented, that the court clearly erred in terminating respondent's parental rights under subsection 19b(3)(a)(ii). MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). Because the family court properly terminated respondent's parental rights under subsection 19b(3)(a)(ii), and only one statutory ground for termination must be established, we need not decide whether termination was also proper under subsections 19b(3)(b)(i), (c)(i), (g) and (j).

Furthermore, the court's findings regarding the child's best interests were not clearly erroneous. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 364-365; 612 NW2d 407 (2000). The record reveals that C.A.V. has not seen respondent since she was seven years old. The child has also indicated that she has no desire to live with respondent. In fact, the trial testimony indicated that C.A.V. displayed increased anxiety throughout the trial and that she wrote a letter to the court expressing her reluctance to live with respondent. The evidence suggests that for a large portion of C.A.V.'s life, her entire relationship with respondent has been based on phone calls and occasional care packages.

Respondent has a history of placing other relationships before his daughter. Specifically, respondent sent C.A.V. to live with her grandmother because he wanted to solidify his relationship with his third wife and their new baby. Indeed, when respondent discovered that C.A.V. was placed in foster care in Michigan he did not seek custody. Rather, respondent

suggested that C.A.V. could visit his home on a trial basis. Respondent's attitude toward his daughter can be seen in his rationale for refusing to comply with court ordered counseling: "I have other things going on. I have other children and . . . I stay quite busy."

Respondent has made some efforts to reunite with C.A.V. and the Georgia home study indicated that he has a well-adjusted family home environment. However, C.A.V. has special needs that have presented a problem for respondent in the past. Respondent's refusal to follow the court's orders to establish a relationship or receive counseling indicates that he is unwilling to address these problems. Thus, based on the whole record, we are not left with the definite and firm conviction that termination was clearly against the best interests of C.A.V. *In re Trejo, supra*.

Affirmed.

/s/ Jessica R. Cooper
/s/ Richard Allen Griffin
/s/ Henry William Saad