

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of D.R.T., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

V

PIN MBOYA WINSTON a/k/a ROBERT
WINSTON,

Respondent-Appellant.

UNPUBLISHED

September 13, 2002

No. 235308

Wayne Circuit Court

Family Division

LC No. 97-349930

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

PER CURIAM.

Respondent appeals as of right the March 26, 2001 order terminating his parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

I. Facts and Proceedings

In January 1997, the minor child in this case was removed from his mother's care because of environmental neglect. At that time, respondent had not established paternity and was not living with the minor child. Although he had visited his son, he said he was unaware of the unsatisfactory condition of the home and did not know that his child was not attending school.

Petitioner established paternity in May 1997, but the court refused to place the minor child in his care because he had waited until the child was nearly eight years old to establish paternity and had not been paying child support. The court ordered respondent to comply with a parent-agency agreement that included attending parenting classes, participating in individual therapy, maintaining stable housing and employment, and visiting the minor child.

Over the next year, the court held dispositional review hearings and learned that respondent was complying with some aspects of the parent-agency plan, but not all of them. He did not follow through with the therapy requirement and missed some of his regularly scheduled supervised visits. Additionally, unsupervised visitation was suspended for a period of time because respondent took the minor child to work with him on the midnight shift and failed to

return the minor child to foster care on Sunday evening. In October 1998, petitioner filed a petition to terminate the rights of the mother and respondent, alleging that respondent had failed to comply with his parent-agency agreement because he did not complete parenting classes or participate in therapy.

Testimony at the termination hearing, which took place over several months in 1999 and 2000, showed that respondent sometimes failed to interact appropriately with his son and that he was “not very realistic” about his child’s special educational and medical needs. Additionally, testimony showed that respondent did not benefit from parenting classes and still had not participated in individual therapy. Testimony also showed, however, that sometimes respondent played appropriately with his son during supervised visits.

Testimony taken in the later months of the proceedings showed that respondent had started attending therapy, had appropriate housing, and was visiting his son regularly. The testimony was mixed regarding whether respondent interacted appropriately during the visits. Ultimately, in February 2000, the court decided not to terminate respondent’s parental rights, but did terminate the mother’s rights.

At the review hearing just one month later, the court learned that respondent no longer had suitable housing and had engaged in “some physical contact” with his son. Additionally, at both the March and June 2000 hearings, the record showed that respondent failed to fully comply with the parent-agency treatment plan. As of June, he still had not obtained suitable housing and had missed several therapy sessions.

Also in June 2000, the minor child began exhibiting signs of mental illness, including experiencing hallucinations and hearing voices. He was hospitalized for these problems, and at the September 2000 review hearing, the court reminded respondent of the importance of attending therapy and having the insight necessary to parent a child with significant psychological problems. The record of the September 2000 hearing shows that respondent’s pattern of non-compliance with the parent-agency treatment plan continued. For example, respondent was incarcerated for a period of time between the June and September hearings, but did not inform any of the concerned parties of his whereabouts during his incarceration. Moreover, respondent still had not secured suitable housing and indicated that it was not important where he lived. By this time, the minor child had been in foster care for nearly three years.

Petitioner again filed a petition for termination of respondent’s rights. At the March 2001 trial, the court took judicial notice of the file and heard testimony from the caseworker, therapist, and respondent. The caseworker’s testimony showed that respondent had engaged in an unauthorized visit with the minor child approximately one month before the trial and did not always interact appropriately during authorized visits, sometimes sleeping during visits or criticizing the minor child. Additionally, although respondent had been offered financial help with finding adequate housing, he failed to follow through with agency requirements. Not long before the trial, respondent indicated to the caseworker that he had decided to move in with his grandparents, who had a suitable home, but that he had not done so sooner because they had too many rules.

The therapist for respondent and the minor child testified that respondent did not understand the importance of stable housing or why it was important to meet his son's most basic needs. Additionally, she stated that although it appeared that respondent and the minor child genuinely loved each other, they seemed to behave more like brothers than father and son, discussing video games, cartoons, and the minor child's love life. Respondent also indicated to her that he would not need to find childcare for the minor child when he was working at night because the minor child and respondent's two-year-old son would just be sleeping. He also did not see a problem with sleeping during the day while leaving his two-year-old son unattended. Additionally, respondent believed the minor child's cognitive troubles were caused by a lack of effort.

Respondent testified regarding his housing difficulties and his desire to do whatever he needed to do to get his son back. However, he also characterized the minor child's hallucinations as an effort to get more attention since he had been in multiple schools and foster homes. Counsel for the minor child informed the court that the minor child wanted to live with his father. In its oral opinion issued a few days after the trial, the court found that petitioner had met its burden of proving by clear and convincing evidence that respondent's rights should be terminated pursuant to MCL 712A.19b(3)(c)(i), (g), and (j) and that termination was not clearly not in the child's best interest. Respondent appeals.

II. Standard of Review

In termination of parental rights cases, petitioner has the burden of proving by clear and convincing evidence that one of the statutory grounds for termination exists. MCL 712A.19b(3); *In re Trejo Minors*, 462 Mich 341, 350; 612 NW2d 407 (2000). If petitioner satisfies its burden, the family court must terminate the respondent's parental rights unless it finds on the whole record that clear evidence exists that termination is not in the child's best interests. *Id.* at 354. We review the court's termination of parental rights for clear error. *Id.* at 356-357. Clear error exists when this court is left with a definite and firm conviction that a mistake has been made. *McNamara v Horner*, 249 Mich App 117, 182; 642 NW2d 385 (2002). "[A] decision must strike us as more than just maybe or probably wrong." *In re Trejo, supra* at 356, quoting *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). We give due regard to the trial court's unique ability to assess the witnesses' credibility. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

III. Analysis

The trial court did not clearly err in finding that plaintiff had met its burden of proving that grounds for termination existed. Although some evidence might be construed in respondent's favor, we are not left with a definite and firm conviction that a mistake has been made. *McNamara, supra* at 182.

Termination of respondent's parental rights under MCL 712A.19b(3)(g) is not clearly erroneous. MCL 712A.19b(3)(g) states that termination is warranted when "[t]he parent, without regard to 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." The evidence showed that respondent minimized his child's psychological and educational problems, despite referral to three sets of parenting classes and

ample opportunities to participate in therapy. Although he did show interest in his son's welfare, he generally failed to understand the precise care, encouragement, and supervision his son required. Additionally, respondent failed to secure adequate housing over a lengthy time span, even though significant assistance had been offered to him. He obtained suitable housing right before the end of the 2000 termination trial, but didn't reside in that home just one month later. Then, just before the 2001 trial, respondent said he was moving into suitable housing with his grandparents. However, testimony showed that he could have moved into their home sooner if he had been willing to follow their household rules. This evidence, together with respondent's indication that a stable home was not important to raising a child, supports the court's conclusion that there was no reasonable expectation that respondent would be able to provide proper care for his minor child in a reasonable time. Because we find that petitioner met its burden of proof with regard to one of the statutory bases for termination, it is unnecessary for us to address the other grounds for the court's decision.

The trial court also did not clearly err by concluding that terminating respondent's rights was not clearly not in the child's best interests. MCL 712A.19b(5), *Trejo, supra* at 353. The evidence showed that the child was eleven years old, had been in foster care for approximately four years, and that he had serious psychological and educational problems. Additionally, testimony showed that the stress of day-to-day life affected the child's emotional health and that a stable environment, which respondent had failed to secure, would be best for him. Based on this evidence, the court properly found that termination was not clearly not in the child's best interests.

Affirmed.

/s/ Hilda R. Gage
/s/ Mark J. Cavanagh
/s/ Kurtis T. Wilder