STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of HALENA TEICHMAN and NAIOMI TEICHMAN, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellant,

v

KAREN TEICHMAN and TIM TEICHMAN,

Respondents-Appellees.

UNPUBLISHED
May 12, 2000

No. 222736
Shiawassee Circuit Court
Family Division
LC No. 97-008137

Before: Neff, P.J., and Smolenski and Meter, JJ.

PER CURIAM.

Petitioner appeals by leave granted from a family court order delaying the termination of respondents' parental rights for six months to provide them with additional time to progress. We reverse and remand.

Petitioner's sole issue on appeal is that the trial court erred as a matter of law in delaying entry of a termination order and reinstating visitation for six months, despite its unequivocal findings that clear and convincing evidence was presented to establish grounds for termination under MCL 712A.19b(3)(c)(i) and (g); MSA 27.3178(598.19b)(3)(c)(i) and (g), and that termination was also in the children's best interests. We agree. This issue presents a question of law, which we review de novo. *Oakland Co Bd of Co Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998); *Watson v Bureau of State Lottery*, 224 Mich App 639, 644; 569 NW2d 878 (1997).

Before January 1, 1995, once a court found that at least one statutory ground for termination was supported by clear and convincing evidence, the court's ultimate decision whether to terminate parental rights was discretionary, to be decided by the child's best interests. MCL 712A.19b(3); MSA 27.3178(598.19b)(3); *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993); *In re*

McIntyre, 192 Mich App 47, 50; 480 NW2d 293 (1991). However, effective January 1, 1995, MCL 712A.19b; MSA 27.3178(598.19b) was amended to add subsection 5, which states:

> If the court finds that there are grounds for termination of parental rights, the court *shall order termination* of parental rights and order that additional efforts for reunification of the child with the parent not be made, *unless* the court finds that termination of parental rights to the child is clearly not in the child's best interests. [Emphasis added.]

In *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997), this Court interpreted § 19b(5), stating:

> Given the Legislature's use of the words "shall" and "unless" in the above provision, we interpret the above statute to now create a *mandatory presumption* that can only be rebutted by a showing 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, we believe that the trial court is *without discretion* and *must terminate parental rights.* Accordingly, we believe that a trial court's now nondiscretionary decision regarding termination is reviewed in its entirety for clear error.
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> Similarly, we believe that once a statutory ground for termination has been met by clear and convincing evidence, the language of MCL 712A.19b(5); MSA 27.3178(598.19b)(5) requires a parent to put forth at least some evidence that termination is clearly not in the child's best interest. Absent any evidence addressing this issue by the parent, *termination of parental rights is mandatory*. [Emphasis added.]

Here, the trial court concluded that petitioner had proven by clear and convincing evidence that there were statutory grounds for termination of parental rights. In particular, it concluded that, under MCL 712A.19b(3)(c)(i); MSA 27.3178 (598.19b)(3)(c)(i), 182 or more days had elapsed since the initial dispositional order was issued and clear and convincing evidence had shown that "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 children's ages." The court further found that, under MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g), respondents, "without regard to intent, failed to provide proper care and custody for the children and there is no reasonable expectation that the parents will be able to provide proper care and custody within a reasonable time considering the children's ages." In light of the trial court's findings, pursuant to subsection 19b(5), the court was required to terminate respondents' parental rights, *unless* it found that termination was clearly not in the children's best interests. However, the court concluded that termination was in the children's best interests. Therefore, the trial court was without discretion and was required to terminate respondents' parental rights, with no additional efforts for reunification.

We note that, in utilizing a "delay procedure," the trial court relied on *In re Adrianson*, 105 Mich App 300, 319; 306 NW2d 487 (1981), in which a similar procedure was used. Without deciding whether the procedure utilized in *Adrianson* remains viable in light of subsection 19b(5), we conclude that the instant case is easily distinguishable. In *Adrianson*, the parties stipulated to delaying termination for the specified time period. *Id*. at 304. More importantly, when the *Adrianson* court allowed the delay, it had not yet concluded that termination was in the children's best interests. *Id*. In this case, however, when the trial court delayed entry of a termination order, it had already concluded that termination was in the children's best interests and that "there is a reasonable likelihood that [the children] will be harmed if returned to the home of [respondents]." Finally, in approving the procedure utilized in *Adrianson*, this Court likened the nature of the final hearing to a motion for rehearing. *Id*. at 319. Here, however, the hearing, scheduled to occur six months (or 180 days) later, is not the equivalent of a motion for rehearing where the time period for such a motion is twenty days after termination. MCL 712A.21(1); MSA 27.3178(598.21).

We therefore conclude that the trial court erred as a matter of law in delaying entry of a termination order after finding that the necessary statutory criteria had been satisfied. Accordingly, on remand, the trial court shall enter an order terminating respondents' parental rights, with no additional efforts at reunification.

We reverse and remand for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Michael R. Smolenski
/s/ Patrick M. Meter