

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of Ryan Vincent Hull, Jr., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

RYAN VINCENT HULL, SR.,

Respondent-Appellant,

and

ANGELA BRADFORD,

Respondent.

UNPUBLISHED

January 22, 2002

No. 233117

Wayne Circuit Court

Family Division

LC No. 99-381667

Before: Hood, P.J., and Murphy and Markey, JJ.

PER CURIAM.

Respondent Ryan Vincent Hull, Sr., appeals as of right from an order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (g), (i), (j), (k)(i), and (l). Respondent Angela Bradford is not a party to this appeal. We affirm.

On July 30, 1999, a preliminary hearing was held in which the hearing referee authorized the filing of a petition for temporary custody of the minor child based on review of police documents indicating that respondent father (Hull) was present in a drug house on July 29, 1999, during a police raid, and that the child, age eleven months at the time, was with Hull in the drug house. Respondents waived a probable cause hearing, and subsequently a pretrial conference took place on August 20, 1999, at which time respondents waived a trial by judge or jury on the petition, instead agreeing to a trial before a hearing referee.

On September 15, 1999, a trial took place on the Family Independence Agency (FIA) petition for temporary custody that was based on improper supervision and failure to protect. Sergeant Marlene Sanders, a police officer in the narcotics bureau, testified that on July 29, 1999, she, along with other officers, executed a search warrant at a house on information that narcotics were being sold from the location. Hull, the child, and four other individuals were in

the house at the time the warrant was executed. Police discovered eleven packages of heroin weighing a total of five grams in the house; however, no drugs or drug paraphernalia were found on Hull, and he did not fit the description of the person identified as the individual selling heroin from the house. Sanders testified that Hull asserted that he was at the house to obtain change, which he needed because he operated a taxicab. Sanders testified that there were numerous businesses in the area at which Hull could have obtained change. Sanders noted that the child appeared clean and was not undernourished. Hull was taken to the police precinct and issued a ticket on a misdemeanor charge of loitering in a place of illegal occupation. The child was taken into protective custody by the police department's child abuse unit.

Hull testified that on July 29, 1999, he and the child were visiting at his father's home, which was around the block from the house where the warrant was executed. Hull claimed that he and the child went to visit an old friend in the neighborhood, and he met with the friend outside the drug house, which is where the friend lived, and they briefly spoke before Hull went into the house to change the child's diaper. Hull testified that the next thing he knew, the police raided the house. Hull denied that he entered the house looking for change, and he believed that Sanders misunderstood when he simply told her that he was going to his taxicab job later that afternoon. Sanders denied that Hull ever mentioned that he entered the drug house to change the child's diaper.

Mary Peyton, an FIA worker, testified that on July 13, 1999, she had visited the respondents' home on a referral regarding neglect by respondent mother, and Peyton found the home to be suitable with no physical marks of abuse observed on the child; however, she noted that respondent mother admitted to being a substance abuser who was currently in treatment. Peyton then testified that her second referral occurred after Hull was found with the child in the drug house.

On September 16, 1999, the hearing referee rendered her decision, finding evidence of risk to the child's health and welfare in light of the respondent mother's substance abuse problems and Hull's actions in taking the child to a drug house. The hearing referee found that the allegations in the petition for temporary custody had been substantiated by a preponderance of the evidence, and that, therefore, the minor child came within the jurisdiction of the family court under the juvenile code.

During the temporary wardship, dispositional hearings were conducted in late 1999 and early to mid 2000, during which time respondents were ordered to undergo drug screens and substance abuse treatment, along with attending counseling and parenting classes. The child resided with his maternal aunt during the temporary wardship. On August 14, 2000, a permanency planning hearing was held, in which the hearing referee found that no progress had been made, and the FIA was ordered to file a supplemental petition to terminate respondents' parental rights.

The trial on the petition to terminate respondents' parental rights was held on January 17, 2001, before the same hearing referee who heard the trial on the petition for temporary custody. The respondents did not appear although the record indicated that they had been personally served with notice of the trial. The only witness at trial was foster care worker Heather Bairski. Although Bairski could not find a signed copy of the parent-agency treatment plan regarding Hull, she testified that the plan was thoroughly discussed with him. The parent-agency treatment

plan required Hull to submit to weekly drug screens, attend court hearings, visit the child on a regular basis, maintain suitable housing, maintain a legal source of income, complete parenting classes, and to contact Bairski on a weekly basis.

Bairski testified that Hull completed only three out of fifty-nine drug screens; the three screens were negative. Hull's last contact for a drug screen was November 22, 1999. Bairski testified that Hull never entered a drug treatment plan. Bairski further testified that Hull last visited the child in March 2000. That visit, at the home of the child's maternal aunt, was cut short because Hull appeared high and had a threatening demeanor. Previous visits were extremely sporadic. Although Hull had the opportunity to visit the child at the FIA after March 2000, he failed to do so without reason, and even after bus tickets were provided to him. According to Bairski, Hull did not attend any individual counseling sessions, his employment status was unknown, he did not regularly attend court hearings, he did not meet with her as required, and for several months at a time, Hull's whereabouts could not be determined.

Of significant importance, Bairski testified that Hull's parental rights had been terminated regarding another child in 1998. Respondent mother was not the mother of that child. The attorneys at trial were confused and unclear regarding the earlier termination, in part, because Hull had told the Clinic for Child Study that he still had custody of his other child, and that he was raising the child. Astonishingly, it appears that the hearing referee, court personnel, and the attorneys involved in the action were unaware of the earlier termination proceedings. The hearing referee delayed rendering her decision until the following day in order to allow her to review the pertinent files regarding the previous termination proceedings.

On January 18, 2001, the hearing referee recommended the termination of respondents' parental rights. Pursuant to written findings of fact, the hearing referee found that Hull failed to visit, support, contact, or communicate with, the minor child, that he failed to substantially and consistently comply with the case plan, failed to provide weekly random urine screens, failed to complete substance abuse treatment, failed to attend NA/AA, failed to complete individual counseling, failed to complete parenting classes, failed to maintain suitable housing, failed to maintain regular legal employment, failed to maintain regular weekly contact with the foster care agency, and failed to regularly attend court ordered parenting time. The hearing referee specifically found that Hull only submitted to three drug screens, which were negative, and that he had not visited the child since March 2000. The hearing referee further found that the parents had a chronic substance abuse history, that they failed to address issues that brought the child into the jurisdiction of the court, and that they abandoned the child.

Additionally, the hearing referee confirmed the termination of Hull's parental rights to his other child. Hull's rights were terminated because he had stabbed respondent mother four times and punctured her lungs, and the child, age three, had a split lip and long scratch on his face caused by Hull and the birthmother. Further, the child had been abandoned while Hull fled arrest, the child was never visited while in foster care, and Hull admitted to the use of heroin, cocaine, and marijuana. The hearing referee concluded that Hull had lied about the previous termination, indicating to clinicians in August 2000, that he was still raising that child. Hull does not dispute the prior act of violence and the physical injuries incurred by his other child.

The hearing referee found that the statutory grounds, MCL 712A.19b(3)(a)(ii), (c)(i), (g), (i), (j), (k)(i), and (l), had been proven by clear and convincing evidence, and that there was no

evidence to show that the termination of parental rights was not in the child's best interests.¹ An order terminating respondents' parental rights was subsequently entered by the circuit court on January 26, 2001, with the order being amended, to correct the child's middle name, on May 21, 2001.

Hull argues that the evidence established that he had been making progress, that he did not test positive for any drugs, that he completed a parenting class, that his home was suitable for the minor child, that his visits with the child were appropriate through March 2000, that the home environment was safe, that there was no need to remove the child, and that he never signed a parent/agency agreement. Hull also argues that respondent mother was taking very good care of the minor child, and that had he not been present at a drug house, the FIA would never have filed the petition. Hull concludes that based on these facts, the hearing referee's findings of fact were clearly erroneous, and that there was not clear and convincing evidence that termination was warranted. We disagree.

Under MCL 712A.19b(3), it is well established that the petitioner requesting the termination of parental rights bears the burden of proving at least one ground for termination. *In re Trejo Minors*, 462 Mich 341, 350; 612 NW2d 407 (2000). Once one or more grounds for

¹ The pertinent provisions of MCL 712A.19b(3) provide as follows:

(a)(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.

(c)(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.

(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

(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.

(k)(i) Abandonment of a young child.

(l) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.

termination are proven, MCR 5.974(E)(2) mandates termination unless it is clearly not in the best interest of the child. *Id.* at 351. Where the petitioner has presented clear and convincing evidence that persuades the court that at least one ground for termination has been established under subsection 19b(3), the liberty interest of the parent no longer includes the right to control and custody of the children. *Id.* at 355.

This Court reviews for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest. *Id.* at 356-357. Findings of fact are reviewed under the clearly erroneous standard. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding of fact is clearly erroneous if, although there is evidence to support it, the reviewing court on all of the evidence is left with a definite and firm conviction that a mistake has been made. *Id.* Deference is given to the special ability of the trial court to judge the credibility of the witnesses who appear before the court. *Id.*

Here, contrary to Hull's assertion that he was making progress, the record indicates that there were minimal attempts to comply with the parent-agency treatment plan early in the proceedings; however, by the time of the trial in January 2001, Hull had not visited the child in nearly a year, he had not submitted to drug screenings for over a year, he had not stayed in contact with his case worker, and he even failed to appear at trial. Hull's argument that he did not test positive for drugs is meaningless considering that he only completed three out of fifty-nine drug screens. Hull's argument that he completed a parenting class is simply not relevant considering the numerous other failings to comply with the parent-agency treatment plan and orders issued through the dispositional phase of the proceedings. Moreover, it appears that the parenting class referenced by Hull may have been in connection to the previous termination proceeding. Hull's argument that his home was suitable and safe for the child also lacks merit considering that the whereabouts of the respondents was unknown for long periods of time, that the respondents had a controlled substance history, that Hull stabbed respondent mother in the past, and that Hull's other child had physical injuries caused by Hull and the birthmother. Hull's argument that he never signed the parent-agency treatment plan, thereby suggesting that he was not subject to the plan, lacks merit because the record is replete with evidence that Hull was told by Bairski and the hearing referee throughout the proceedings of the necessary actions that needed to be undertaken. Moreover, Hull makes no claim that he was unaware of the necessary actions concerning drug screens, counseling, visitation, and other matters, nor did Hull ever claim below that he should not be subject to the requirements of the treatment plan.

The hearing referee did not clearly err in finding that there was clear and convincing evidence that Hull had deserted and abandoned the child after having last visited or seen the child in March 2000. MCL 712A.19b(3)(a)(ii) and (k)(i); see *In re Mayfield*, 198 Mich App 226, 230, 235; 497 NW2d 578 (1993); *In re Hall*, 188 Mich App 217, 223; 469 NW2d 56 (1991). Additionally, in light of Hull's failure to submit to drug screens and substance abuse treatment, the hearing referee did not clearly err in finding that there was clear and convincing evidence that the conditions that led to the adjudication continued to exist without a reasonable likelihood that the conditions would be timely rectified. MCL 712A.19b(3)(c)(i). Further, taking into consideration the history of drugs, violence, and lack of involvement and proper supervision, the hearing referee did not clearly err in finding that there was clear and convincing evidence that Hull failed to provide proper care or custody for the child, and that there was no reasonable

expectation that Hull would be able to provide proper care and custody in the future. MCL 712A.19b(3)(g). Next, considering the evidence regarding the previous termination, which Hull does not dispute, the hearing referee did not clearly err in finding that there was clear and convincing evidence supporting termination pursuant to MCL 712A.19b(3)(i) and (l). Finally, considering the history of drugs and violence, the hearing referee did not clearly err in finding that there was clear and convincing evidence that there was a reasonable likelihood that the child would be harmed if returned to Hull's care.

Affirmed.

/s/ Harold Hood

/s/ William B. Murphy

/s/ Jane E. Markey