STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of DEMEATRICE MCCANTS, MERCEDES D. MCCANTS, and TATIANA D. MCCANTS, minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

VALERIE A. MCCANTS,

Respondent-Appellant,

and

EDWARD SKIPPER and DAVID STEWART,

Respondents.

UNPUBLISHED
November 12, 1999

No. 214042
Wayne Circuit Court
Family Division
LC No. 93-346856

Before: Jansen, P.J., and Saad and Gage, JJ.

PER CURIAM.

Respondent-appellant Valerie A. McCants (respondent) appeals as of right from a family court order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j); MSA 27.3178(598.19b)(3)(c)(i), (g), and (j). We reverse.

Respondent argues that the trial court erred in finding that the statutory bases for termination were established by clear and convincing evidence. We agree.

The existence of a statutory ground for termination must be proven by clear and convincing evidence. MCR 5.974(F)(3). Once a statutory ground for termination has been proven by clear and convincing evidence, the respondent bears the burden of going forward with evidence that termination is

clearly not in the children's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997). This Court reviews a trial court's decision terminating parental rights for clear error. *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). This requires a showing that the court's decision is more that just maybe or probably wrong. *Id.*

Here, the trial court determined that termination of parental rights was warranted under three different statutory subsections. Only one of these subsections need be established for terminating respondent's parental rights. *In re Huisman*, 230 Mich App 372, 384-385; 584 NW2d 349 (1998).

In order to terminate parental rights under § 19b(3)(c)(i), at least 182 days must have elapsed since issuance of the initial dispositional order and the conditions that brought the children within the jurisdiction of the court must continue to exist.

In the present case, the conditions that led to adjudication involved respondent's history of abusing crack cocaine and her "abandonment" of the children with the children's paternal grandfather. The trial court did not identify the specific conditions leading to adjudication that it believed continued to exist at the time of the termination hearing. However, in a written opinion, the trial court made the following findings pertinent to respondent's drug rehabilitation:

> The mother failed to complete an in-patient treatment program at SHAR House in September 1996. She attended a thirty day inpatient treatment program at Genesis I in the Spring 1997. That was followed by a thirty day outpatient program. There was then to be an aftercare program. Drug screens done on May 1 and May 8, 1998, were negative.

These findings do not support the conclusion that respondent's past drug abuse was a continuing condition. Initially, we note that respondent's failure to complete the SHAR House program occurred before the Family Independence Agency (FIA) petitioned the court to take jurisdiction of the children and, therefore, does not establish that the conditions that led to the adjudication continued to exist at the time of the termination hearing in May 1998. The trial court's finding concerning the aftercare program implies that respondent did not participate in such a program. However, respondent testified that she successfully completed her aftercare drug treatment counseling at Eastwood Clinic on October 31, 1997, and the FIA worker agreed that respondent successfully completed drug counseling. No further drug counseling, other than attendance at NA and AA meetings, was requested by the FIA. No evidence was presented that respondent had resumed using drugs, nor did the trial court make a finding to that effect.

The record indicates that respondent's abandonment of the children was no longer an issue at the time of the termination hearing, and the trial court did not make a finding that would support a conclusion that this condition still existed. Moreover, the FIA worker testified that respondent had "pretty consistent visitation" and "overall the visitation was as expected of her." Thus, the evidence did not clearly and convincingly show that the conditions that led to adjudication still existed at the time of

the termination hearing. To the extent the trial court found to the contrary, that finding is clearly erroneous.

Parental rights may be terminated under § 19b(3)(g) when "a 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."

The trial court did not explicitly explain the basis for its conclusion that this statutory ground was established by clear and convincing evidence. Because the evidence did not establish that drug abuse was an ongoing problem, the trial court's findings concerning respondent's treatment for drug abuse obviously would not support a conclusion that there was no reasonable expectation that respondent would be able to provide proper care and custody. Apart from the issue of drug abuse, the trial court made two additional findings of fact that may be pertinent to the court's determination concerning § 19b(3)(g). First, the trial court found that respondent "has been unable to maintain independent housing" and has "moved frequently from friends to relatives." Second, the trial court found that respondent and Edward Skipper "had an altercation at a recent visit [which] occurred in front of the children and disturbed them."

To the extent the trial court determined that § 19b(3)(g) had been established on the basis of respondent's failure to secure "independent housing," we conclude that the trial court clearly erred. At the time of the termination hearing, respondent had been living with her mother for five months. The FIA worker never visited the home, and no testimony was presented indicating that the home was inappropriate for the children. In the absence of evidence indicating that respondent's home with her mother was inadequate or unsuitable, the fact that respondent had not secured "independent housing" does not constitute clear and convincing evidence that she is unable to provide proper care and custody for the children.

To the extent the trial court based its finding concerning § 19b(3)(g) on the "altercation" at a visit, we likewise conclude that the trial court clearly erred. The FIA worker, who did not witness the incident, testified that respondent and Skipper had a "verbal confrontation in front of the children which led the family aide to cut the visit short because the children were getting upset." Skipper testified that he and respondent had a "misunderstanding" and assigned blame for the incident entirely on himself. Similarly, Skipper's father, who was caring for the children, testified that the children were upset about the visit and related he had been told that his son "come in there acting the fool," not respondent. The FIA worker also agreed that domestic violence had not been an issue in the case. Thus, the limited information concerning respondent's role in this single incident does not establish that respondent is unable to provide proper care and custody for her children.

Parental rights may be terminated under § 19b(3)(j) when there is a reasonable likelihood, based on the conduct or capacity of the children's parent, that the children will be harmed if they are returned to the home of the parent. The trial court did not identify what evidence it believed supported its determination that this statutory basis for termination had been established. Neither respondent's treatment for drug abuse, her lack of "independent housing," nor the single "altercation" at the visit

provide a basis for concluding that there is a reasonable likelihood that the children will be harmed if returned to respondent's care. Thus, petitioner did not establish this statutory basis for termination by clear and convincing evidence, and any finding to the contrary is clearly erroneous.

In light of our conclusion that a statutory ground for termination was not established by clear and convincing evidence, we need not address whether termination was clearly not in the children's best interests.

Reversed.

/s/ Kathleen Jansen
/s/ Henry William Saad
/s/ Hilda R. Gage