STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ASHLEY MARLANA ELLIS,
Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CLARENCE LAVELLE ELLIS,

Respondent-Appellant,

and

MARLIN ROXANA ALFARO,

Respondent.

UNPUBLISHED
February 13, 2007

No. 271499
Wayne Circuit Court
Family Division
LC No. 96-344960-NA

Before: Kelly, P.J., and Davis and Servitto, JJ.

PER CURIAM.

Respondent father appeals as of right the trial court's order terminating his parental rights under MCL 712A.19b(3)(g), (i), (j), and (l). We affirm.

The minor child came to the trial court's attention after respondent mother took the child to the hospital emergency department complaining that she was having trouble breathing and had vomited. Respondent mother also said that the minor child, at less than two years old, was having suicidal thoughts, hearing voices, and taking lithium. The child was dressed inappropriately for the cold weather, wearing no shoes or socks. The attending physician called protective services because of respondent mother's extreme anxiety and reluctance to answer questions regarding the lithium. Respondent mother has an extensive history of mental health issues and her parental rights to four other children have been terminated. Respondent father also has an extensive history of mental health issues and his parental rights to two other children have been terminated. Petitioner sought permanent custody of the minor child in its initial petition.

Although respondent father concedes that subsection (l) was established by evidence of the termination of his parental rights to his older children, he contends that the trial court clearly erred in finding that subsections (g), (i), and (j) were established by clear and convincing evidence. He also asserts that the termination of his parental rights was not in the child's best interest. We disagree.

In *In re Fried*, 266 Mich App 535, 540; 702 NW2d 192 (2005), this Court set forth the standards for reviewing these issues:

> In order to terminate parental rights, the court must find that at least one of the statutory grounds set forth in MCL 712A.19b has been met by clear and convincing evidence. *In re Terry*, 240 Mich App 14, 21-22; 610 NW2d 563 (2000). Once a ground for termination is established, the court must order termination of parental rights unless the court finds that termination is clearly not in the child's best interest. *In re Trejo*, 462 Mich 341, 365; 612 NW2d 407 (2000). 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. "An appellate court should not reverse the findings of a trial court in such a case unless its findings are clearly erroneous." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). When reviewing the trial court's findings of fact, this Court accords deference to the special opportunity of the trial court to judge the credibility of the witnesses. *Id.*

The trial court did not clearly err in its determination that grounds for termination were established by clear and convincing evidence under subsections (g), (i), and (j). Subsection (i) requires the court to find that a prior termination occurred "due to serious and chronic neglect or physical or sexual abuse and prior attempts to rehabilitate the parents have been unsuccessful." In December 2001, both parents' rights were terminated as to their child Clarenzo Ellis after the trial court found that respondent mother had a history of serious mental illness that continued after extensive treatment and hospitalization. While the parents lived together, they had to call the child's grandparents for food and they had resorted to feeling the child sugar water. At the time of that petition, respondent father said he did not know where the respondent mother or child were as they had been missing for three days. Less than one year later, the parents' rights were terminated as to their other child Christian Ellis. Ashley Ellis was born to the couple in 2004. The incident giving rise to the petition in this case occurred when the child was left with the respondent mother despite her well-established mental instability. Given this course of conduct, the trial court did not clearly err in finding that the prior terminations were due to chronic neglect and respondent father has not succeeded in rehabilitation. This factor was established by clear and convincing evidence.

Subsection (g) requires the trial court to find that 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." In this case, respondent father, despite his assertions that he would be able to provide proper care and custody for his child, failed to present any evidence to support this assertion. There is no evidence that he will provide a stable living environment or avoid the mother, who poses a danger to the child. Respondent father and mother have a long and ongoing

history of domestic violence for which respondent father has sustained convictions. The most recent occurrence was in March 2006. Thus, while respondent father testified that he had been living with his sister in her home for one month, that is insufficient to demonstrate a permanent living situation away from respondent mother and free of domestic violence. The trial court did not clearly err in finding that petitioner established subsection (g) by clear and convincing evidence.

Subsection (j) requires the trial court to find "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." In this case, unfortunately, the record evidence does not show that defendant has the will to extricate himself from the violent relationship he and respondent mother have maintained over the years. As such, respondent father's continued contact with respondent mother and his prior record of leaving the child with the mother despite her severe mental instability demonstrates "a reasonable likelihood" that the child will be harmed if she is returned to his care. The trial court did not clearly err in finding that petitioner established subsection (j) by clear and convincing evidence.

We also agree with the trial court that termination was in the child's best interest. The protective service worker testified that termination was in the minor child's best interest because of respondent parents' extensive protective services history, extensive mental health issues, criminal histories, and involvement in a domestic violence relationship. Respondent father testified that he loved his daughter, that he saw her daily, and that she spent about half her time living with him. He had not seen her since she went to the hospital, a period of roughly four months, because visitation was not permitted. The minor child was two years old at the time of the termination hearing. Respondent father did not reside with respondent mother and did not plan to reunite with her. Respondent father's parental rights to his two other children were previously terminated and respondent father failed to complete a treatment program at that time. However, five years had passed since then and respondent father claims to have corrected his mental health issues with medication. Respondent father testified that he had a strong bond with the minor child and that he was responsible for doctor's appointments and filling out any required paperwork for her. However, the evidence nonetheless supports the trial court's determination that termination was in the child's best interest. As discussed above, the evidence demonstrates that respondent father has a history of neglecting his children and neglecting this child, including leaving her in the care or respondent mother who has proved to be a danger. Moreover, respondent father has not demonstrated any significant strides in improving or avoiding his violent relationship with respondent mother. On the basis of the record evidence, we cannot say that the trial court's termination of respondent father's parental rights was not in the child's best interest.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Alton T. Davis
/s/ Deborah A. Servitto