

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of AMARI WARDLOW-MURPHY,  
Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TINA MURPHY,

Respondent-Appellant,

and

WILLIAM WARDLOW,

Respondent-Not Participating.

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UNPUBLISHED

July 1, 2004

No. 251449

Kent Circuit Court

Family Division

LC No. 99-054104-NA

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

PER CURIAM.

Respondent Tina Murphy appeals by right from the order terminating her parental rights to the minor child, Amari Wardlow-Murphy under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), MCL 712A.19b(3)(g) (failure to provide proper care and custody), and MCL 712A.19b(3)(i) (rights to siblings terminated after serious neglect or abuse and rehabilitation unsuccessful). We affirm.

**I. FACTS**

In 1999, several years before Amari was born, respondent granted her father guardianship of her two oldest children. She gave birth to a third child in 1999. In 2001, the three older children were removed from respondent and her father's home and placed in foster care, as a result of an incident where one of the children was treated in the emergency room for second-degree burns on his hands, several abrasions and a thigh bruise. The injuries were inconsistent with respondent's explanation that the child had been injured while playing in the bathtub. As a result, the children were made temporary wards of the court for neglect.

On July 28, 2002, respondent gave birth to Amari; two days later petitioner obtained temporary custody, citing medical neglect. At the August 2, 2002 hearing, protective services worker Magda Gadomski testified that on July 30, 2002, petitioner was contacted by a hospital social worker who reported that respondent left the hospital with the baby against a doctor's advice.

The court ordered that Amari remain in foster care and granted respondent supervised visits. Petitioner filed a custody petition two days later; the court found probable cause for the allegations. Respondent signed a parent-agency agreement for Amari on August 13, 2002; it required her to obtain housing and employment, attend additional parenting classes, complete her women's group, and attend anger management classes.

Claudia Triestram took over the case in October 2002. In her testimony at the termination hearing, she noted that during the time she supervised the case, progress by respondent was poor. She noted that respondent's level of cooperation varied from sometimes being quite compliant to sometimes being very hostile and threatening.

In addition, Triestram stated that respondent had not demonstrated that she could provide a safe, stable, non-neglectful home for Amari. Triestram gave her professional opinion that it would be in Amari's best interests that the parental rights of respondent and Wardlow be terminated.

In late December 2002, Kristin Frederick was assigned as respondent's caseworker, with Triestram acting as her supervisor. On January 29, 2003, respondent began working at McDonald's. She obtained an apartment on February 27, 2003. Frederick testified in March that respondent's mother helped her pay the deposit and the housing was appropriate. Frederick said respondent had sufficient income from her job to pay her rent and necessary expenses if she followed an extremely tight budget. Further, Frederick said that respondent attended every visit with her child and interacted appropriately during the visits.

The court noted respondent's recent progress and found that, although there was still a substantial risk of harm if the child was returned to respondent, it was in the child's best interests to continue visitation after the termination petition was filed. The court ordered petitioner to initiate termination proceedings and ordered respondent to comply with the parent-agency agreement. On April 16, 2003, petitioner filed a petition to terminate respondent's parental rights.

Protective services worker Jody Smith took over the case from Frederick in March 2003. She stated that she met respondent roughly every other week when she took over and that respondent was initially pleased and cooperative. However, she later found out that respondent had not been straightforward with her and learned that respondent had been fired from her job at McDonald's in mid-May 2003 for tardiness and was running an escort service from her apartment.

On July 25, 2003, respondent pleaded guilty to solicitation of prostitution. Smith testified that respondent admitted she was arrested and pleaded guilty but accepted no responsibility. Smith noted that the conviction for prostitution indicated that respondent could not provide a safe, stable, non-neglectful home, and that she continues to engage in risky behavior which

would put Amari at risk. She recommended that respondent's parental rights be terminated.

Smith testified that she was concerned respondent could not provide a stable, safe environment if she was engaged in criminal activity. Smith cited the risk of harm from whomever she met and the risk of incarceration and questioned whether respondent had someone available to care for the child while she was engaged in the illegal activity. Smith said she was also concerned about respondent's continued involvement with Amari's father because of domestic violence issues between the two. She said respondent failed to make significant progress and recommended that the court terminate respondent's parental rights.

Respondent admitted that she "messed up" and listened to the wrong person, a person who abused her when she was pregnant. Respondent said she had not used any illegal substances since Amari was born and that she was regularly attending counseling groups. She testified that she had a stable housing situation and that she was currently seeking employment.

On September 4, 2003, the trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(i), (g) and (i). Respondent appeals.

## II. STATUTORY GROUNDS FOR TERMINATION

### A. Standard of Review

This Court reviews for clear error the trial court's determination that the petitioner established at least one statutory ground for termination by clear and convincing evidence. MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 355-357; 612 NW2d 407 (2000). To constitute clear error, a finding must be more than just maybe wrong or even probably wrong. *Id.* at 356, quoting *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). Rather, it must leave this Court with a definite and firm conviction that a mistake was made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Further, this Court must consider the trial court's special opportunity to judge witness credibility. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

### B. Analysis

A petitioner must establish at least one statutory ground for termination of parental rights by clear and convincing evidence. *In re JK, supra* at 210. The trial court did not err when it found that petitioner provided clear and convincing evidence of at least two statutory grounds for termination, MCL 712A.19b(3)(c)(i) and (g).

#### 1. Conditions Leading to Adjudication Continue to Exist

The conditions leading to adjudication were medical neglect, past substance abuse, emotional instability, and respondent's lack of independent housing and employment. At the time of termination, respondent-appellant had left her job, lacked sufficient income, and only recently obtained a new apartment after being evicted for failing to pay rent. She failed to obtain an updated psychological evaluation and demonstrated a lack of progress in counseling when she allowed the child's father to involve her in an "escort" service that led to her arrest for solicitation of prostitution.

Petitioner therefore offered clear and convincing evidence that the conditions leading to adjudication continued to exist and there was no reasonable likelihood that the conditions would be rectified within a reasonable time. Therefore, the trial court did not err when it found statutory grounds for termination under MCL 712A.19b(3)(c)(i).

## 2. Improper Care and Custody

Respondent's lack of stable housing and sufficient income, her continued relationship with Wardlow, and her prostitution arrest also constituted evidence that respondent could not provide proper care and custody for the child under MCL 712A.19b(3)(g). See *In re AH*, 245 Mich App 77, 87-88; 627 NW2d 33, 465 Mich 862 (2001). Respondent's treatment of her older children and her failure to make progress while they were in foster care was also evidence of her inability to provide proper care and custody, *In re Powers*, *supra*, 208 Mich App at 591-593, in light of her continuing problems. The loss of her job and housing and her involvement in the "escort" service created significant risk of harm to the child, should she be returned to respondent's care, especially in light of the child's young age and health problems.

Mere potential for future harm is insufficient. See *In re Hulbert*, 186 Mich App 600, 605; 465 NW2d 36 (1990). However, respondent's lack of income and housing at the time of the child's birth, combined with the decision to leave the hospital early, constituted sufficient evidence that she failed to provide proper care and custody in the past.

Petitioner offered clear and convincing evidence that respondent failed to provide proper care and custody and could not provide proper care within a reasonable time. MCL 712A.19b(3)(g). Therefore, the trial court did not err when it found statutory grounds for termination under MCL 712A.19b(3)(g).

## 3. Prior Termination of Rights to Siblings

Respondent argues that the trial court improperly relied on MCL 712A.19b(3)(i), in part because respondent agreed to the termination of her parental rights to the older children only with the understanding that the termination would not be used as ground for termination of her rights to Amari. Petitioner does not expressly dispute that argument on appeal and instead relies on the alternate statutory grounds, subsections (c)(i) and (g).

Due to the fact that the petitioner offered clear and convincing evidence on two statutory grounds for termination of respondent's parental rights and that the trial court did not err in concluding that statutory grounds for termination did exist pursuant to MCL 712A.19b(3)(c)(1) and 19b(3)(g), we need not reach the issue of whether termination of parental rights pursuant to 19b(3)(i) was appropriate.

This Court should affirm a termination decision if at least one statutory ground was established by clear and convincing evidence, regardless whether an alternative ground was not sufficiently established. See *In re Sours*, *supra*, 459 Mich at 640-641.

## III. BEST INTERESTS

After the trial court determines that the petitioner established a statutory ground for termination, it must terminate the respondent's parental rights unless termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo, supra*, 462 Mich at 352-353. This Court reviews for clear error the trial court's decision regarding the child's best interests. MCR 3.977(J); *In re Trejo, supra*, 462 Mich at 365.

We find that the evidence produced demonstrated that termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5); *In re Trejo, supra*, 462 Mich at 352-353. There is no specific burden on either party to present evidence of the child's best interests; rather, the trial court should weigh all evidence available. *In re Trejo, supra*, 462 Mich at 354.

Accordingly, although there was evidence that respondent attempted to bond with the child, the evidence showed that termination of respondent's parental rights was clearly in the best interests of the child.

#### IV. CONCLUSION

The trial court did not clearly err when it found clear and convincing evidence of a statutory ground for termination under MCL 712A.19b(3)(c)(i) and (g); this Court should therefore not reverse regardless whether petitioner sufficiently established a ground for termination under MCL 712A.19b(3)(i).

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Richard A. Bandstra  
/s/ Bill Schuette