

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

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In the Matter of MIKE MIGUEL SMART,  
SHAWNTREZ DARRAND SMART, JAMEELAH  
ARIES SMART, and ABDUL MALIK  
McFARLIN, Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner -Appellee,

v

LINDA SMART,

Respondent -Appellant,

and

MIKE A. KAY, ANTHONY C. ANDERSON,  
RONALD DONALD, and ABDUL M.  
MCFARLIN,

Respondents.

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Before: Bandstra, C.J., and Saad and Meter, JJ.

PER CURIAM

Respondent Linda Smart appeals by leave granted the June 8, 1999 order terminating her parental rights to Mike, Shawntrez, and Jameelah Smart and Abdul McFarlin under MCL 712A.19b(3)(c)(i), (g), and (j); MSA 27.3178(598.19b)(3)(c)(i), (g) and (j). We affirm.

Mike was born in 1989, when respondent was sixteen years old and a permanent court ward committed to the Michigan Children's Institute (MCI) in residential care placement. Petitioner Family Independence Agency (FIA) filed a petition on August 11, 1989, alleging that because of respondent's age and living arrangements, she was unable to provide a suitable home for Mike. Respondent admitted the truth of the allegations in the petition at a hearing conducted

on November 29, 1989. The court ordered that Mike be made a temporary ward of the court and placed in foster care. Between the date of Mike's placement and 1993, Mike was in foster care and, after respondent turned 18, given to respondent for overnight visitation. In January 1993, Mike was given to respondent for extended visitation, notwithstanding the testimony of Evelyn Walker, the foster care worker in charge of respondent's case, that respondent had "not made much progress in stabilizing her lifestyle."

Over the next three years, the court conducted reviews every three months. In June 1994, Walker informed the court that respondent had placed Mike with respondent's mother. At a June 17, 1994 hearing, counsel for Mike reminded the court that respondent's mother's parental rights had been terminated. Respondent was using her mother's address as her own, but was living with her boyfriend. Respondent signed a new parent-agency agreement in August 1994. Three months later, foster care workers reported that respondent had no stable housing and was living in a shelter for victims of domestic violence. Respondent also reported that Mike had been molested by one of her cousins. In June 1995, a worker for Catholic Social Services reported that although respondent had partially complied with the parent/agency agreement, the agency had experienced trouble maintaining contact with her. Respondent was moving between her father's home and sister's apartment because she did not feel safe in her current residence. Catholic Social Services was concerned about respondent's lack of stable housing and the children being "uprooted going from place to place." In a December 1995 hearing, the foster care worker testified that respondent had moved twice since the June hearing and had been in her current location for one month.

On April 18, 1996, FIA petitioned the court to take jurisdiction over Shawntrez, born on January 21, 1992, and Jameelah, born on April 9, 1995. The petition alleged that (1) respondent had been evicted for the second time in six months, (2) she had been absent from her new location from March 25 to April 18 without informing either Mrs. Kelly, with whom she and the children had been placed, or the foster care workers, (3) she reappeared on April 3, telling workers that the children were with a maternal aunt, (4) when the children were found, they were dirty and had a foul smell, (5) Boysville Families First, an agency that was enlisted by foster care to work with respondent, closed its file on respondent due to noncompliance, and (6) respondent left the home where she had been placed after an altercation on April 16, 1996. On July 16, 1996, a hearing was held, the allegations were found to be true, and the children were placed in foster care.

Over approximately the next two years, FIA worked with respondent, enlisting the help of two agencies, Homes for Black Children (HBC) and the Clinic for Child Study (CCS). In October 1996, CCS reported that respondent had been homeless for six months, but was currently in a three-bedroom flat. She had not consistently exercised visitation. HBC reported that respondent had not enrolled in parenting classes, found a job, or stayed in touch with HBC. After a number of reviews between October 1996 and February 1998, it appeared to the agencies involved that respondent had stabilized her living situation and, on February 23, 1998, the children were placed with respondent on extended visitation.

The children were removed from the home on July 16, 1998, after a petition had been filed alleging noncompliance with the parent/agency agreement. On July 21, 1998, FIA

petitioned the court to take jurisdiction over Abdul, who was born on January 2, 1997, alleging that respondent had failed to maintain a suitable home for the children. The court took jurisdiction over Abdul on October 7, 1998. On October 7, 1998, petitioner filed a petition to terminate respondent's parental rights, alleging that: (1) the conditions leading to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the ages of the children, MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i); (2) the parents without regard to intent failed to provide proper care or custody for the children and there is no reasonable expectation that the parents will be able to provide the proper care and custody for the children considering the ages of the children, MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g); and (3) there is a reasonable likelihood based on the conduct or capacity of the parents that the children will be harmed if they are returned to the home of the parents, MCL 712A.19b(3)(j); MSA 27.3178(598.19b)(3)(j).<sup>1</sup>

A hearing was held on the termination petition on March 4 and May 4, 1999. On March 4, the court limited the parties to the question of whether a fifth child, Jermaine, who had been born after the termination petition was filed, should be brought under the jurisdiction of the court. At the May 4 hearing, two witnesses testified. Yvonne Simmons, a foster care worker with HBC, testified that the children had been removed from the home in July 1998 when respondent was "seriously out of compliance" with the parent/agency agreement, which required that respondent maintain a suitable home, properly care for the children, place the children in daycare so she could get a job, and make sure that "none of her family moved in with her or stayed with her for any period of time." In July 1998, respondent had left Jameelah with a former foster parent in violation of instructions that HBC had given respondent. The foster parent's home caught fire while Jameelah was there. Jameelah was removed from the home without being harmed; however, when respondent was informed of the fire, she did not pick up Jameelah.

Respondent and the children had lived in rented housing. The owner of the home had been notified that it would be foreclosed on for failure to pay back taxes. When HBC was notified of the impending foreclosure, it arranged for respondent and the children to move into transitional housing, which would have met the needs of respondent and the children. On the day before respondent and the children were to move, respondent informed Simmons that she would not move, saying that she wanted to locate a home on her own and that she did not want to stay somewhere that she would be told what to do. The transitional housing had rules prohibiting anyone other than the children living or staying with her, and prohibited visitors after "a certain hour." Respondent had previously had problems with relatives staying at her house, eating her food and taking her money, causing her to be unable to pay her rent.

After the children were removed from respondent's custody, she was offered parenting classes and counseling; she had not taken advantage of these services. She attended a single

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<sup>1</sup> Petitioner also moved for termination of the parental rights of Mike A. Kay, Anthony C. Anderson, Ronald Donald, and Abdul M. McFarlin, alleging that they had abandoned their children for 91 or more days and had not sought custody during that period, MCL 712A.19b(3)(a)(ii); MSA 27.3178(598.19b)(3)(a)(ii). The court entered an order of termination as to all four respondents, none of whom have appealed from the order of termination.

orientation session in February 1999, but only one counseling session thereafter. Respondent was not allowed to visit the older children after the termination petition was filed; however, she was allowed visitation with her youngest child, Jermaine. During the period between July 1998 and October 1998, when the termination petition was filed, respondent was allowed visitation with the older children. Her exercise of her visitation rights was irregular. She explained that she did not visit because she was busy and had been working. Since respondent's visits had stopped, the children had not asked for respondent.

At the time of the hearing in May 1999, respondent had lived in her current home for five months. Her rent was current at the time of the May hearing. However, it was revealed at the March 1999 hearing that respondent had been served with an eviction notice for failure to put the utilities in her name. By the May 1999 hearing, respondent had placed the utilities in her name; however, she had an outstanding balance on her gas service of \$1714, on her electric service of \$1994.15, and on her phone service of \$100. Respondent informed Simmons on the day of the hearing that "she was going to get on a Budget Plan."

Respondent testified that she had begun to pay the arrearage on her utilities and planned to work out a payment plan on her next day off from work. She had begun a new job as a cashier at a White Castle the day before the hearing. She did not make her counseling appointments "because I was working and stuff." She had explained her inability to keep her appointments with her caseworker. Her schedule also prevented her from exercising regular visitation with her children. She testified her mother and sisters were available to help take care of the children. No one currently lived with her. She admitted that twice when Simmons visited her home, her father was present; however, she said, he was just visiting.

On June 8, 1999, the court announced its findings and conclusions. It found that Mike had been a temporary ward of the court for nearly ten years and that Shawntrez and Jameelah had been temporary wards for nearly three years. Respondent had difficulty maintaining stable housing and had refused assistance in the form of transitional housing. The court further found that "[t]he longer one waits, the more times the court allows the children to move back and forth between mother and foster care, and the older the children get, the more likely the pattern will be repeated of their growing up in foster care or as MCI wards." Accordingly, the court terminated respondent's parental rights.

In a termination hearing, the petitioner bears the burden of showing by clear and convincing evidence a statutory basis for termination. MCR 5.974(F)(3). Once a statutory basis for termination is shown, the trial court shall terminate parental rights unless it finds that termination of parental rights is clearly not in the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Trejo Minors*, 462 Mich 341, 354; 612 NW2d 407 (2000). This Court reviews the trial court's decision for clear error. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). "A finding is 'clearly erroneous' [if] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Id.*, quoting *In re Riffe*, 147 Mich App 658, 671; 382 NW2d 842 (1985).

In the present case, the court terminated respondent's rights under three provisions, MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i), MCL 712A.19b(3)(g); MSA

27.3178(598.19b)(3)(g), and MCL 712A.19b(3)(j); MSA 27.3178(598.19b)(3)(j), which provide as follows:

The court may terminate the parental rights of a parent 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 days or more have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds ...:

(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 age of the child.

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(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 age of the child.

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(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.

Respondent contends that the court's ruling was clearly erroneous. We disagree. We recognize, as respondent argues, that the primary problem in respondent's case was her inability to provide a suitable home for the children. The case had originally been opened because respondent was unable to provide a suitable home for Mike. At the termination hearing, ten years later, the court found that respondent had difficulty maintaining stable housing, that she had been evicted from a number of homes, and that she had not always accepted assistance with housing. The record, consisting of the court record and transcripts of hearings conducted over the ten years since the case was opened, is replete with instances in which respondent had been evicted from housing and was being assisted in finding new housing. She refused assistance in moving to transitional housing in July 1998, which would have provided all her and the children's needs, because she did not want to live under the rules in place at the facility. At the time of the May hearing, respondent had lived in her latest home for five months. However, at the March hearing, it was revealed that respondent was facing eviction for failure to put the utilities in her name.

Respondent argues that she maintained suitable housing. She had moved into this housing only after the termination petition was filed. In addition, respondent's current tenancy of five months, in the context of her history, could hardly be considered stable housing. In addition,

respondent argues that she went to counseling when possible and informed her worker when she would not. However, Simmons had testified that respondent did not give notice to the agency when she did not appear. This Court must accord deference to the trial court's assessment of the credibility of the witnesses before it. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991).

The children have filed a brief in which they claim that the court said, at the March 4, 1999 hearing, that it made more sense to work with respondent if she could maintain her home. However, no such affirmative statement was made by the court. Simmons testified at the March hearing that respondent was facing eviction for failure to put the utilities in her name. When the court asked if the agency could work with respondent, Simmons responded that she could not make respondent switch the utilities into her name. This exchange, moreover, further shows respondent's seeming inability to stabilize her living situation by putting the utilities in her name. The court's conclusion that the grounds for termination had been proven was not clearly erroneous.

Further, there is no evidence in the record that termination would not be in the best interests of the children. The children had been in foster care for at least half of their lives. Respondent had shown a pattern over a ten-year period of being unable to maintain stable housing. Since the termination petition had been filed, approximately eight months before the termination hearing, the children had not asked for respondent. No error appears in the record.

We affirm.

/s/ Richard A. Bandstra  
/s/ Henry William Saad  
/s/ Patrick M. Meter