

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ADRIAN JAMES CARTER,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

V

JAMES CARTER,

Respondent-Appellant.

UNPUBLISHED
January 25, 2002

No. 233119
Wayne Circuit Court
Family Division
LC No. 98-372809

Before: Cooper, P.J., and Griffin and Saad, JJ.

PER CURIAM.

Respondent appeals as of right the family court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g) and (j). We affirm.

In an appeal from an order terminating parental rights, the trial court's findings of fact are reviewed for clear error. MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). A finding of fact is clearly erroneous if, although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake has been made. *Terry, supra* at 22. Consistent with this standard, deference must be accorded to the trial court's assessment of the credibility of the witnesses before it. *In re Newman*, 189 Mich App 61, 75; 472 NW2d 38 (1991). To terminate parental rights, the family court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Once a statutory ground is established, the court must terminate parental rights unless "there exists clear evidence, on the whole record, that termination is not in the child's best interests." MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000).

Respondent argues on appeal that the family court clearly erred in terminating his parental rights because clear and convincing evidence warranting termination under any of the enumerated grounds was not presented. Defendant contends that he completed his treatment plan and that petitioner failed to make reasonable efforts to reunify the family or to rectify the conditions that led to adjudication. Defendant's argument is without merit.

The minor child was born in 1992. His mother died in 1994, and since that time, he has been cared for by family members, primarily respondent father. In October 1998, the child came to the attention of petitioner when Children's Hospital of Michigan reported that the child had received a number of injuries while in the care of his father. The conditions that led to the adjudication herein included respondent's admission to petitioner's protective services worker that he had hit his son with a belt and a broom handle and that he had picked him up by the neck with a belt. Respondent also admitted that he occasionally smoked marijuana in front of his son. The protective services worker observed red marks on the child's neck, a bruise on his back, and a bump on his forehead. As a result, the minor child was made a temporary ward of the court and placed with a suitable relative, his maternal aunt. Respondent was required to comply with a court-ordered parent/agency agreement, which mandated that respondent attend parenting classes, undergo drug screening, demonstrate appropriate interaction and discipline with the child, attend a court Clinic for Child Study evaluation, visit the child on a regular basis, attend psychiatric evaluations and treatment and obtain and maintain a safe and suitable home.

Following the adjudication and initial disposition in December 1998, respondent made limited progress on the treatment plan. Although respondent submitted to drug screens for nine months through December 1999, during which time there was one positive screen for marijuana, he thereafter failed to provide any screens. Petitioner's caseworker testified that respondent never provided employment verification. At one time, he was reportedly working at a nursing home, but he no longer had that job and was living with a relative at the time of trial. The caseworker further testified that although respondent had been ordered to undergo therapy to address his abusive behavior, he had not benefited from counseling or parenting classes and had refused a psychiatric evaluation. His last counseling session was in June 2000.

The caseworker testified to major concerns regarding the child's safety. During a supervised visit at the maternal aunt's house on Easter Sunday in April 2000, respondent struck his son in the mouth and caused a bleeding lip. As a result, respondent's visits with his son were suspended. Further, the caseworker testified that she cut off her contacts with respondent because he had been making threats toward her. Respondent's involvement in counseling ended in June 2000 because the counseling was scheduled in conjunction with visits with his son; when the visits were suspended, the counseling also ended. The testimony indicated that even when he was in counseling, respondent insisted that he would "discipline" his son as he had done before.

The caseworker testified that respondent's son had been doing well in school and at home since visitations with respondent were suspended. The child's therapist also testified that his behavior had improved since visitation was discontinued. The therapist reported that the minor child was enjoying school, had a 2.66 grade point average, and had been in a school play.

Respondent testified at the termination hearing, admitting that he slapped his son in the face during the Easter visit. He also admitted whipping him on more than two occasions in the past. Respondent testified that this was done because he had trouble controlling his son's behavior. Respondent never considered counseling to deal with the minor child's behavioral problems. Respondent further testified that he had no present source of income and that his social security benefits stopped when his son was removed from his care.

On appeal, respondent asserts that the foster care worker's bias against him, based on her claim that she was threatened by him, tainted the case. However, respondent admitted at the

termination hearing that he never contacted petitioner about any purported problems with the caseworker and he never raised these claims during the termination hearing.

Given the above circumstances, the family court did not clearly err in finding that the statutory grounds for termination pursuant to MCL 712A.19b(3)(c)(i), (g), and (j) were established by clear and convincing evidence. MCR 5.974(I); *Miller, supra*. Respondent failed to substantially comply with the terms of the parent/agency agreement. The proofs indicate that respondent never benefited from any counseling in which he participated or any parenting classes which he attended. In fact, he did not make any substantial progress in rectifying the abusive behavior that precipitated these proceedings. Respondent continued to threaten and physically discipline his son when he believed such discipline was needed and refused to alter his belief that no harm is done with corporal punishment. Respondent failed to comprehend the problem and the long-lasting effects of such punishment on his child. The evidence further shows that he lacked insight into his son's diagnosed Hyperactivity Disorder and Oppositional Defiant Disorder and the need for medication to treat this condition. Moreover, respondent had neither a source of income nor suitable housing. In sum, despite counseling and parenting classes, respondent had not changed.

Finally, the evidence did not show that termination of respondent's parental rights was clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo, supra*. Thus, the family court did not clearly err in terminating respondent's parental rights to the minor child.

Affirmed.

/s/ Jessica R. Cooper
/s/ Richard Allen Griffin
/s/ Henry William Saad