

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

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In the Matter of THOMAS DIXON II, Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

THOMAS DIXON,

Respondent-Appellant,

and

JADA GROSS,

Respondent.

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UNPUBLISHED  
September 7, 2004

No. 254283  
Mecosta Circuit Court  
Family Division  
LC No. 02-004358-NA

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In the Matter of OLIVIA GROSS and THOMAS  
DIXON II, Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JADA K. GROSS,

Respondent-Appellant,

and

THOMAS DIXON,

Respondent.

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No. 254296  
Mecosta Circuit Court  
Family Division  
LC No. 02-004358-NA

Before: Donofrio, P.J. and White and Talbot, JJ.

## PER CURIAM

In these consolidated appeals, respondents appeal as of right from the trial court order terminating their parental rights under MCL 712A.19b(3)(c)(i) and (g). Because the trial court did not clearly err in finding clear and convincing evidence for termination of parental rights, and termination was not clearly contrary to the children's best interests, we affirm.

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The trial court's findings are clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Terry*, 240 Mich App 14, 21-22; 610 NW2d 563 (2000). The primary conditions of adjudication were respondents' medical neglect of the minor child Thomas, who suffers from hydrocephalus and cerebral palsy and requires a great deal of intervention and ongoing medical attention, as well as their lack of suitable housing. Problems in the residence included filthy conditions and domestic violence that was witnessed by Olivia. At age three, Olivia was morbidly obese.

Although the parent-agency agreement required respondents to participate promptly and fully in the medical and educational appointments for both children, the evidence established that they did not consistently do so. Both respondents missed a substantial number of medical appointments for Thomas and failed to perform Thomas' physical therapy consistently. Clearly their inability to meet the medical needs of Thomas persisted more than one hundred and eighty-two days after the initial order of disposition. Respondent mother's failure to attend a nutritional appointment, a doctor's appointment, and an educational meeting for Olivia in the months preceding the termination hearing also evidences her continuing inability to meet the needs of this child. To be sure, the record is replete with excuses for non-attendance and lapses of attention on respondents' part, but the excuses are neither reasonable considering the needs of the children nor persuasive given the fact that the parents are unemployed for the most part.

Both parents continued to lack suitable housing as well. Respondent father resided with various friends and relatives throughout this matter and lived with an aunt and uncle at the time of the termination proceedings. Respondent mother obtained physically suitable housing, but allowed the presence of numerous persons, including her sister, Angel Burhans, whose participation in domestic violence witnessed by Olivia was one of the reasons the children were initially placed in care. Ms. Burhans' daughter, who had assaulted her grandmother with a knife and in another incident backed the minor children into a corner with a knife, also frequented the premises. Under these circumstances, the trial court was justified in concluding that the home was not safe for the children.

Moreover, the evidence offered little basis to conclude that these conditions would be rectified in the reasonable future. Both respondents' failure to attend to the medical and educational needs of their children during these proceedings suggests that they will continue similarly in the future. Respondent mother clearly verbalized that she was frustrated by Thomas' needs and requested that her visitation time with him be reduced because of those frustrations. Testimony that respondents demonstrated little or no benefit from over a year of intensive preventive services prior to the filing of the petition in this matter also suggests little likelihood of improvement in the reasonable future. The trial court did not clearly err by finding clear and convincing evidence that the conditions of adjudication continued to exist and there was no

reasonable likelihood that they would be rectified in the reasonable future. MCL 712A.19b(3)(c)(i).

Termination of the parental rights of both respondents was also warranted under MCL 712A.19b(3)(g). Respondents both failed to provide proper care and custody for Thomas by neglecting his medical needs. Respondent mother further failed to provide proper care and custody for both children by exposing them to domestic violence and allowing them to live in filthy conditions. The same evidence that established that the continuing conditions of adjudication concerning both respondents would not likely be rectified in the reasonable future equally demonstrates their inability to provide proper care and custody for the children within a reasonable time considering their ages. Although the living conditions were ameliorated, we note that respondents' failure to comply with the parent agency agreement requiring prompt and full participation in all medical appointments and educational meetings for both children is evidence of their inability to provide proper care and custody. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003).

On appeal, respondent mother cites testimony suggesting that she could meet the needs of Olivia if she were not burdened with the substantial special needs of Thomas. In fact, the worker testified that respondents could meet the needs of the children, absent any special needs, with continuous services and in a minimal fashion. However, respondents both, after participating in voluntary services prior to the filing of the petition in this matter, declined further services with the exception of Early On, which was apparently continued to avoid protective services involvement. In light of all of this evidence, the trial court did not clearly err by finding a reasonable likelihood that respondent mother would be unable to provide proper care and custody for Olivia in the reasonable future considering her age.

Finally, the trial court did not clearly err by finding that termination was not clearly contrary to the best interests of the children. MCL 712A.19b(5). Thomas has demonstrated vast improvements in his foster care placement. The foster parents wish both children to be placed with them permanently. Determination of a child's best interests may include consideration of the availability of suitable alternative homes. *In re Mathers*, 371 Mich 516, 530; 124 NW2d 878 (1963); *In re Futch*, 144 Mich App 163, 170; 375 NW2d 375(1984). Particularly considering that respondents have demonstrated their inability to meet Thomas' medical needs, we are left with no impression that the trial court made a mistake by finding that termination was not clearly contrary to his best interests. *In re Terry*, *supra* at 21-22. The trial court also did not clearly err by finding that termination of respondent mother's parental rights was not contrary to the best interests of Olivia. Olivia was morbidly obese when she entered care and is now at an appropriate weight. She is doing well in kindergarten and appears bonded to her foster parents. While there was clearly a bond between respondent mother and Olivia, we cannot conclude on the whole record that the trial court clearly erred by finding that termination was not clearly contrary to the best interests of the child.

Affirmed.

/s/ Pat M. Donofrio  
/s/ Helene N. White  
/s/ Michael J. Talbot