STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of Adam Spencer Miteff, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JAMES MITEFF,

Respondent-Appellant,

and

PAMELA MITEFF,

Respondent.

UNPUBLISHED
November 19, 2009

No. 288266
Washtenaw Circuit Court
Family Division
LC No. 2006-000146-NA

Before: Saad, P.J., and Whitbeck and Zahra, JJ.

PER CURIAM.

Respondent-father[1] appeals a trial court order that terminated his parental rights to the minor child, Adam, pursuant to MCL 712a.19b(3)(c)(i) and MCL 712a.19b(3)(j). We reverse.

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." *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). As our Supreme Court further explained in *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009), "[a]ppellate courts are obliged to defer to a trial court's factual findings at termination proceedings if those findings do not constitute clear error." " 'A finding is "clearly erroneous" [if] although there is evidence to support it, the reviewing court on the entire

[1] Respondent-mother separately appealed the termination of her parental rights and, on June 16, 2009, this Court reversed the trial court's termination order. *In re Adam Spencer Miteff*, unpublished opinion per curiam of the Court of Appeals, issued June 16, 2009 (Docket No. 288265).

evidence is left with the definite and firm conviction that a mistake has been made.' " *Id*. at 91, quoting *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

We hold that several of the trial court's findings of fact are clearly erroneous. The court rejected the testimony of psychotherapist Josephine Salem and Dr. Michael Katz on the grounds that their testimony was not supported by sufficient, objective evidence. To the contrary, both witnesses stated that they relied on documents, evaluations, psychological tests, and interviews from various doctors and counselors who were either assigned by DHS to evaluate respondent or hired by respondent. Further, Dr. Katz's conclusion that respondent suffers from no psychological disorder matches the conclusions of Dr. Sain and Arbor Psychological Consultants, both of which were assessments requested by DHS. Also, in addition to his interview with respondent, Dr. Katz conducted various independent psychological examinations on respondent.

The trial court further stated that Dr. Katz spent insufficient time with respondent. The record reflects that Dr. Katz was hired to perform a psychological examination of respondent, not to provide ongoing therapy. Accordingly, it is unclear how the trial court could consider inadequate his assessment totaling six hours over a period of three days. Moreover, though the trial court accepted the findings of the Family Assessment Clinic (FAC), Dr. Robert Ortega testified that he interviewed respondent for only two hours and Dr. Elise Hodges' interview lasted one hour. Thus, Dr. Katz individually spent far more time with respondent than any of the individual FAC counselors.

The court also improperly rejected respondent's trial testimony. According to the court:

> Much of the respondent father's testimony was an effort to justify his behavior. He blames others, especially his ex-wife and Christina.

Later, the trial court opined:

> The testimony establishes the respondent father's serious deficiencies in insight and his inability to assess the reasons for the removal of his children from his care. Rather than engage in self-examination, the father has opted to blame others for his situation. The father does not take responsibility for the reasons behind Adam's removal from the home.

To the contrary, respondent testified at length about how his behavior toward his daughter was wrong and that he understood how his statements on the audiotape led to her removal and the removal of Adam. Respondent further testified that he blames no one but himself for what occurred and that he places no blame on his daughter.

As did other witnesses, respondent disagreed about aspects of his daughter's testimony, including how he handles and stores guns and his alleged angry outbursts. However, the court should not have rejected respondent's testimony simply because he failed to agree with all of his daughter's allegations. Respondent testified at length about what he learned in his parenting and anger management classes and in therapy about how to be a better parent and how to handle difficult emotional situations. He fully described his improper behavior and repeatedly expressed regret about how it affected his daughter and his relationship with her. The record

does not support the trial court's conclusion that respondent lacks insight about what occurred or that he has no ability to assess the reasons his daughter and Adam were removed. Even were we to accept the FAC's conclusion that respondent continued to deny wrongdoing, several months later, respondent clearly expressed that what he did was wrong when he testified at trial in August 2008.

The trial court also rejected the testimony of DHS foster care worker Robin Richards, who stated that she believes Adam should be returned to respondent. The record reflects that, as early as November 2007, Richards reported that Adam should be reunited with respondent. The trial judge rejected Richards's testimony because he concluded that she did not review the daughter's file or Adam's CPS file and was not familiar with how respondent treated his other daughters. However, Richards testified that she read three file volumes on Adam, one volume on respondent's daughter, and some of the trial transcripts from his daughter's case. Richards also reviewed the case with her supervisor, Adelia Clark, and the previous case worker, Toni Farmer, and participated in case conferences with CPS worker Joyce Mansfield and Mansfield's supervisor. While Richards conceded that she did not read the CPS file, she further explained that, as a foster care worker, her job is to review and maintain the foster care file, which contains pertinent information from the CPS file. Moreover, Richards took over the case in June 2007 and, since that time, she had numerous interviews, meetings, and other interactions with respondent and regularly observed his parenting time with Adam. Accordingly, it was clearly erroneous for the trial court to conclude that Richards lacked sufficient information about the case to render an informed opinion at trial.

We also note that, while Richards had ample information about the allegations in this case and the daughter's case, her role began after respondent pleaded to certain allegations in the petition and, ostensibly, her job as a DHS representative was to facilitate reunification through the parent-agency agreement. Accordingly, Richards testified about her observations of the respondent during the reunification process, his interactions with Adam, and the steps the respondent took to fulfill the DHS requirements. The court rejected this testimony in the same manner it rejected all evidence showing that conditions in respondent's home have changed since Adam was removed. Rather than acknowledging respondent's rehabilitative efforts and positive reports about his interactions with Adam, the trial court relied solely on the daughter's allegations and the FAC report. Importantly however, while the daughter's trial testimony was compelling, she had not lived in respondent's house since March 2006. Though she could testify about her view of respondent's behavior in 2006, her testimony could in no way establish whether the conditions in the home changed since she left or since Adam left. Further, the FAC staff had not interviewed respondent since October and December 2007 and, accordingly, did not have recent knowledge about respondent's insights or conduct at the time of trial.

In addition to the errors cited above, we further hold that the trial court clearly erred when it found that the petitioner proved the grounds for termination by clear and convincing evidence. The trial court ruled that "[t]his is a classic case of anticipatory neglect, and the Court finds that based on his prior treatment of Christina there is a high probability that Adam will be subject to serious emotional and mental abuse if returned." The doctrine of anticipatory neglect provides that a parent's treatment of one child is probative of how that parent may treat other children. *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001). While anticipatory neglect is a sufficient basis for the court to take jurisdiction over a child, parental unfitness must also be

demonstrated to terminate parental rights under MCL 712a.19b(3). Thus, again, even if the trial court accepted the daughter's testimony in its entirety, the petitioner nonetheless had to prove that conditions in the home have not changed and will not change within a reasonable time or that Adam is at a reasonable risk of harm if returned to respondent's care.

The petitioner failed to prove by clear and convincing evidence that conditions remain unchanged or that Adam is at risk of harm. Again, the court disregarded evidence showing that respondent fulfilled the terms of the parent-agency agreement with unanimously positive appraisals and that numerous therapists reported that he acknowledged his errors and will not repeat his past behavior in the future. Ample evidence also established that respondent has no tendencies toward violence and is not likely to lash out at his son. Christina made serious allegations about respondent's prior conduct and, clearly, his audiotaped tirade was offensive and reprehensible. However, as in all termination cases, we look at evidence of a parent's ability and willingness to change through the fulfillment of the parent-agency agreement, and whether evidence shows that the parent benefited from offered services, whether the parent continues the same behaviors that brought the child into care, whether the parent recognizes the child's needs during visitations and whether the child and the parent are "bonded." Abundant evidence showed that respondent and Adam appear to have a close and loving relationship. While respondent and some DHS workers were plainly at odds throughout this litigation, ample evidence showed respondent's determination to more than fulfill DHS's service requirements and ample evidence showed that he benefited from the services. Indeed, DHS took the position that respondent benefited from offered services because, by November and December 2007, it reported to the court that respondent should have expanded and unsupervised visitation and that Adam should be returned home; importantly, it was the court's reaction to the FAC report that prompted it to order DHS to pursue termination.

The trial court also clearly erred when it reasoned that termination of respondent's parental rights is in Adam's best interests. The judge observed:

> When parents want their children back, even if they disagree or object to the legal process or DHS, parents typically do everything in their power to get their children back as quickly as possible. The respondent parents have focused on everything other than Adam in this process.

Though respondent did not immediately plead to the allegations in the petition, it cannot be said that the numerous delays in this adjudication were his fault. On appeal, petitioner repeatedly cites respondent's delays of court proceedings as a reason to affirm the termination order. The record does reflect that respondent changed attorneys during the case, but the record contains only one example of a delay in proceedings requested by respondent.[2] More importantly,

[2] The petitioner asked for a stipulated adjournment of the trial on the petition in November 2006, respondent asked for an adjournment in January 2007, the petitioner requested an adjournment in March 2007, and further adjournments of the trial on the petition appear to have been ordered by the court. Furthermore, we cannot fault respondent for failing to immediately admit to the allegations in the petition when he did not believe them to be correct. And, though the petitioner repeatedly complained that respondent refused to release his testing data to the FAC, Richards explained that any delays were not caused by respondent and the FAC had offered them the

(continued…)

however, respondent actively took numerous steps to regain custody of Adam. Respondent immediately sought psychological help and continued therapy throughout the case, he paid for a parenting class and two anger management classes before he was ordered to do so, and he obtained a private psychological assessment at his own expense. Respondent also complied with every requirement by DHS, he never missed a visit with Adam, and he repeatedly urged the court to grant him more parenting time with his son and to move Adam to the care of a close relative. Accordingly, the trial court's decision to terminate respondent's parental rights was clearly erroneous.[3]

Reversed.

/s/ Henry William Saad
/s/ William C. Whitbeck
/s/ Brian K. Zahra

(…continued)

option of submitting to an interview rather than allowing the FAC to reinterpret other psychologists' testing data.

[3] In light of our holding, we need not address respondent's argument that his plea was not knowingly or intelligently made.