STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JTS and JWS, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

V

JEFFREY HORTON,

Respondent-Appellant,

and

SONYA SPILLMAN,

Respondent.

UNPUBLISHED
March 19, 2002

No. 234390
Wayne Circuit Court
Family Division
LC No. 98-372187

Before: Talbot, P.J., and Gage and Wilder, JJ.

PER CURIAM.

Respondent Jeffrey Horton appeals as of right from a trial court order terminating his parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j).[1] We affirm.

I. Facts and Proceedings

The case first came to the attention of the Family Independence Agency (FIA) on or about October, 22, 1998, after one of respondent's children, JTS, called the Detroit Police Department to report alleged child abuse. Based on the complaint, Detroit Police Officer Lynette White went to respondent's home, where she found the mother and her four children present.[2]

[1] The children's mother, Sonya Spillman, also had her parental rights terminated pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). She has not appealed this order; therefore, this issue is not before us.

[2] One of the children was over eighteen and therefore not part of the initial petition. The other child, Shallen Spillman, was initially part of the termination proceedings; however, due to her age and involvement in an independent living program, she was removed from the petition on or

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Officer White observed that the home was "very filthy" and roach infested. In addition, there was no food in the cabinets and the food in the refrigerator was moldy. Officer White also observed that one of the children had ringworm on his head and noticed that the mother appeared to be very intoxicated. The mother also admitted to using crack cocaine and hitting JTS in the back. JTS also informed Officer White that his mother had thrown a telephone at him and hit him in the back because he had hit his brother. Because of the state of the house, as well as the mother's admissions and condition, Officer White called her supervisor, notified the FIA of the situation, and removed the children from the home as ordered by the FIA.

Further investigation took place by Rose Aguirre, the FIA protective services worker assigned to the case. Based on that investigation, Aguirre testified at the adjudicatory hearing, which was held on February 9, 1999 and March 6, 1999, that the mother had three prior cases of substantiated neglect dating back to 1989. She further testified that she had contact with respondent and that he informed her that he lived with the mother. Based on this admission, Aguirre concluded that respondent was aware of the unsuitable conditions in the home, had allowed those conditions to continue, and that therefore he had neglected his children.

Evidence was also presented at the adjudicatory hearing that a 1990 court order required respondent to pay child support on behalf of JTC and that as of February 10, 1999, respondent was $24,618.49 in arrears. Based on this evidence, as well as the testimony of Officer White, Aguirre, respondent, and the mother, the family court referee authorized the petition and made the children temporary court wards.

The referee then continued the hearing in order to complete the initial dispositional hearing. At that time, Lara Miller, a foster care worker with Lutheran Child and Family Services testified that she had prepared a parent/agency agreement for the mother and respondent to complete and also testified that the children should be placed in foster care or with a suitable relative. Following her testimony, the referee placed the children in foster care and adopted the following treatment plan for respondent and the mother:

> The parents are to visit weekly, establish a suitable home and income with which to support the children. They are to attend and complete parenting classes and counseling and be evaluated by the Clinic for Child Study. The mother and [respondent] are to present continuing evidence that they are drug free through drug screens. . . .

The first dispositional review hearing was held on June 23, 1999. At that time, respondent had not complied with the treatment plan.[3] Specifically, in April, 1999, respondent tested positive for marijuana and also had an additional drug screen provide "questionable" results. In addition, there were allegations that respondent had been submitting someone else's urine for the drug screens. Since respondent had failed to comply with the treatment plan and

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about July 13, 2000. In addition, Shallen was not respondent's child.

[3] The mother had not complied with the treatment plan either. However, because this appeal only concerns respondent, for the remainder of this opinion, we will only discuss respondent's progress, or lack thereof, with the treatment plan.

had a positive drug screen, the referee ordered that FIA was to continue to fund drug screens for respondent, and also ordered respondent to undergo individual counseling and drug treatment.

The next review hearing was held on September 23, 1999. At that time, respondent agreed to enter an inpatient drug treatment program; however, he had also tested positive for cocaine on September 7, 1999. Following the hearing, the referee determined that visitation should be suspended pending respondent's enrollment in an inpatient drug treatment program. The referee also indicated that the treatment program must be for a minimum of thirty days.

On December 20, 1999, a permanency planning hearing was held. The evidence showed that respondent had completed inpatient treatment and was continuing outpatient treatment. Defendant also provided proof of employment; however, he had yet to pay any child support. Notwithstanding the failure to pay child support, the referee found that termination was not clearly in the best interests of the children at that time. Another permanency planning hearing was held on March 17, 2000, where it was reported that respondent failed to provide a requested drug screen. The referee then determined that while he would not order the FIA to file a supplemental petition seeking termination of parental rights, based on the evidence and respondent's continued failure to meet the requirements of the treatment plan, the FIA could file such a petition.

On May 2, 2000, the FIA filed the supplemental petition seeking termination of respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). As a factual basis for termination on these grounds, the petition alleged that respondent continued to live with the mother of the children; that the mother had relapsed into drug use; that respondent had not paid child support; and that respondent had failed to comply with the parent/agency agreement.

At the permanent custody hearing, the family court took judicial notice of the file and also determined that termination was being sought based on the same circumstances that led to the initial petition against respondent; namely, that respondent continued to allow the children to live in an unsuitable environment and under neglectful conditions, which included the mother's drug use in the home. Testimony from one of the children's former foster care worker indicated that even though respondent had informed her that he would move out of the mother's home for the sake of having his children returned, he had not done so. The foster care worker also testified that while respondent had completed his inpatient treatment program, he had failed to attend Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) three times a week as required and that respondent failed to provide a progress report from the aftercare treatment program he entered. The foster care worker's testimony also established that respondent had only provided five drug screens since January 2000 and that he had failed to comply with the requirement of calling in daily to determine if he was to have a drug screen completed. The worker further testified that while respondent indicated he worked for his uncle on a cash basis, respondent had failed to provide proof of how much money he brought home. The foster care worker then concluded that respondent was not capable of providing a safe and suitable home for the children within a reasonable time. This conclusion was based, in part, on the fact that respondent had failed to complete the requirements of the parent/agency agreement even though his children had been temporary court wards for almost two years.

In lieu of testifying, respondent proffered exhibits indicating that he had completed an outpatient drug program and that he had attended AA meetings from March 24, 2000 to May 22,

2000. In addition, according to the testimony of the current foster care worker for the children, respondent indicated that he did not comply with the daily call in procedure for drug screens because of his job situation. The current foster care worker also testified that respondent had informed him that the mother was moving out of the home because "it was best that she were to move out."

On January 29, 2001, the family court issued an opinion terminating respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g) and (j). In reaching the conclusion that termination was proper, the family court stated:

> In this case, the evidence clearly and convincingly demonstrated that [the mother] and [respondent] have failed to rectify the conditions which led to the adjudication of temporary wardship or their children and, based on their failure to rehabilitate themselves notwithstanding the many substance abuse treatment programs offered to them, establishes that there is no reasonable likelihood that the parents will be able to rehabilitate themselves within a reasonable time to effectively parent these children. The same evidence establishes that the parents, without regard to intent, fail to provide the proper care or custody for these boys and there is no reasonable expectation that the parents will be able to provide proper care of [sic] custody within a reasonable time considering the children's age, and that the children would be harmed if returned to their care.
>
> Particularly demonstrative of the lack of reasonable likelihood that the parents could rehabilitate themselves was the length of this trial, adjourned seven times at the parents' request, and the parents' failure to demonstrate a commitment of [sic] live substance free even while the trial was taking place. The mother's conceded relapse, coupled with [respondent's] failure to provide drug screens, demonstrates to this Court's satisfaction that there is no reasonable expectation that these parents can overcome their substance abuse problems to responsibly provide care for their children.
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> [Respondent] claimed to have separated from [the mother] after her most recent relapse and contended that the evidence does not establish his substance abuse, but simply established that he failed to provide drug screens. [Respondent] argues that even if [the mother's] parental rights are terminated, this his should not be. First, the Court finds the evidence not credible concerning the separation of [respondent] and [the mother]. While [respondent] declined to testify at trial, [the mother's] testimony concerning the separation conflicted with the caseworker's testimony of statements made by [respondent] to her concerning the separation. . . . In addition, [respondent's] failure to provide drug screens to the Family Independence Agency, a fairly slight burden given the severity of the pending termination trial, coupled with the incredible evidence concerning his attendance at Alcoholics Anonymous and/or Narcotic's Anonymous, reasonably leads this Court to infer that [respondent's] claimed progress in overcoming his substance abuse problem was not substantiated by the evidence before the Court.

Based on these facts and conclusions, the trial court found that termination was clearly not against the best interests of the children, and terminated respondent's parental rights.

II. Standard of Review

A trial court's factual findings in an order terminating parental rights is reviewed by this Court for clear error. MCL 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Vasquez*, 199 Mich App 44, 51; 501 NW2d 231 (1993). 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. *In re Miller*, *supra*. Deference must be accorded to the trial court's assessment of the credibility of the witnesses before it. MCL 2.613(C); *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991). Once the trial court finds a statutory ground for termination by clear and convincing evidence, the court must terminate parental rights unless it finds, based on the whole record, that termination is clearly not in the best interests of the children. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000); *In re Maynard*, 233 Mich App 438, 450-451; 592 NW2d 751 (1999).

III. Analysis

Respondent contends that the family court erred in terminating his parental rights because the petitioner failed to establish a statutory ground for termination by clear and convincing evidence. Alternatively, respondent argues that the family court erred when it found that termination was clearly not against the best interests of the children. We disagree.

Respondent's parental rights were terminated under subsections (3)(c)(i), (g), and (j), MCL 712A.19b(3)(c)(i), (g), and (j), which provide for termination as follows:

> (3) The court may terminate a parent's parental rights 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 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds. . . the following:
>
> (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 child's age.
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> * * *
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> (g) The parent, without 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 child's age.
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> * * *
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> (j) There is a reasonable likelihood, based on the conduct or capacity of the child's parents, that the child will be harmed if he or she is returned to the home of the parent.

In the instant case, the record clearly establishes that respondent (1) failed to provide credible evidence that he had attended AA and NA meetings as required; (2) failed to call in daily to inquire about the necessity to complete a random drug screen; and (3) failed to provide evidence of income. In addition, the family court found that respondent and the mother were still living together. On the basis of the above findings, the family court concluded that respondent was not able to provide a safe and suitable home for the children. Since this conclusion is not clearly erroneous, termination was proper under subsection 19b(3)(g).[4]

We also find that the family court's assessment of the best interests of the children was not clearly erroneous. MCL 712.19b(5); *In re Trejo, supra*. The family court found that respondent had not provided credible evidence that he had overcome his substance abuse problems or that he was no longer living with the children's mother, who was also unable to properly care for the children. Furthermore, the children had been temporary court wards for more than two years at the time of termination. Based on the whole record, we are not left with the definite and firm conviction that termination was clearly not in the best interests of the children. MCL 712A19b(5); *In re Trejo, supra*; *In re Maynard, supra*.

Finally, FIA requests that this Court give immediate effect to our decision pursuant to MCR 7.215 (F)(2). We decline to do so. Although we can find no case law discussion of the factual circumstances necessary to support the exceptional issuance of an order under MCR 7.215(F)(2), the effect of such an order is similar to that of an order pursuant to MCR 2.614(A)(2), which directs that immediate enforcement of a judgment may not occur, except in the limited circumstances described in the rule, absent a showing of good cause. In *Loyd v Loyd*, 182 Mich App 769, 782; 452 NW2d 910, (1990), this Court held that because plaintiff established compelling reasons to justify an immediate transfer of custody of the minor child, there was good cause for the trial court's order shortening the usual 21-day automatic stay of judgments to five days.

In this case, FIA made no showing of good cause for the exceptional issuance of an order affirming the termination of parental rights. Instead, in requesting this remedy FIA simply made a generalized statement in its prayer for relief that the children are placed for adoption. Without some demonstration by FIA that the adoption proceeding would be adversely affected and the minor children prejudiced if this Court did not invoke its authority under MCR 7.215(F)(2), there is insufficient support on the record before us for the exceptional relief requested.

Affirmed.

/s/ Michael J. Talbot
/s/ Hilda R. Gage
/s/ Kurtis T. Wilder

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[4] Because the family court properly terminated respondent's parental rights under subsection 19b(3)(g) and only one statutory ground for termination must by established in order to terminate parental rights, we need not decide whether termination was also proper under subsections 19b(3)(c)(i) and (j). *In re Trejo, supra* at 350.