STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of DEVON'AE TANSHERRE FONES, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

KRISTI FONES,

Respondent-Appellant,

and

NATHANIEL ANDERSON,

Respondent.

UNPUBLISHED
February 1, 2002

No. 234502
Ingham Circuit Court
Family Division
LC No. 00-459211-NA

Before: Gage, P.J., and Hoekstra and Meter, JJ.

PER CURIAM.

Respondent-appellant (hereinafter respondent), biological mother of the involved minor child, appeals as of right the trial court's order terminating her parental rights to the minor. The trial court determined after the lone evidentiary hearing in this case that termination of respondent's parental rights was warranted pursuant to MCL 712A.19b(3)(g). We reverse and remand.

In January 2000, respondent, her son and the minor left their home in Lansing after it was condemned and relocated in Florida where respondent's father lived. In June 2000, respondent, the 5-1/2 year-old minor and Hazel Speckin, who babysat the minor for approximately 1-1/2 years when respondent and her children resided in Michigan, agreed that the minor would spend the summer of 2000 in Michigan with Speckin. Speckin's daughter picked up the minor in Florida in June 2000 and respondent had not seen the minor since then. Although respondent and Speckin apparently contemplated that the minor would return to Florida in the fall for the beginning of the school year, respondent and Speckin blamed each other for failing to arrange the minor's return to Florida at the end of the summer. Whatever the reason for the minor's failure to return to Florida, respondent and Speckin subsequently agreed that Speckin would have

a temporary guardianship of the minor so that she could enroll the minor in school and provide the minor medical care.

The guardianship existed from September 2000 until November 30, 2000. On November 30, petitioner filed its initial petition requesting that the court take temporary custody of the minor.[1] Speckin retained custody of the minor from the beginning of December 2000 until February 5, 2001, when the trial court authorized the amended petition seeking termination of respondent's parental rights.[2] Only sixty-seven days elapsed between the trial court's authorizations of the initial and amended petitions.

Respondent first contends that the trial court erred in finding clear and convincing evidence that respondent, "without regard to intent, fail[ed] to provide proper care or custody for the child" and that no reasonable expectation existed that respondent would "be able to provide proper care and custody within a reasonable time considering the child's age." MCL 712A.19b(3)(g). This Court reviews for clear error a trial court's decision terminating parental rights. MCR 5.974(I); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding qualifies as clearly erroneous when although evidence exists to support it, the reviewing court is left with the definite and firm conviction that a mistake has been made. *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996).

We do not find within the instant record *clear and convincing* evidence that respondent failed to provide the minor proper care and custody. MCL 712A.19b(3). The record does not support the petition's allegation that respondent "has never provided [the minor] with a structured home." The scant evidence regarding respondent's prior residences indicated that before the initial petition for temporary custody of the minor was filed in November 2000, the minor had lived with her brother and respondent, and that for most of the minor's life all three lived with respondent's father. Absolutely no evidence was presented to show that while in respondent's care the minor ever lacked the physical necessities for life, i.e., food, clothing, shelter, medical care, or experienced any emotional neglect or trauma or physical abuse.

When the minor's intended return to Florida did not occur in August 1998 as planned, respondent and Speckin agreed that Speckin would care for the minor until respondent could arrange the minor's return to Florida. In September 2000, respondent mailed Speckin letters expressing her consent to Speckin's enrollment of the minor in a Michigan school and Speckin's provision of medical treatment for the minor, and the minor's temporary guardianship with Speckin was established. Although respondent apparently did not provide Speckin legal authority beyond November 30, 2000 to attend to the minor's educational and medical needs, the

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[1] According to the petition, "for the past majority of her life" the minor had lived with Hazel Speckin in Lansing. The petition asserted that although respondent wrote a letter giving Speckin permission to enroll the minor in school, respondent "has never provided [the minor] with a structured home and provided limited financial support." The petition also asserted that Speckin had heard nothing from respondent since October 2000 and that respondent failed to attend any of the guardianship hearings.

[2] The amended petition contained identical allegations regarding respondent's neglect.

hearing testimony established that respondent knew that Speckin would give the minor appropriate care.

Respondent's apparent failure to ensure continued legal authority in Speckin to provide for the minor's needs between November 30, 2000 and the authorization of the amended petition seeking termination of respondent's parental rights on February 5, 2001, together with respondent's less than regular contacts with the minor certainly raise concern regarding respondent's dedication to the minor. We cannot characterize this evidence as a clear and convincing showing of neglect, however, when respondent had ensured the minor's placement with Speckin, who undisputedly could adequately provide for the minor's needs.

We further conclude that the trial court clearly erred in finding "no reasonable expectation that [respondent] will be able to provide proper care and custody within a reasonable time considering the child's age." MCL 712A.19b(3)(g). The record contained no hint that respondent had engaged in any long term neglect of the minor, either when respondent and her children lived with respondent's father or on their own. While respondent testified that she was not immediately prepared to resume the minor's custody, petitioner failed to offer respondent any services whatsoever to assist her resumption of custody. Furthermore, the trial court never afforded respondent even a brief period of time to present a plan for reclaiming custody of the minor.

In light of (1) the absence of any history of respondent's neglect of the minor, (2) the brief, approximately two-month period between the lapse of Speckin's guardianship of the minor and the authorization of the amended petition seeking termination of respondent's parental rights, and (3) the lack of any indication that respondent could not get a new residence, including with her father who had indicated a willingness to care for respondent's children, or a new job within a reasonable time, we are left with the definite and firm conviction that the trial court erred in finding no reasonable expectation that respondent could provide proper care and custody within a reasonable time. *In re Conley*, *supra*. We find that the trial court prematurely terminated respondent's relationship with the minor. *Fritts v Krugh*, 354 Mich 97, 114; 92 NW2d 604 (1958) ("[W]hile evidence of temporary neglect may suffice for entry of an order taking temporary custody, the entry of an order for permanent custody must be based upon testimony of such a nature as to establish or seriously threaten neglect of the child for the long-run future."), overruled on other grounds, *In re Hatcher*, 443 Mich 426; 505 NW2d 834 (1993).

Respondent also argues that the trial court erroneously determined that termination of her parental rights was in the minor's best interests. A court that finds grounds for terminating a parent's rights must order termination "unless the court finds that termination of parental rights to the child is clearly not in the child's best interests." MCL 712A.19b(5).

Our review of the record indicates that the trial court failed to consider the minor's best interests. The trial court apparently paid no attention in its rather abrupt decision to the fact that its termination order would sever all the minor's ties to her family. The minor, her brother and respondent had lived with respondent's father for most of the minor's life, and no evidence whatsoever indicated that while these living arrangements prevailed the minor ever lacked proper care and custody. Respondent's father was willing to do what he could to assist respondent and

care for the minor in light of the fact that he apparently filed a petition for guardianship of the minor.[3] Absent any showing that the possibility of the minor's placement with her family posed a threat of harm to the minor, we conclude that the trial court's termination order, which cut off entirely respondent's and her father's rights to contact the minor and separated the minor from her older brother, clearly contravened the minor's best interests and the policy of the juvenile code to place a juvenile who has been removed from home "in care as nearly as possible equivalent to the care that should have been given to the juvenile by his or her parents." MCL 712A.1(3).[4]

We reverse the trial court's order terminating respondent's parental rights and remand so that petitioner may implement services that provide respondent the opportunity to demonstrate her ability to give the minor proper care and custody within a reasonable time. We do not retain jurisdiction.

/s/ Hilda R. Gage
/s/ Joel P. Hoekstra
/s/ Patrick M. Meter

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[3] As the petitions in this case observed, respondent's father already was taking care of respondent's son.

[4] MCL 712A.1(3) also states that the juvenile code "shall be liberally construed so that each juvenile coming within the court's jurisdiction receives the care, guidance, and control, *preferably in his or her own home*, conducive to the juvenile's welfare and the best interest of the state." (Emphasis added). MCR 5.902 contains similar policy statements.