STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of DEAN J. OLSON, a Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

RACHEL OLSON,

Respondent-Appellant,

and

ANTHONY CASPER,

Respondent.

UNPUBLISHED
May 23, 2000

No. 222584
Wexford Circuit Court
Family Division
LC No. 99-013936-NA

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

MEMORANDUM.

Respondent appeals as of right the termination of her parental rights to her minor child, Dean (DOB 11/30/95), pursuant to MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g) (parent, without regard to intent, fails to provide proper care or custody for the child), and (j) (reasonable likelihood of harm if child is returned to parent's home). We affirm.

Respondent argues that the family court erred in terminating her 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).

Petitioner filed a petition to have the court take temporary custody of the child on July 16, 1998. The petition was based on allegations that respondent had verbally belittled the child, handled him in a rough manner, and hit him several times in front of service providers. In addition, the child had been taken to the hospital because he had swallowed staples and a hearing aid battery. Furthermore, respondent's home was cluttered, dirty, and unsafe for a small child. On September 14, 1998, the family court issued an order taking jurisdiction over the child.

At a hearing on June 9, 1999, the family court held a hearing on petitioner's request that respondent's parental rights be terminated. The testimony established that various agencies had been attempting to help respondent since May 1996, and services had been made available to her almost continuously.

Bedonna (or Bedona) Davis of the Family Independence Agency testified that she had observed respondent interacting with her son. Respondent called the child names such as "butt," "brat," "devil child," "demon child," and similar names. Respondent would often hold the child and not let him get down. She did not appear to have a nurturing relationship with him. One of the goals of respondent's service agreement was for her to talk to the child in a more appropriate manner; for a time, respondent improved, but then things became progressively worse.

Shannon Cross of Families First testified that she had observed respondent being rough with her son. For example, respondent would grab the child's arm hard, even when he had a collarbone injury. Another time, respondent "dragged him over" and placed him into a chair; Cross thought "it just seemed that he went into the chair pretty hard for a little guy." On yet another occasion, respondent grabbed the child's face and shook his head in a way that Cross found inappropriate. At another time, the child crawled up to respondent and put his head between her legs; she squeezed his head between her legs and began to jump up and down; Cross feared that respondent would step on his arms. When anyone protested, respondent would say that the child liked what she was doing.

The foster mother testified that she had observed respondent tell the child that he had broken a toy, even if it were not broken. Respondent would also tell him that he was a naughty boy.

Claire Little testified that she volunteered for the Family Independence Agency as a visitation observer. During visits, respondent would sometimes hold Dean tight and not let him get down, even when he screamed. When he reached for a toy, she would tell him that he could not have it because he

was naughty, even when he had done nothing to deserve it. Respondent would bring treats to the visits and tell the child that he could not have them.

Steven Loring, the case worker, testified that he had observed "an extremely conflicted, painful, violent interaction between Dean and his mother" during visits that was, at times, uncomfortable to watch. The quality of the visits had not been affected by the recommendations that respondent had received. Loring stated that respondent is intelligent and intellectually knows what good parenting is; however, for the most part she appears to be unwilling to implement what she knows.

Dr. Thomas Chevalier, a psychologist, testified that he had evaluated respondent and found that she represses feelings of anger and hostility until "they tend to explode." This finding could explain the descriptions of the manner in which respondent played with her son. If the allegations in the petition were true, Chevalier would conclude that respondent's psychological problems were impeding her ability to provide a safe environment for her child. Chevalier believed that respondent's reported behavior would do "great psychological harm" to the boy.

Deanna Rosser, a psychotherapist, testified that she had treated respondent from December 12, 1998, to March 10, 1999, after which respondent chose not to return. Respondent's perception of the reasons that her son had been removed from her care conflicted with the observations of others. Respondent did not appear able to accept any responsibility for the removal or to recognize that her manner of interacting with the boy amounted to physical and emotional abuse. Rosser believed that respondent would not be able to change without long-term counseling.

Respondent admitted that the child had ingested staples and a battery on different occasions, and that he had been hit by a car while in the care of a former boyfriend. Respondent testified that when she called Dean names, it was done in a playful way. If the caseworkers told her not to do a particular thing, she would stop doing it. Respondent took toys away from Dean as a means of discipline when he was doing something inappropriate. Similarly, she would hold him because it was the only means of doing a time out in the visitors room. Respondent admitted that she had a problem with repressed anger and that she needed counseling, but stated that she had not found a counselor that she felt comfortable with. Respondent believed that the people at the FIA who had supervised her visits with her son had taken an instant dislike to her.

Respondent's mother, brother, and aunt all testified that respondent had a normal, loving relationship with her son. They all denied that respondent was rough with the child.

The family court stated that it found credible the testimony regarding respondent's physically and emotionally abusive conduct. The court further found that respondent "is of a mental state where she is able to engage in a massive denial of objective reality and actually encouraged in this regard by her extended family who maintain that nothing is wrong here." The court stated that each individual incident of parental failure was relatively minor, but the aggregate effect of these incidents, in addition to the testimony regarding psychological and emotional damage to the child, provided clear and convincing evidence of a reasonable likelihood of harm if the child were to be returned to respondent's home. Moreover, given respondent's inability to behave appropriately with her son even when she knew she

was being observed by social workers, there was no reasonable likelihood that she could change within a reasonable time.

We conclude that the family court did not clearly err in finding that the statutory grounds for terminating respondent's parental rights had been established. See MCR 5.974(I); *Miller*, *supra*. Because respondent did not present any evidence that termination of her parental rights would not be in the child's best interest, the court properly terminated her parental rights. See MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *Huisman*, *supra*.

Affirmed.

/s/ Martin M. Doctoroff
/s/ David H. Sawyer
/s/ Mark J. Cavanagh