STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of AUNDRE MURPHY, JARQUICE MURPHY, ANTONIO BIGGS, and JESSIE BIGGS, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

HENRY BIGGS,

Respondent-Appellant.

UNPUBLISHED
April 27, 2004

No. 250791
Genesee Circuit Court
Family Division
LC No. 00-113313-NA

Before: Bandstra, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to his children, Aundre Murphy (d/o/b 2/5/88), Jarquice Murphy (d/o/b 9/30/91), Antonio Biggs (d/o/b 4/13/93), and Jessie Biggs (d/o/b 9/8/97), under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We affirm.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence. MCL 712A.19b. *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). We review the findings of fact under the clearly erroneous standard. MCR 5.974(I); *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). A finding is clearly erroneous if we are left with a definite and firm conviction that a mistake has been made. *Jackson*, *supra* at 25. Once a statutory ground for termination has been met by clear and convincing evidence, the parent against whom termination proceedings have been brought has the burden of going forward with some evidence that termination is clearly not in the children's best interests. *Terry*, *supra* at 22. If no such showing is made and a statutory ground for termination has been established, the trial court is without discretion; it must terminate parental rights, unless the court finds from evidence on the whole record that termination is clearly not in the children's best interests. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCL 712A.19b(5).

On appeal, 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. MCL 712A.19b(3)(g) provides that the trial court may terminate parental rights to children if it finds

by clear and convincing evidence that the parent, without regard to intent, fails to provide proper care or custody for the children and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the children's age.[1] In the instant case, the evidence demonstrated that Aundre had learning disabilities and required special education at school, as well as asthma that required daily medication. Jarquice had learning disabilities that qualified him for special education at school, and had ADHD (Attention Deficit Hyperactivity Disorder) that required medication three times per day. Antonio had learning disabilities that qualified him for special education at school, had ADHD that required medication three times per day, and had a club foot for which he had to wear a brace. Jessie had ADHD that required medication three times per day, and had a club foot for which he had to wear a brace. The children all attended weekly individual therapy and attended family therapy twice per month. Jarquice, Antonio, and Jessie saw a neurologist once per month for their ADHD. Antonio and Jessie saw a foot specialist approximately once per month, but would eventually visit a specialist once every six months.

Although the children had remained in foster care for over two and a half years, respondent had not obtained suitable housing for them at the time of the hearing. Additionally, respondent had not demonstrated that he would be able to meet the children's special educational needs. While respondent attended two parent/teacher conferences when a foster care worker picked him up and drove him to the conferences, he failed to attend any of the eight other appointments at the children's schools, including the Individualized Education Plan meetings for the three children who received special education services. Respondent also failed to attend any one of twenty of the children's medical appointments. Further, while respondent attended six appointments with the children's neurologist who treated them for ADHD, he failed to attend eight of them. Respondent attended fifteen appointments with the family therapist, and missed three and attended six of eight appointments with the children's therapist. Additionally, respondent admitted that he did not have a valid driver's license, and upon learning this, respondent's mother stated that she would no longer let respondent borrow her car to attend the children's various appointments.

Following two psychological evaluations of respondent, a clinical psychologist testified that respondent's prognosis for successful parenting was poor. This was due in part to respondent's mildly retarded comprehension level, which would impact his ability to parent in that where it would be difficult to parent "normal" children who did not have problems, the difficulty would be exacerbated with the children in the instant case who had numerous special needs. Respondent's impaired comprehension made it difficult for him to understand the nature of the children's problems and identify the symptoms of ADHD. Respondent's mental limitations would also make it difficult for him to administer the necessary treatment, identify the children's needs, and find ways to cope with those needs. Specifically, while respondent had the ability to mechanically administer medication, it would be difficult for him to determine whether the medication was working properly.

[1] Because only one statutory ground is required for termination, it is unnecessary to address the trial court's findings with respect to the other statutory grounds.

Based on the evidence adduced at the hearing, we do not believe the trial court clearly erred in finding that MCL 712A.19b(3)(g) was established by clear and convincing evidence. MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). Termination of respondent's parental rights was warranted where the trial court found by clear and convincing evidence that respondent, without regard to intent, failed to provide proper care or custody for the children, and there was no reasonable expectation that he would be able to provide proper care and custody within a reasonable time, considering the children's age. While we commend respondent for his successful completion of a substance abuse program, and his attendance at the family therapy sessions, his failure to attend his children's numerous doctor's appointments and school meetings, and his inability to monitor his children at the level necessary for successful treatment of their ADHD supports the trial court's termination of respondent's parental rights under MCL 712A.19b(3)(g).

Respondent also argues that the trial court erred in terminating his parental rights because petitioner failed to appropriately accommodate his intellectual limitations. We disagree. While claimed violations of the Americans with Disabilities Act (ADA), 42 USC 12101, *et seq*., are not a defense to termination of parental rights proceedings, the ADA does require the Family Independence Agency to make reasonable accommodations for those individuals with disabilities so that all persons may receive the benefits of public programs and services. *Terry*, *supra* at 25. The record reveals that following termination of respondent's parental rights to other children, the trial court determined that the FIA had not been clear about its expectations of respondent. To address the problem during the present termination proceedings, the foster care worker reviewed the parent/agency agreement with respondent and had him initial the provisions to indicate his understanding. Moreover, respondent admitted that he understood what was expected of him and the evidence demonstrated that petitioner took respondent's intellectual limitations into account following the first termination proceedings. *Id*. at 26.

Respondent claims that petitioner did not offer or require him to attend parenting classes concerning parenting children with ADHD. Respondent argues that petitioner's requirement that he attend the children's appointments with their neurologist and read information about ADHD given to him by the foster care worker was insufficient to accommodate his disability. However, respondent does not claim that he failed to attend the appointments with the neurologist because of his disability. Rather, he stated that he did not attend the appointments because he must have had something more important to do. Respondent also argues that the service plan was worded in such a way that he could not understand it. While one of the sentences in the service plan was complicated, the foster care worker testified that she reviewed the plan with respondent and had him initial the plan to indicate that he understood it. Therefore, respondent's argument that the FIA did not make reasonable accommodations to accommodate his intellectual disability is without merit.

Respondent next argues that the trial court erred by not finding that termination of his parental rights was clearly not in the best interests of the children. Respondent does not argue that the trial court clearly erred concerning its findings with regard to Aundre's best interests; therefore, respondent has abandoned that issue. *Yee v Shiawasee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). With respect to Jarquice and Antonio, respondent only argues that the evidence did not show that termination of his rights was in the best interests of the children, because they sometimes vacillated between wanting to stay with their foster family and

returning to live with him. With respect to Jessie, respondent argues that the evidence did not show that termination of his rights was in the best interests of the child, based on the psychologist's testimony that he would be the easiest child to manage. However, the trial court's finding that a ground for termination had been established is supported by the record. Moreover, respondent does not argue, and the evidence did not establish, that termination was clearly not in the children's best interest. MCL 712A.19b(5); *Trejo, supra* at 356-357. Therefore, even if this issue was properly preserved, the trial court did not clearly err in terminating respondent's parental rights to the minor children.

We affirm.

/s/ Richard A. Bandstra
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald