

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of DE'CARLOS BUTLER, TYREKICA  
BUTLER, TONY DE'SHAWN HAYES, JA-MEKIA  
DAVIS & LESTER DAVIS, Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

PRISCILLA D. BUTLER,

Respondent-Appellant.

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UNPUBLISHED

June 20, 2000

No. 220345

Wayne Circuit Court

Family Division

LC No. 94-322,855

Before: Hoekstra, P.J., and Cavanagh and White, JJ.

PER CURIAM.

Respondent-Appellant Priscilla Butler appeals by leave granted the family court order terminating her parental rights to her minor children, De'Carlos Butler, Tyrekica Butler, Tony De'Shawn Hayes, Ja-Mekia Davis, and Lester Davis,<sup>1</sup> under MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist), and (3)(g) (unable to provide proper care and custody). The parental rights of several of the fathers<sup>2</sup> were previously terminated and they are not parties to this appeal. We affirm.

I

The children were placed in foster care in December 1994 and remained in foster care during the pendency of this case. Respondent's initial parent/agency treatment plan required that she attend weekly agency visits, participate in individual counseling, attend all court hearings, participate in psychological evaluation, and secure employment by May 30, 1995.

A report to the court in May 1996 stated that respondent had completed parenting classes, was actively seeking safe and suitable housing, and was not attending individual counseling but was to begin participation in a program to learn nurturing techniques which offered individual counseling. A report

dated December 1996 stated that respondent was in full compliance with the parent/agency agreement with regard to obtaining suitable housing but still required adequate furnishings and appliances. The report recommended that the case not progress to the next legal proceeding until respondent complied with the parent/agency agreement plan regarding individual therapy and a psychiatric evaluation. After December 1996, respondent was also required to provide weekly drug screens, because of suspected drug use. Respondent did seven drug screens in 1997.

In November 1997, a hearing on the first petition to terminate parental rights was held, at which the parental rights of the children's fathers, see n 2, were terminated, but respondent was given another chance to comply with the parent/agency agreement and to make appropriate progress.

In February 1998, the court ceased requiring drug screens. A parent/agency treatment plan for the period of October 19, 1998 to January 19, 1999, provided that respondent again submit to weekly random drug screens. A court report prepared for a December 1, 1998 hearing stated that respondent was in marginal compliance with the case service plan, and that one of the children had reported that during a visit respondent had smoked marihuana in the home. The report stated that respondent had explained that other people in her home had smoked marihuana when she had gone to the grocery store. The report further stated that respondent did not have enough beds for all the children to stay with her overnight and that although she had provided verification of work on September 30, 1998 and October 15, 1998, she was no longer working. The report stated that it had come to the caseworker's attention that respondent may have male companions staying with her, but that such had not been verified. The report recommended that the parent/agency agreement be modified to order weekly random drug screens.

In December 1998, the caseworker filed a second petition requesting that respondent's parental rights be terminated, stating that respondent had not complied with the parent/agency agreement, had not secured suitable housing, had not attended therapy regularly, that one of the children reported that respondent smoked marijuana during his unsupervised visit, that respondent had male companions present overnight during unsupervised visits, that one of the children witnessed her mother being choked by a male companion, and that on another unsupervised visit, respondent allowed a male companion to spend the night because he was "high."

At the April 1, 1999 final dispositional hearing, the court took judicial notice of the court file. Kathleen Sullivan, foster care worker at Catholic Social Services, testified that the children came into care on December 27, 1994. She testified that after the court required that respondent once again do weekly drug screens in December 1998, respondent submitted to five of the seven screens requested, but only one screen was within twenty-four hours of Sullivan's request, as required, and one screen was positive for marihuana. Sullivan testified that as part of the parent/agency plan respondent was supposed to get housing, and that she had lived in ten places since the children went into care. Sullivan testified that respondent was currently renting her own unit but that as of Sullivan's last visit in November 1998, it was not suitable for the children because there were not enough beds. Sullivan testified that respondent had provided proof of employment between September 30 and October 15, 1998 but had provided no further proof, even though she reported she was working.

There was testimony from several witnesses regarding the children's special needs. De'Carlos was diagnosed with adjustment disorder, had problems that included temper tantrums, and was on an anti-depressant; Tony was in therapy to build self-esteem and was dealing with attachment issues; Ja-Mekia and Lester also attended therapy. Lester has Attention Deficit Disorder, takes Ritalin, soils himself, and smears his feces. One of the children's foster mothers and De'Carlos' therapist reported that the children reacted poorly to their visits with their mother, that De'Carlos would be upset and throw furniture after the visits, and that Tyrekica would withdraw for several days after the visits. Sullivan recommended that respondent's parental rights be terminated.

Respondent testified that she missed several drug screens because of work, and that she had last given one in late February 1999. She testified that the last time she used drugs was when "they took Antonio," referring to her youngest son, born February 19, 1996, who was removed from respondent's care in early 1999. Respondent testified that she was employed and had been working thirty-five hours a week but no documentary proof was produced. She testified that she was aware that her children had special needs and that she was able to deal with those needs. On cross-examination, respondent testified that she had been in jail for one or two days in 1994 or 1995 because Ja-mekia's father had been selling drugs from respondent's home, and that she was incarcerated for about a month in 1996 for violating probation. Respondent testified that she had told her probation officer that she could not see him because she had to visit the children. Respondent testified that she had lived at a number of places, and that after the male friend tried to choke her, she told him to leave, called the police, and made a report.

## II

We review the family court's decision to terminate parental rights for clear error. MCR 5.974(I); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Regard is given the trial court's special opportunity to judge the witnesses' credibility. MCR 2.613(C); *Miller, supra* at 337. Only one statutory ground is required to terminate parental rights. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). Once a statutory ground for termination is established, the court must terminate parental rights unless it finds that termination is clearly not in the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5), MCR 5.974(E)(2), *In re Hall-Smith*, 222 Mich App 470, 472; 564 NW2d 156 (1997). Once the petitioner has established a ground for termination of parental rights, the respondent has the burden of going forward with evidence to establish that termination is clearly not in the child's best interest. *Id.* at 473.

The applicable statutory subsections, MCL 712A.19b(3)(c)(i) and (3)(g); MSA 27.3178(598.19b)(3)(c)(i) and (3)(g), provided at pertinent times:

- (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:

(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.

Regarding subsection (c)(i), respondent argues that there was no clear and convincing evidence that the conditions that led to the adjudication continued to exist or could not be rectified. Respondent argues that the children were brought into care only because of conditions of the home and, therefore, that the court's claim that drug use was a reason to terminate parental rights was unjustified.

Regarding subsection (g), respondent argues that there was not clear and convincing evidence that she could not provide proper care and custody for her children in the future.

The record does not support respondent's arguments. Regarding subsection (c)(i), respondent is correct that the petition filed January 6, 1995 alleged a number of damaging home conditions, including no food, table or chairs, beds, temperature in the home of nearly 100 degrees, and the presence of numerous flies and roaches. However, the petition also alleged physical, medical and emotional neglect, failure to send the three oldest children to school, and that the children were being exposed to persons who sold or used drugs:

3. On October 1, 1994, Protective Services needed police intervention for a "Children Alone" complaint. Upon police arrival, the mother arrived with an explanation for her hour plus absence and a JCO1 was not done.

\* \* \*

8. On October 10, 1994, the children wandered about aimlessly. There were no games, toys, puzzles, dolls, or books of any kind for them.

9. The three school age children had no clothes, which explained their presence on Monday, October 10, 1994, in the early afternoon. In Tyreckia's [sic] case, another reason for school absences was that she was behind on her shots and needed both a physical and a dental exam. Her mother failed to make an appointment in time, so she was not able to be seen until November 11, 1994. The mother missed this appointment and failed to call to explain and/or reschedule for another appointment at the Clinic, which sent a letter to the mother requesting same.

10. On October 13, 1994, the family was evicted from their home because of the mother's negligence.

11. The mother has admitted to the petitioner that she has provided her children unsafe and terrible role models. Her boyfriend, the father of the two youngest children, is incarcerated for drug sales and violation of probation. His place in the home was taken by her brother, thereby reducing the living space of her children by one half, because he had just been released from the hospital for a beating he sustained in a drug deal and the home he was using to live in had been shot up.

12. The mother advised the petitioner that she knew that this placed her children at risk, especially, in that, she suspected that her brother was now dealing from her home. On separate occasions, June 19, 1994, and September 1994, he stole the children's toys, their school clothes, microwave, her clothing, the rent money, and a stereo to support his habit and/or pay off debts. Subsequent to the eviction, she moved her children into the home of an alcohol drinking crackhead across the street.

13. The mother continually fails to adequately address Carlos['] severe emotional problems and his potentially blinding eye disease. His school social worker suspects that part of his total non-involvement with humans is that he is not nurtured at home and the medical history from 1998 indicates that eye patching and surgery are needed "very badly". Carlos' teachers have advised the petitioner that he is now picking and scratching at the bad eye.

Regarding subsection (g), we conclude that the evidence clearly showed that respondent failed to provide proper care or custody for the children and that there was no reasonable expectation that she would be able to within a reasonable time. Respondent ultimately failed to comply with the parent/agency plans. She did not maintain suitable housing, did not maintain employment, did not comply fully with the plan regarding therapy, and continued to have issues with drugs, whether her own use or use by persons in her home. The family court did not clearly err in terminating respondent's parental rights under statutory subsection (3)(g).

We reject respondent's argument that termination was not in the best interests of the children, because she failed to present evidence to show that termination ran counter to the children's welfare. *Hall-Smith, supra* at 473.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Mark J. Cavanagh  
/s/ Helene N. White

<sup>1</sup> The birthdates of the children at issue are: De'Carlos (9/25/85), Tony (8/14/86), Tyrekica (9/1/89), Ja-mekia (3/19/93) and Lester (4/21/94).

<sup>2</sup> The record indicates that Tony Lee Hayes, father of Tony Hayes, and Eddie Lee, father of Tyrekica, are deceased.