STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of SHERRI LE'ANN MITCHELL, CORY DENNIS MITCHELL, MELINDA D. MITCHELL, KEVIN RAYSHON MITCHELL and DANIEL MARTEZ MITCHELL, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LINDA FAY MITCHELL,

Respondent-Appellant,

and

TERRY DENNIS PORTER a/k/a TERRY DENNIS PARKER, FRED TUCKER and RAYMOND WILLIAMS,

Respondents.

UNPUBLISHED
April 18, 2000

No. 218749
Wayne Circuit Court
Family Division
LC No. 94-320939

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TERRY DENNIS PORTER a/k/a TERRY DENNIS PARKER,

Respondent-Appellant,

No. 220437
Wayne Circuit Court
Family Division
LC No. 94-320939

and

LINDA FAYE MITCHELL,

Respondent,

and

FRED TUCKER and RAYMOND WILLIAMS,

Respondents-Not Participating.

Before: Cavanagh, P.J., and Sawyer and Zahra, JJ.

PER CURIAM.

In Docket No. 218749, respondent Linda Mitchell appeals as of right the termination of her parental rights to her minor children, Melinda, Corey, Kevin, Sherri, and Daniel, pursuant to MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i) [conditions that led to adjudication continue to exist and are not likely to be rectified within a reasonable time], (g) [parent, without regard to intent, fails to provide proper care or custody for the children], and (j) [reasonable likelihood of harm if children are returned to parent's home]. In Docket No. 220437, respondent Terry Parker appeals as of right the termination of his parental rights to Melinda and Corey pursuant to MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i), (g), and (j).[1] We affirm in both cases.

I

Both respondents argue that the family court erred in terminating their parental rights. A two-prong test applies to a family court's decision to terminate parental rights. First, the court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b; MSA 27.3178(598.19b) has been met by clear and convincing evidence. *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). This Court reviews the findings of fact under the clearly erroneous standard. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding of fact is clearly erroneous where the reviewing court is left with a definite and firm conviction that a mistake has been made. *Jackson*, *supra* at 25.

Once a statutory ground for termination has been met by clear and convincing evidence, the parent against whom termination proceedings have been brought has the burden of going forward with some evidence that termination is clearly not in the child's best interest. If no such showing is made and a statutory ground for termination has been established, the family court is without discretion; it must

terminate parental rights. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Huisman*, 230 Mich App 372, 384; 584 NW2d 349 (1998).

The children were removed from the home of respondent Parker's grandfather in May 1997. When the police entered the home, they found soiled diapers on the table, rat poison lying all around the house, garbage covering the floors, no food in the refrigerator, and no sink in the bathroom. The children stated that they had witnessed both respondents and their uncle smoking crack cocaine.

On October 1, 1997, respondents each signed a parent-agency agreement. Respondent Mitchell was required to attend weekly visitation, complete parenting classes, maintain weekly contact with the agency, attend all court hearings, obtain and maintain suitable housing, undergo a drug assessment, and submit to weekly drug screens. Gina Petitti, the caseworker, testified that Mitchell did not miss any visits in 1997; however, in 1998, there was an eighty-three day period during which she did not visit the children or maintain contact with the agency. She completed the parenting classes. She had missed two court hearings. Mitchell underwent the drug assessment; however, she twice failed to complete the drug treatment program that was ordered as a result. She did not consistently comply with the requirement to provide weekly drug screens, and two of the drug screens that she submitted tested positive for cocaine. She had not obtained suitable housing for herself and the children.

Respondent Parker was required to attend weekly visitation, complete eight hours of parenting classes, attend all court hearings, participate in two Narcotics Anonymous/Alcoholics Anonymous meetings weekly, obtain and maintain suitable housing, undergo a drug assessment, and submit to random drug screens. Petitti testified that Parker attended one parenting class, never underwent the drug assessment, and submitted to only two drug screens out of eighteen. He had attended only nine out of a possible twenty-three visits in 1997 and only twenty-eight out of a possible forty-three visits in 1998; however, Petitti conceded that in 1998 Parker had suffered from medical problems that accounted for his failure to attend a number of visits. He had attended all court hearings. Petitti had not received any verification of his attendance at Narcotics Anonymous/Alcoholics Anonymous meetings. Parker testified that he was currently living with his grandfather in the home from which the children had been removed.

Petitti testified that both Melinda and Corey have special needs. Both intellectually and academically, Melinda functions at a level well below average. She has emotional issues and exhibits disruptive behaviors. Corey is of average intelligence, but has attention deficiencies and has displayed problems both in school and at home. He has demonstrated aggressive behavior and is currently in therapy. Petitti testified that Corey had been discharged from two different treatment programs because neither parent would come in and sign a consent form so that he could be placed on the recommended medication.

Furthermore, Petitti stated that respondent Parker understandably had difficulty in disciplining Corey; however, he had not followed up on her recommendation that he contact Family Roads regarding classes in disciplining difficult children. Petitti testified that Parker had not shown any interest in personally planning for his children; rather, he wanted his mother to plan for them. However, petitioner had not considered this to be a suitable option.

On these facts, we conclude that the trial court did not clearly err in finding that the statutory grounds for terminating respondents' parental rights had been established. See MCR 5.974(I); *Miller*, *supra*. Because neither respondent presented any evidence that termination of his or her parental rights would not be in the children's best interest, the family court properly terminated respondents' parental rights. See MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *Huisman*, *supra*.

Affirmed.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Brian K. Zahra

[1] At the same time, the family court terminated the parental rights of Raymond Williams, Kevin's father, pursuant to MCL 712A.19b(3)(a)(ii); MSA 27.3178(598.19b)(3)(a)(ii) [abandonment for ninety-one or more days]. The court also stated that David Goddard's parental rights were being terminated on the same basis; however, at a previous hearing both Goddard and respondent Mitchell had stated that testing had established that Goddard is not Sherri's father. Sherri's father is apparently Fred Tucker, who is deceased. Petitioner did not seek to terminate the parental rights of Melvin Dunlop, Daniel's father.