STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JUSTIN WHEATLEY, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

KENNETH WHEATLEY,

Respondent-Appellant.

and

PATRICIA CASTLEBERRY,

Respondent.

UNPUBLISHED
February 8, 2002

No. 235288
Branch Circuit Court
Family Division
LC No. 00-001595-NA

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

PER CURIAM.

Respondent-appellant ("respondent") appeals by right from the family court's order terminating his parental rights to a minor child, Justin Wheatley,[1] under MCL 712A.19b(3)(c)(ii) ("[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] other conditions [than those that led to the adjudication] exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to

[1] Justin's date of birth is May 21, 1992.

rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age").[2] We affirm.

This Court reviews for clear error a family court's finding that a statutory basis for termination has been met. MCR 5.974(I); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Once a statutory basis has been proven by clear and convincing evidence, the court must terminate parental rights unless the court finds that termination is clearly not in the best interests of the child. *Trejo,* supra at 344, 355. A court's finding on the best interests prong is also reviewed by this Court for clear error. *Id*. at 356-357, 365.

Here, the original petition, dated May 30, 2000, alleged that respondent had "a history of self-harm, overdosing on medication, attempting to hang himself, and . . . cutting his wrist" and that the latter two incidents occurred in Justin's presence. The termination petition, dated May 3, 2001, additionally alleged that respondent and his wife, Kelly[3] Wheatley, were being investigated for the improper care of the three additional children[4] in their home[5] and that respondent failed to attain success with counseling, remarked to Justin during visitation that he (Justin) was to blame for their current circumstances, failed to obtain employment, and failed to obtain suitable housing. The family court concluded that the additional allegations warranted termination, particularly the fact that Kelly, with whom respondent had reunited during the course of the proceedings, did not treat Justin appropriately. The court further noted that respondent and Kelly didn't "recognize the problem" and believed themselves "cured" of parenting deficiencies. Finally, it noted that respondent "ha[d]n't worked very hard for Justin."

Respondent contends that the family court clearly erred in terminating his parental rights because petitioner presented no proof that respondent performed poorly in counseling, made inappropriate remarks to Justin, was ordered to obtain employment, or, along with Kelly, was subject to an additional Child Protective Services investigation. Respondent argues that the only allegation in the termination petition with any merit was the allegation that he failed to obtain suitable housing. According to respondent, this allegation was insufficient to support termination because he was never given notice, a hearing, and an opportunity to reform himself with regard to the lack of suitable housing issue. See MCL 712A.19b(3)(c)(ii).

We disagree with respondent's argument. Indeed, the following amply supported the family court's decision in this case: (1) the testimony by a social worker, Stephanie Ayscue, that at the beginning of the proceedings, respondent had been ordered to find a suitable job and

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[2] The parental rights of Justin's mother, Patricia Castleberry, were terminated on grounds of desertion, and she has not appealed that ruling.

[3] "Kelly" is spelled alternatively as "Kelli" in parts of the record. We use the spelling contained in respondent's appellate brief.

[4] Two of these children are respondent's biological children; one is a stepchild.

[5] Respondent and Kelly were separated at the time the initial petition was filed but later reunited and resided, at the time of the termination hearing, in respondent's one-bedroom apartment with their three additional children.

housing but had done neither; (2) Ayscue's testimony that there was an ongoing Child Protective Services investigation regarding the other children residing with respondent and Kelly; (3) the testimony by a therapist, Bernie Giles, that respondent showed poor decision-making ability with regard to regaining custody of Justin and would continue to reunite with Kelly after breakups, even though he knew that she behaved inappropriately in front of children; (4) the testimony by a social worker, David Babcock, that part of the reason the initial petition was filed was because Kelly treated Justin inappropriately and refused to care for him; (5) respondent's admission that recently he had received an eviction notice for having an overcrowded apartment; (6) respondent's admission that when he was hospitalized after a suicide attempt, Kelly cared for her three children but Justin had nowhere to go; (7) Kelly's admission that during respondent's hospital stay, she called her mother to retrieve Justin from respondent's home instead of getting him herself; (8) Kelly's admission that her and respondent's apartment was inappropriate for the entire family; (9) Kelly's admission that she refused to let Justin in the family home one day and that the police were summoned as a result; and (10) Kelly's admission that she had wanted respondent to find a babysitter for Justin.

In light of the foregoing evidence, and giving due regard to the family court's special ability to judge the credibility of the witnesses before it, see MCR 2.613(C) and *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989), we simply cannot say that the court *clearly erred* in concluding that a statutory basis for termination existed and that termination of respondent's parental rights was in the best interests of the child. Indeed, Ayscue testified that respondent had been ordered to obtain a suitable home for Justin. The evidence showed that respondent failed to do so, both by virtue of the overcrowded nature of the family apartment and by virtue of his reunion with a woman who failed to treat Justin appropriately. While it is true that certain witnesses testified favorably about respondent's ability to parent, we nonetheless find no basis to reverse the family court's decision, in light of the evidence set forth above.[6]

Affirmed.

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

[6] We note that this evidence is gleaned from the transcripts of the permanency planning hearing as well as the transcript of the termination hearing. In child protective proceedings, evidence from all prior hearings may be considered by the family court in ruling on a termination request. See, e.g., *In re Harmon*, 140 Mich App 479, 481; 364 NW2d 354 (1985).