

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MJ, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner -Appellee,

v

FAUSTINA JACKSON,

Respondent -Appellant.

UNPUBLISHED
December 1, 2000

No. 226611
Washtenaw Circuit Court
Family Division
LC No. 96-023967-NA

Before: Wilder, P.J., and Smolenski and Whitbeck, JJ.

PER CURIAM.

Respondent Faustina Jackson appeals as of right. She challenges the trial court's order terminating her parental rights to one of her two sons, MJ, pursuant to MCL 712A.19b(3)(b)(i), (c)(i), (j), and (k)(iii); MSA 27.3178(598.19b)(3)(b)(i), (c)(i), (j), and (k)(iii). We affirm.

I. Basic Facts And Procedural History

Jackson has two sons, RJ and MJ. Both boys have emotional and behavioral problems including attention deficit and hyperactivity disorder (ADHD). Before he became a temporary court ward, MJ took the prescription drug Ritalin for his ADHD. While the complete nature of RJ's emotional and behavioral problems is not clear from the record, it appears that they were severe enough to prompt Jackson to seek state assistance at some time by bringing him to a local police station. The trial court made RJ a temporary court ward and arranged an inpatient assessment and then a residential program for him, first at the Whaley Center, then at Judson, and later at Boysville. If there was abuse or neglect underlying RJ's temporary ward status, the record does not reveal it.

Jackson seemed to be pleased with the services that RJ received as a temporary court ward and had been cooperating fully with FIA case workers and a service plan seeking reunification with RJ. Individuals involved with RJ's case, including the trial court, observed that he and Jackson had a strong bond. Additionally, Jackson had both a job and stable, albeit

subsidized, housing. All of these factors, as well as RJ's progress in the residential setting, made reunification seem like a realistic goal.

In spring 1998, while RJ was still a temporary court ward, MJ's behavioral problems, which had previously included aggressive behavior and tantrums, escalated. He and another boy set a serious fire in the wooded area behind Jackson's apartment complex. Then, in April 1998, Jackson discovered that MJ had smeared jelly and sugar all over the apartment. This, apparently, was the last straw for Jackson. She beat her son with a shoe, at one point striking him in the face, leaving a serious and distinctive bruise. Later, at the preliminary hearing, Jackson admitted to "whipping" her son but claimed that this blow to his face was accidental.

Jackson, evidently aware that she was losing control and concerned about MJ's behavior, made telephone calls to FIA workers involved with RJ's case around this time. In one call, Jackson told CPS worker Joe Lanczki that she did not think that therapy once a week was sufficient for MJ and that she wanted him to have an inpatient evaluation like the evaluation performed for RJ. She asked Lanczki "why didn't we [FIA staff] take MJ from her house and . . . [if] she had to break his arms before we took him or if she had to drop him off at the police station as she did Ronnie." Lanczki also said that Jackson threatened not to pick up MJ after school. Jackson did, in fact, go to the school to collect MJ that day. However, Lanczki had already taken MJ to be placed in foster care. Additionally, in one call, Jackson said that she was "finished parenting" MJ.

The original petition in this case alleged that the trial court should find that MJ came within its jurisdiction because of the incident of abuse involving the shoe and Jackson's alleged threats to break MJ's arm and to abandon him at the school. Jackson – who waived her right to an attorney at the preliminary hearing – admitted to the abuse, but denied that her comments to Lanczki constituted threats of abuse. Rather, Jackson contended, she was merely trying to express her desperation and her desire to have "something done" soon. She said that when she mentioned wanting MJ out of her house, she meant for an inpatient assessment to help with his behavioral problems. She also said that she told Lanczki that she was not going to take MJ home from school, meaning that she was going to take him to a social services facility or to Lanczki. At a number of times during this hearing, Jackson expressed concern for MJ and a desire to be reunited with him.

The trial court accepted Jackson's plea of admission at the preliminary hearing, concluding that MJ came within the court's jurisdiction and making trial unnecessary. The trial court placed MJ with a foster family specially trained to handle children with special needs. Because Jackson already had a case service plan for RJ and was also working with a therapist, the trial court essentially included MJ in that preexisting case service plan that was being monitored or carried out by Lutheran Social Services of Michigan (LSSM). The trial court stated that it was permitting Jackson to have weekly supervised visits with MJ.

Generally speaking, reports for the next four months were very positive about Jackson's cooperation with social service workers, progress in therapy, compliance with the case service plan, and her loving relationship with MJ. There was one occasion when Jackson lost her composure when she learned that LSSM and the foster family had not yet obtained necessary

dental care for MJ. MJ was beginning to make slow progress with his own behavioral challenges despite having a difficult time adjusting to his foster care placement, making a false allegation of abuse against his foster father, and biting his own arm in an attempt to blame the resulting mark on his foster father.

The trial court ordered Jackson to undergo a substance abuse evaluation for her admitted marijuana use after the July 1998 dispositional hearing. However, because of MJ and Jackson's progress, the trial court loosened the visitation restrictions, eventually permitting MJ to have unsupervised weekend visits at the beginning of September 1998. On September 14, 1998, Jackson reported having difficulty with MJ during his two unsupervised weekend visits at the beginning of the month. According to Jackson, he threw tantrums, broke a number of items, and made a mess with sugar and syrup. The next day, a CPS worker visited MJ's foster mother, who said that she had overheard MJ tell the other children in the home that over the weekend he had seen Jackson smoking crack and, before she passed out, telling him that she had "to quit smoking this stuff because it is bad for her." At a subsequent meeting between various case workers and Jackson, Jackson denied smoking crack, passing out on her bed, or making the statement to MJ. She believed that MJ may have seen a pipe she kept to smoke marijuana. She stated that she never smoked crack, that she never smoked marijuana in front of MJ, that her use did not affect her ability to parent, and that MJ had lied.

A LSSM report from this period states that at about the same time MJ made this accusation, he had also met with his therapist, Catrina Bady. The report recounted Bady's remarks:

MJ has little understanding as to why he is in foster care and has a hard time dealing with being separated from his mom. He enjoys visits with her and would like to be with her if she can get help for her drug use. Ms. Bady reports that MJ discussed one of his classmates with her in their last session. This little girl apparently had a parent that used drugs and portrayed some very disturbing behavior. MJ was frustrated by his friend's story and doesn't want this to happen to his mom. He continues to describe instances of persons using drugs in great detail. Ms. Bady doesn't feel that he could get such an account without firsthand knowledge. She finds that he is a very scared little boy who needs a lot of support in order to get him home.

At the second dispositional review hearing on October 8, 1998, the trial court and the parties addressed MJ's allegation. LSSM case worker Patrick Okoronkwo stated that MJ was very upset and claimed that he never wanted to see Jackson again. Okoronkwo questioned whether Jackson was committed to treating her substance abuse and stated that he did not believe that Jackson was taking responsibility for her actions. Okoronkwo recommended that a termination petition be filed by January 1999 if the situation did not improve and added that MJ was doing very well in his current placement.

Jackson's attorney attempted to refute Okoronkwo's testimony, stating that Jackson had taken responsibility for her conduct, that she was willing to take a drug test that day, that she still believed that a residential facility would provide a better placement for MJ, and that MJ's

progress with the foster family was not as significant as Okoronkwo suggested. Jackson's counsel denied that Jackson wanted MJ to go to a residential facility to punish him and, in every other respect, agreed with the recommendations that LSSM staff had made. Jackson personally added that she believed that MJ had lied because he was upset that she had divorced his father and was now dating; evidently, the person she was dating dropped by unexpectedly during the visit when MJ allegedly saw her smoking the pipe. Jackson pointed out MJ's documented history of lying and that she had submitted two drug tests, neither of which were positive for cocaine, demonstrating that he was not completely truthful about this most recent allegation.

William Schooley, MJ's attorney, claimed that MJ's allegation was truthful despite the conversation with his therapist concerning the little girl's experience with a parent who used drugs. Further, Schooley claimed that Jackson's focus on placing MJ in a residential facility was a ploy to shift attention away from her drug use. He favored maintaining MJ's placement in foster care.

At the end of the hearing, the trial court found:

But this case – when it came before the Court in April of 1998, [MJ's] brother, [RJ] had already been in the Court for similar problems, similar behaviors, similar parent-child relationships and there was always a concern as the case of [RJ] was going on that [MJ] was going to – was having problems also that were not being addressed. Problems with his mother, and there was work that was done, but that relationship and that placement with him at home with his mother was tenuous all the time and finally came to a head [when] the child abuse which was admitted by the mother.

There has been on-going treatment, on-going service provided for Miss Jackson regarding these children and we don't seem to be making any headway. I think the attitudes are the same. The anger is the same. The substance abuse is the same. The substance abuse is something that, at least as far as I'm concerned, was not initially noted in [RJ's] case. It's something that came up later on and then was addressed and I was frankly quite surprised that it came up as an issue today. It's been sort of a quiet, underlying thing, but it is clearly something that disturbs [MJ]. I don't think that talking about Whaley is necessarily to divert the Court's attention from substance abuse. I think one of the very serious, unchangeable attitudes of the mother in this case is that if the children cannot succeed with her, she doesn't want them to succeed with anyone because it is, I think, a blow to her ego.

I remember when [MJ's] case came into the Court and Miss Jackson was telling me the same things about [MJ] that she said about [RJ]. Almost the demonic nature of the children and yet we had teachers [sic] reports about [MJ] that although he had some behavioral problems in school, he was also a youngster who could and at many times was often very, very successful. One of those teachers reported the anger of Miss Jackson at her for saying that [MJ] had successes in school. When the case first came into Court, the recommendation of

Protective Services was for the child to go into institutional placement when his behavior was much, much worse than it is now when he was very much out of control, and I refused to do it at that time because I thought this child might be able to succeed in a family home and the requirement responsibility at this Court is to place a child in the most family-like setting possible, as near to the conditions that he should have in his home and a family foster home is exactly that and we have moved away from orphanages and institutions for exactly that reason. To try to keep a child in a most family-like setting.

I think it is a problem to Miss Jackson that these foster parents are making a change in [MJ's] behavior and that [MJ] is changing. I don't think we're getting anywhere in this case. I don't think we've gotten anywhere in this case for a long time in terms of Miss Jackson. Whenever the children go home, there is a change in their behavior. There's an upset. There's a reversion. I don't see reunification anymore. I'm going to order a petition to be filed for the termination of the mother's parental rights to [MJ]. I don't have [RJ] in front of me this morning and [RJ] is an individual child who's [sic] circumstances have to be looked at so I'll make that order and we'll set a -- and that petition should be filed within 42 days of today's hearing and we'll set another review hearing.

Reports from Jackson's therapists over the next several months continued to recount Jackson's progress, even though her depression had increased because the court had ordered a termination petition. Jackson was still "highly motivated" to make healthy changes in her life so she could be reunited with her sons. Jackson had even begun to address her denial about abusing marijuana and was beginning to realize that she "tended to externalize the factors" that caused the breakup of her family, blaming MJ's behavior problems and her ex-husband. She also decided to end her relationship with the man MJ disliked and to find resources that would help support her efforts as a parent while giving MJ good role models.

Veronica Smith of LSSM filed the termination petition on November 28, 1998, pursuant to the trial court's request. The record next reveals that Jackson had a positive drug screen in December 1998. However, reports for winter 1998-1999 reveal that Jackson's therapists believed that she continued to make progress, learning how to control her anger and be a better parent. Even with the positive drug test, Jackson's therapist believed that her prognosis for quitting substance abuse was "quite positive." During this period, after the trial court suspended her visitation rights, Jackson was concerned that MJ thought that she had abandoned him and arranged to send him cards.

The spring 1999 reports presented a mixed picture of MJ's progress in foster care. While he was adjusting to his placement and school, he continued to display behavioral problems. His foster parents were, at times, "disgusted" with his "lying and stealing." An April 1999 LSSM report stated that MJ knew foster care was in his "best interests" and he was "fearful" of returning to his mother. However, MJ had also begun mentioning his life with his mother before foster care to his teachers.

Despite having had her visitation rights suspended for MJ, according to the reports, Jackson was still improving, had been attending counseling “very reliabl[y],” and was “highly motivated to work toward the reunification of her family.” Jackson’s therapist attributed her depression to her separation from MJ. Jackson was “hopeful, however, that family visitation with MJ will be reinstated in the near future. She indicates that she has been informed by Lutheran Social Services that they are also in support of reinstatement.” In addition to seeking out a support network, Jackson was exploring the option of having her mother live with her so MJ would have additional structure in her home.

Jackson’s therapist, Belinda Nelson, and two LSSM case workers, Veronica Smith and Sabrina Griffin, testified at the first day of the termination hearing in May 1999. They generally related the events that they each had conveyed in their reports, discussed above. Nelson stated that she believed that Jackson abused marijuana, but was not addicted to it. Smith thought that using marijuana kept Jackson from giving MJ the attention he needed based on Bady’s report reaching that conclusion. Smith, however, admitted that Bady had only worked with MJ, not Jackson. Smith also conceded that she had not spent more than an hour, total, observing Jackson with MJ and that she had not seen Jackson having any problems in the little time she had spent with mother and son. Nor did she see Jackson under the influence of drugs. Griffin explained the services offered to Jackson included drug testing and counseling, but noted that it was Jackson’s responsibility to follow through with RSI’s referrals to drug treatment and that she had no documentation proving that Jackson had in fact obtained treatment. Apparently, none of the attorneys asked Griffin, Nelson, or Smith whether termination was in or against MJ’s best interests. The trial court continued the hearing without a finding.

A report for September 1999 noted that Jackson’s mother died in June 1999 and Jackson was suffering from the grief that naturally occurs after such a loss. The report also stated that Jackson was looking for a new treatment program that would not conflict with her work schedule, had been encouraged to go to a twelve-step program and therapy, and had been encouraged to have regular drug testing.

The second day of the termination hearing occurred on October 26, 1999. Jackson was the sole witness. She detailed the progress she had made in counseling with Nelson, including efforts to help her control her anger and improve her parenting skills. She mentioned that she was taking prescription medication for her depression. She also explained that she was still employed and entitled to subsidized housing but that her lease was expiring the next month. She stated that she expected to find a new apartment soon because of her subsidy.

Jackson acknowledged her problem with marijuana and her initial denial. She admitted that she had failed to complete a substance abuse treatment program, but said that the primary problem was her work schedule; according to her, outpatient programs met while she worked and an inpatient program would keep her from working. However, she said that she was drug-free, could give a clean sample that day, and although the marijuana sometimes interfered with her short-term memory, it did not prevent her from being a good mother. She maintained that MJ lied when he said he saw her smoking out of the pipe. Jackson found it hard to describe her relationship with MJ because she had not been allowed visitation for about a year, but she said

she loved him, they had gotten along “fine,” but that she “just needed and as I probably will forever, needed a lot of help with MJ and it just wasn’t there.”

An updated case service plan from November 1999 noted that MJ was gradually adjusting to foster care and improving some of his problems with stealing and handling other people’s belongings. However, MJ had developed a problem with defecating in his pants and another foster child in the home had accused him of sexually inappropriate conduct. MJ continued to have problems with overeating and hoarding food, which the foster parents had expressed concern about ever since MJ was placed in their home. The person who wrote the report identified Jackson’s continued drug use as the primary impediment to reuniting MJ with his mother.

The trial court continued the termination hearing to November 18, 1999. Although none of the parties presented additional testimony, Jackson’s attorney noted for the record that she had provided a clean drug screen at the beginning of the month. The court then continued the hearing again, until February 10, 2000. The LSSM report submitted in the interim provided little new information other than that MJ had improved his problem with lying and his foster parents supported termination to give MJ a sense of closure and allow him to move on with his life.

The trial court made relatively lengthy findings at the final day of the termination hearing on February 10, 2000, including: that there was clear and convincing evidence to terminate Jackson’s parental rights to MJ under subsection (b)(i) because, despite progress, there was no reason to believe that Jackson had made permanent changes and would not abuse MJ in the future; that this “long, long history of physical and emotional abuse” supported termination under (j) because it made it likely that MJ would be harmed if returned to Jackson; that even though the petitioner had not pleaded termination under subsection (k)(iii), there was clear and convincing evidence of that ground for termination because the petitioner proved (b)(i) as a ground for termination and both grounds involve abuse; that the court believed that Jackson had made insufficient personal progress to avoid termination, implicating subsection (c)(i); that MJ had expressed a desire not to be reunited with his mother “in the beginning of the case” and “[e]ven before, when the initial petition was filed, MJ had reached a point where he was able to verbalize his need to be separated from his mother’s care”; that Jackson’s claim that MJ lied about the pipe was not credible because she eventually admitted smoking marijuana in the pipe; that there was a “meaningful past history of physical abuse between the mother and the children, and that the mother has in the past become enraged, lost all inhibition regarding the children”; that Jackson had improved but she had a “very, very hard way to go”; that her recent abstention from drugs was “sad” because it was late in the case; and that the court was “concerned” that if MJ returned home nothing would be different. Further, the trial court noted that “MJ has expressed that he is not able to endure what he did in fact endure, that he couldn’t take it anymore, and what I would be doing by allowing him back into the mother’s home is to make him a guinea pig, testing the mother’s change and when a child has said, ‘I can’t do this anymore’, I don’t believe that I have the right, if there are legal grounds for termination, to make him a guinea pig to test the mother’s change. The trial court affirmatively found that termination was in MJ’s best interests.

II. Standard Of Review

This Court reviews all aspects of a trial court's decision to terminate parental rights for clear error.¹

III. Failure To Correct Conditions Leading To Adjudication

The crux of Jackson's first argument is that she had made substantial and documented progress by the time of the final termination hearing, proving that the conditions leading to adjudication, physical abuse, threats of abuse, and threats to abandon, no longer existed. Although she does not say so explicitly, she challenges the trial court's findings supporting termination under MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i), which, when read together, provides that termination is proper when there is clear and convincing evidence that

[t]he 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 [that] . . . [t]he 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.

Jackson does not challenge that she was a respondent in a proceeding brought under the relevant code chapter for 182 or more days. Indeed, almost two years passed between when the trial court issued the original dispositional order on April 30, 1998, and when the trial court terminated Jackson's parental rights. The pertinent questions, then, are (1) what were the conditions leading to the adjudication, (2) was there clear and convincing evidence that those particular conditions continued to exist at the time of the termination, and (3) were those conditions unlikely to be cured within a reasonable time considering MJ's age?

The original petition in this case listed physical abuse as well as threats of physical abuse and abandonment as the conditions leading to the adjudication; the question of Jackson's drug use did not exist at the time of the adjudication and was, therefore, not a condition *leading* to the adjudication. However, Jackson's underlying problems that contributed to the conditions leading to adjudication – including depression and an inability to cope with MJ's behavior – persisted. For instance, Jackson was evidently upset that MJ misbehaved during his weekend visits in September 1999. While there is no evidence that she abused MJ during those two weekend visits, it is impossible to say that the trial court's concern that Jackson's coping and parenting skills had not improved sufficiently to return MJ to her on a full time basis on any reasonable schedule was clearly erroneous. MJ's behavior had improved somewhat in the context of his foster family, but he still had numerous problems and, once returned to Jackson, it was likely that she would be exposed to the same stress-inducing behavior that provoked the abuse in the first instance. The incident in which Jackson angrily clashed with Griffin and the foster family over MJ's dental care indicates that Jackson continued to have anger management problems even after

¹ *In re Huisman*, 230 Mich App 372, 384; 584 NW2d 349 (1998), rejected on other grounds by *In re Trejo*, 462 Mich 341, 353, n 10; 612 NW2d 407 (2000).

her primary source of stress – MJ – was removed from her surroundings. Further, Jackson’s depression was well documented throughout the proceedings in the trial court. Thus, there was clear and convincing evidence that the conditions leading to adjudication had not been rectified even aside from Jackson’s drug use.

The trial court record plainly documents that Jackson substantially complied with the case service plan, was cooperative, loving and affectionate toward MJ and concerned for his welfare even after visitation ceased. The record also documents that she was steadily progressing in her efforts to improve her ability to be a good parent, manage her anger, and abstain from using drugs. However, the final critical factor supporting the trial court’s determination that termination under subsection (c)(i) was proper is that none of the evidence, even Nelson’s encouraging testimony, suggested *when* Jackson would be so improved that the threat of abuse no longer lingered regardless of MJ’s ability to improve his own behavior. In other words, the evidence at trial suggested that Jackson could be a good parent as long as her circumstances, especially MJ’s conduct, remained stable. Yet, MJ’s history suggests that it is unlikely that he will ever be a problem-free child. It is important, therefore, for Jackson to have enough parenting skills and to be able to keep her anger in check to avoid abusing him in the future regardless of his conduct. No one – not Jackson or Nelson – explained *when* Jackson would be able to handle MJ well. Jackson even conceded at the termination hearing that it was likely that she would always need help with MJ. Although perfectly able parents are likely to need help with their children, especially difficult children, when this comment is viewed with Jackson’s continuing efforts to place MJ in a residential facility it underscores the fact that she had not yet gained the skills to prevent abuse in the future. Thus, while certainly a close call for the trial court given the statements concerning Jackson’s improvement, it is impossible to say that the trial court clearly erred terminating her parental rights on this basis.

The primary authority on which Jackson relies, *In re Miller*,² does not alter this conclusion. In *Miller*, the trial court concluded that there was no reasonable likelihood that the father could provide the necessary emotional support and parenting skills for the child within a reasonable time as defined by the particular statutory subsection that was relevant in that case.³ However, the record not only documented the father’s progress in therapy and other services, his therapist testified that he would be able to provide all necessary support for the child within twelve months.⁴ This Court reversed, noting the evidence of the father’s progress, the therapist’s estimate that the father would soon be ready to care for the child, and that the familial problems really were between the parents, not between the father and child.⁵

However, the Department of Social Services appealed this Court’s decision to the Supreme Court.⁶ The Supreme Court, relying on the deference appellate courts extend to trial

² *In re Miller*, 167 Mich App 75; 422 NW2d 1 (1988) (*Miller I*).

³ *Id.* at 79.

⁴ *Id.* at 80.

⁵ *Id.* at 80-81.

⁶ *In re Miller*, 433 Mich 331; 445 NW2d 161 (1989) (*Miller II*).

court's in termination matters, disagreed that the trial court lacked the clear and convincing evidence necessary to terminate the father's parental rights.⁷ The Supreme Court noted that the trial court had, in fact, acknowledged the father's success during the lengthy dispositional phase of the proceeding.⁸ However, the trial court was in the position of weighing the father's success against continuing evidence that he had not yet resolved all of his own problems to the extent that he would be able to care for his child's full needs, including the child's emotional needs.⁹

As Jackson points out, this case is similar to *Miller* in terms of the great evidence of progress. What she fails to acknowledge is that her progress, like the father's progress in *Miller*, fell short of being sufficient. Accordingly, the trial court did not err when it balanced the positive and negative factors on the record to conclude that termination was proper.¹⁰

IV. Best Interests

Jackson next contends that termination was improper in this case because it was not in MJ's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5) states that a trial court "shall order termination of parental rights" if it finds clear and convincing evidence to terminate. In other words, termination is mandatory once the court finds evidence of at least one statutory ground to terminate.¹¹ There is no statutory or case law requirement that the trial court engage in a best interests analysis before terminating parental rights.¹² Only if the trial court finds evidence on the record as a whole that termination is *not* in the child's best interests can it refuse to terminate parental rights.¹³

In this case, the trial court affirmatively stated that termination was in MJ's best interests. While Jackson made substantial efforts to maintain contact with MJ and to improve her own prospects for being a good parent, the evidence that MJ needed intensive attention and guidance that Jackson could not give him did not contradict this implicit conclusion. Further, MJ's purported objection to returning to his mother also suggests that the trial court did not err when it refused to find that termination was inappropriate.

⁷ *Id.* at 337-338.

⁸ *Id.* at 338, 343.

⁹ *Id.* at 343-344.

¹⁰ Note, also, that this particular argument by Jackson does not implicate the trial court's findings on the other statutory grounds for termination because this is the only ground pleaded that required this evidence that she had failed to cure the original conditions leading to the adjudication.

¹¹ See *In re IEM*, 233 Mich App 438, 450-451; 592 NW2d 751 (1999).

¹² See *In re EP*, 234 Mich App 582, 594; 595 NW2d 167 (1999), rejected on other grounds by *Trejo*, *supra* at 353, n 10.

¹³ See *Trejo*, *supra* at 353-354.

V. Inconsistent Disposition

Jackson contends that the trial court's conclusions regarding her ability to be a fit parent were inconsistent, because the court believed that she could parent RJ but not MJ. She relies on *In re Newman*¹⁴ for the proposition that this inconsistent view of her capabilities is irreconcilable. In *Newman*, this Court held that the trial court's finding that the respondents' home was unsuitable for some of their children, and therefore was sufficient to justify termination, was inconsistent with the fact that the Department of Social Services permitted the respondents to retain custody of another child in that same environment.¹⁵ This finding, among others that were clearly erroneous, justified reversal.

This case, however, is distinguishable from *Newman* because the factors that supported termination did apply equally to RJ and MJ. In other words, the trial court observed that Jackson was less able to parent MJ in a proper manner than RJ because MJ had more severe problems and was younger. RJ had also expressed an interest in reuniting with his mother while Bady reported that MJ was afraid to be with his mother. Given that the trial court was involved with both RJ and MJ's cases, it was proper for the court to apply its firsthand knowledge of both boys to make a decision that was tailored to each one as an individual. To require that the trial court refuse to terminate Jackson's parental rights to MJ despite her difficulties because she was a better parent to RJ would make little sense. Similarly, requiring the trial court to terminate her rights to RJ, even though there was a possibility that reunification could occur between them in the future, merely because the court was also terminating Jackson's parental rights to MJ, would be difficult to understand. Either decision would elevate form over a substantive inquiry into the grounds for and need to terminate Jackson's parental rights. Accordingly, it is impossible to say that the trial court erred when it determined that it would be best to address each child's needs separately.

VI. Hearsay

Jackson argues that MJ's statement that he saw his mother smoke crack cocaine and pass out was not trustworthy. Drug tests confirmed that Jackson did not use crack. MJ has an extensive and well-documented history of lying and making false claims of abuse. He had also reported to his therapist his concerns about drug use because of a classmate's experience at around the same time he accused his mother of smoking crack. This allegation was also a radical departure from Griffin's observations during this period that MJ and his mother had a close, loving, and positive relationship. None of these facts compelled the trial court to find MJ's claim credible and would likely have supported a contrary finding.

However, this sort of hearsay evidence was plainly admissible in the termination hearing because it was directly relevant and material to explaining why MJ indicated that he was afraid of returning to his mother, regardless of whether that fear was grounded in fact.¹⁶ Further,

¹⁴ *In re Newman*, 189 Mich App 61; 472 NW2d 39 (1991).

¹⁵ *Id.* at 67.

¹⁶ MCR 5.974(F)(2).

determining credibility is a special issue entrusted to the trial court as factfinder because the court is in a position to view evidence and testimony directly.¹⁷ There is certainly a distinct possibility that those factors that would sway a factfinder's appreciation of MJ's credibility are not available in the cold record we have on appeal.

More importantly, despite the trial court's possible misapprehension of some of the facts it found relevant to terminating Jackson's parental rights,¹⁸ the trial court relied on more than this one hearsay statement to terminate her parental rights. Rather, the trial court was able to show that Jackson had made insufficient personal progress in managing her anger and accepting responsibility for her actions, not to mention continued use of an illegal substance, to support termination. Again, this was a close case, but there is insufficient support to Jackson's argument that the trial court was *clearly* wrong when it made its findings.

VII. Reasonable Efforts To Reunify The Family

Jackson's final argument challenges the services she and MJ received while he was in temporary care. She contends that these services were not designed to help her reunite with MJ and that terminating her parental rights was therefore improper. Further, she challenges the abrupt end to her visitation rights after the trial court ordered the termination petition,¹⁹ the lack of family counseling, failed efforts to help her find an outpatient substance abuse treatment program that fit her schedule, and failure to find medication that would alleviate her depression.

MCL 712A.18f(4); MSA 27.3178(598.18f)(4) requires the trial court to determine whether "reasonable efforts have been made to prevent the child's removal from his or her home or to rectify the conditions that caused the child's removal from his or her home" before entering a dispositional order. The trial court found throughout the proceedings that there were reasonable efforts to reunite Jackson and MJ. The record establishes that MJ was receiving

¹⁷ MCR 2.613(C).

¹⁸ For instance, it is entirely unclear how the trial court could have concluded that MJ expressed a fear of returning to his mother at the time the original petition was filed. All the documentary evidence in the record indicates that, at least up until the time MJ accused Jackson of smoking crack, he was having a difficult time adjusting to foster care and wanted to be returned to his mother. Similarly, there is, quite literally, only evidence of one incident of abuse by Jackson against MJ. While it is possible to speculate that Jackson may have hurt her son on other occasions, there are no reports of other acts of physical abuse in the trial court record. This directly contradicts the trial court's conclusion that there was a long history of physical abuse. Further, it is unclear why the trial court believed that every time a petition pleads abuse under subsection (b)(i) the allegations also support termination under subsection (k)(iii). Without drawing an overly artificial line between "ordinary" abuse justifying termination under subsection (b)(i) and the extreme types of abuse that justify termination under subsection (k)(iii), the petitioner in this case did not see this elevated level of abuse on the record in this case and so did not plead this subsection. Nor is this extreme abuse apparent from the record.

¹⁹ The decision to cease visitation was not left to the trial court's discretion. Once the trial court ordered the termination petition, MCL 712A.19b(4); MSA 27.3178(598.19b)(4) "automatically suspended" her visitation rights.

services, including counseling with Bady and special education programs at school. Griffin detailed the services that were extended to Jackson, noting that Jackson failed to take the initiative to follow-through with drug treatment. It is unclear whether there were any outpatient drug treatment services in Washtenaw County that fit well with Jackson's work schedule. However, that only underscores that LSSM workers did not fail Jackson by not referring her to other treatment programs.

Further, there is one crucial factor to this question of reasonable efforts in this case: Jackson was receiving services, including counseling, even before MJ became a temporary ward of the court. While, in a perfect world, other services may have been beneficial to Jackson, the trial court only had to find that the efforts to reunite the family were "reasonable." There is insufficient evidence of a significant failure to provide Jackson with services intended to help her reunite with her son to justify reversing the trial court's finding on this issue as clearly erroneous.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Michael R. Smolenski

/s/ William C. Whitbeck