

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of JESSICA GOTTS, WAYNE  
BOGUE, NICHOLAS BOGUE, LEVI BOGUE,  
ZACHARIA BOGUE, and ALEXIS BOGUE,  
Minors.

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FAMILY INDEPENDENCE AGENCY,  
  
Petitioner-Appellee,

v

WAYNE BOGUE, SR.,  
  
Respondent-Appellant.

UNPUBLISHED  
February 19, 2002

No. 234816  
Muskegon Circuit Court  
Family Division  
LC No. 89-018000-NA

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Before: Griffin, P.J., and Holbrook, Jr. and Hoekstra, JJ.

PER CURIAM.

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

In an appeal from an order terminating parental rights, the trial court's findings of fact are reviewed for clear error. MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). A finding of fact 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. *Terry, supra* at 22. Consistent with this standard, deference must be accorded to the trial court's assessment of the credibility of the witnesses before it. *In re Newman*, 189 Mich App 61, 75; 472 NW2d 38 (1991). To terminate parental rights, the family court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Once a statutory ground is established, the court must terminate parental rights unless "there exists clear evidence, on the whole record, that termination is not in the child's best interests." MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000).

Respondent argues on appeal that the family court clearly erred in terminating his parental rights because clear and convincing evidence warranting termination under any of the enumerated grounds was not presented. Respondent maintains that the testimony of the

witnesses listed by the court as supporting evidence is either inapplicable to him or irrelevant to the questions presented in the termination petition and does not provide clear and convincing evidence in support of termination. Respondent contends that at best, even the testimony of the foster care worker, the primary witness for petitioner, is clearly contradictory and shows bias on the part of the witness. Further, according to respondent, the family court, in rendering its decision, relied substantially on a psychological report even though respondent had objected to its admissibility and the court never ruled on his objection. We find no merit in respondent's contentions.

The initial petition filed in this case in November 1999 alleged that the minor children should be made temporary wards of the court with out-of-home placement on the grounds of neglect, domestic violence, and respondent's prior criminal history. Respondent's ongoing substance abuse was also an underlying factor in bringing about this action. Respondent's criminal history indicates that he has been charged and convicted of the delivery and manufacture of controlled substances, domestic violence, and two drunk driving offenses. After proceedings were initiated, respondent actually signed two parent-agency agreements with petitioner, the second agreement being an amended version that incorporated the requirements of his probation for his second drunk driving offense.

Petitioner's foster care worker testified at the termination trial that respondent failed to substantially comply with the terms of the parent-agency agreement. Pursuant to this agreement, respondent was required to attend AA meetings on a regular basis and provide petitioner with verification; he only provided verification for two days of attendance during the pendency of the case. The agreement further required respondent to participate in any counseling recommended as a result of a psychological evaluation.<sup>1</sup> Respondent initially participated in counseling regarding sobriety and eliminating impulsive and violent behavior. However, the foster care worker testified that after a few months, he refused to further participate unless it included family counseling with his children, an arrangement that was expressly discouraged by the examining psychologist until individual counseling had been completed. According to the foster care worker, respondent's visitation with his children was "sporadic" until January 2001, when respondent began to make a more serious effort toward visiting the minor children.

The foster care worker also cited respondent's lack of suitable housing as a major impediment to reunification with his children. Petitioner had indicated that the children possibly could be returned to respondent's care if he secured adequate multi-bedroom housing. Petitioner even offered financial support with housing but withdrew its offer in light of respondent's failure to substantially comply with the parent-agency agreement. The foster care worker testified that respondent had been living in his mother's one-bedroom apartment since December 1999 and had made no effort to secure appropriate housing for the return of his children.

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<sup>1</sup> Respondent focuses much of his appellate argument on the admission of this document at an earlier hearing and the court's purported failure to state on the record whether or not the document was admissible. However, a review of the record clearly indicates that both respondent and his counsel had "no objection" to the admission of the psychological evaluation. The transcript does indicate that respondent cross-examined a witness regarding the facts in the evaluation but did not object to its admission.

With regard to employment, the testimony at trial demonstrated that during the course of the various family court proceedings, respondent had lost one job in February 2000 due to his incarceration for his second drunk driving offense, and although he found employment again in November 2000, he was laid off from that job in February 2001 and remained unemployed at the time of trial. Thus, respondent had not fulfilled the parent-agency requirement requiring that he maintain stable employment.

The foster care worker further testified that although respondent's driver's license had been suspended from the time these proceedings were initiated, respondent nonetheless on one occasion drove his children to the park. Respondent did not avail himself of the bus passes offered by petitioner.

The above evidence supporting termination was not rebutted by respondent. In fact, respondent did not appear in court on the second day of trial. His trial counsel explained on the record to the court that "he [respondent] indicated to me that he was — he was choosing voluntarily to leave, that he wished to be defaulted. He said it would be too painful for him to come in here and consent to termination." Subsequently, based on the evidence presented to it at the termination trial and review hearings, the trial court concluded that the statutory bases for termination under MCL 712A.19b(3)(c)(i), (g), and (j) had been established. The court noted, in pertinent part, that respondent's "propensity to violent and reckless behavior when intoxicated indicates that he is not currently able to provide for the physical and emotional well-being of his children and given his long-standing and intractable problem with alcohol dependence, as well as his personality problems, it's highly unlikely that Mr. Bogue will be able to acquire this capacity in the near or foreseeable future." The court further held respondent had failed to provide proper care and custody for his children and there was no reasonable likelihood that he would be able to do so within a reasonable time.

On review, given the above circumstances, the family court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I); *Miller, supra*. Respondent failed to substantially comply with the terms of the parent-agency agreement.

Respondent's argument that the testimony of certain witnesses who testified about some of the children's expressed preferences regarding custody was irrelevant to the questions presented in the termination petition is wholly unmeritorious. Likewise, respondent's second issue raised on appeal — that the family court committed error requiring reversal because it failed to properly and adequately make its findings of fact and conclusions of law on the record as required by MCL 712A.19b(1) — is belied by the record.

Finally, the evidence did not show that termination of respondent's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo, supra*. Thus, the family court did not clearly err in terminating respondent's parental rights to the minor children.

Affirmed.

/s/ Richard Allen Griffin  
/s/ Donald E. Holbrook, Jr.  
/s/ Joel P. Hoekstra