STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of GEORGIA YVONNE BROWN, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MADELYN NANCY WADERLOW,

Respondent-Appellant.

UNPUBLISHED
April 18, 2000

No. 220956
Wayne Circuit Court
Family Division
LC No. 89-281941

Before: Hood, P.J., and Gage and Whitbeck, JJ.

PER CURIAM.

Respondent appeals as of right from a family court order terminating her parental rights regarding the involved minor, who was born with cerebral palsy and suffers severe mental and physical limitations, pursuant to MCL 712A.19b(3)(c)(i), (g) and (j); MSA 27.3178(598.19b)(3)(c)(i), (g), and (j).[1] We affirm.

This Court reviews for clear error the family court's findings supporting an order terminating parental rights. MCR 5.974(I). To be clearly erroneous, a decision must strike us as more than just maybe or probably wrong. *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). Findings of fact are clearly erroneous when, although evidence exists to support them, we are left with the definite and firm conviction that a mistake has been made. *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996).

Despite respondent's impressive adherence to and progress with the parent-agency agreements, several instances of respondent's past behaviors and judgments supported the family court's findings that respondent, without intent, failed to provide proper care and custody and that a reasonable likelihood exists that Georgia would suffer harm if returned to respondent's home. MCL 712A.19b(3)(g), (j); MSA 27.3178(598.19b)(3)(g), (j). As case worker Linda Powers' testimony

indicated, respondent in 1997 had knowledge that Georgia's sixteen-year old sister was sexually active and should be monitored and taking birth control pills. Respondent, however, not only failed to ensure that Georgia's older sister regularly took the pills, but also left the older sister in the care of respondent's boyfriend, then forty-seven year old Dwight Singleton, who on several occasions sexually assaulted her and also impregnated her. Furthermore, despite the older sister's accusation that Singleton impregnated her, respondent refused to completely accept that Singleton had done so. Respondent's failure to protect Georgia's older sibling, who generally functioned normally, from harm casts serious doubt on her ability to protect severely impaired and totally dependent Georgia from harm. See *In re Powers*, 208 Mich App 582, 588; 528 NW2d 799 (1995) ("[H]ow a parent treats one child is certainly probative of how that parent may treat other children.").

Respondent further demonstrated poor judgment when in late 1997 she discharged a firearm at another individual, while inside the home in which she had custody of the older sister's first baby. Respondent failed to accept that the shooting represented poor judgment until she testified at the adjudication hearing.

The family court also clearly credited Powers' opinion that despite respondent's love for Georgia and her older sister, respondent was incapable of taking proper care of them. To the extent that the trial court relied on the testimony of Powers, who was the case worker during the entirety of Georgia's and her sister's temporary wardships (1989-1990, 1997 through the adjudication) and had followed respondent's efforts to improve her parenting skills, we note that "regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C).

Considering respondent's past behaviors and Powers' testimony, we cannot conclude that the family court was "more than just maybe or probably wrong" in finding that clear and convincing evidence supported termination of respondent's parental rights pursuant to MCL 712A.19b(g) and (j); MSA 27.3178(598.19b)(g) and (j).[2] *In re Sours*, *supra*.

Finally, despite respondent's testimony that she was capable and willing of taking care of Georgia, we find that the family court properly determined that termination of respondent's parental rights was in Georgia's best interest. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); MCR 5.974(E)(2); *In re Boursaw*, ___ Mich App ___; ___ NW2d ___ (Docket No. 214828, issued 12/17/99), slip op at 9-10. In light of the evidence of Georgia's special needs and constant required care, as well as Powers' indication that Georgia would likely be adopted, *In re Draper*, 150 Mich App 789, 805; 389 NW2d 179 (1986) ("The suitability of an alternative home is an improper consideration until statutory neglect has been established."), vacated in part on other grounds 428 Mich 851; 397 NW2d 524 (1987), we are not left with the definite and firm conviction that the family court erred in finding that Georgia's special needs and best interest would be served by placement elsewhere than with respondent. *In re Conley*, *supra*.

Affirmed.

/s/ Harold Hood
/s/ Hilda R. Gage
/s/ William C. Whitbeck

[1] The statutory provisions relied on by the family court in ordering termination of respondent's parental rights provide as follows:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
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> * * *
>
> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence finds either of the following:
>
> (i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.
>
> * * *
>
> (g) 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.
>
> * * *
>
> (j) There is 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. [MCL 712A.19b; MSA 27.3178(598.19b).]

[2] Because termination appears appropriate pursuant to either of these statutory subsections, we need not further consider whether termination was appropriate pursuant to MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i).