# STATE OF MICHIGAN

# COURT OF APPEALS

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In the Matter of EMILY BACON, CHARITY BACON, and MATTHEW BACON, Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JAMES BACON,

Respondent-Appellant,

and

NOREEN BACON,

Respondent.

UNPUBLISHED
January 15, 2004

No. 248836
Emmet Circuit Court
Family Division
LC No. 00-004528-NA

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Before: Donofrio, P.J., and Griffin and Jansen, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court order terminating her parental rights to her minor children pursuant to MCL 712A.19b(3)(c)(i), (g) and (i). We affirm.

This Court reviews a trial court's decision to terminate parental rights for clear error. MCR 5.974(I), now 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). If the trial court determines that petitioner established the existence of one or more statutory grounds for termination by clear and convincing evidence, then the trial court must terminate the respondent-appellant's parental rights unless it determines that to do so is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). We review for clear error the trial court's decision with regard to the child's best interests. *Id*. at 356-357.

In the instant case, respondent-appellant does not contest the trial court's findings on the statutory grounds for termination. On the contrary, respondent-appellant argues that testimony presented at trial indicated that terminating his parental rights and disallowing any further

contact with his children after termination was clearly not in the children's best interests and that the trial court clearly erred in finding otherwise. We do not agree.

MCL 712A.19b(5) provides:

> If the court finds that there are grounds for termination of parental rights, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made, unless the court finds that termination of parental rights to the child is clearly not in the child's best interests.

As our Supreme Court decreed in *In re Trejo, supra*, "subsection 19b(5) preserves to the court the opportunity to find that termination is 'clearly not in the child's best interests' despite the establishment of one or more grounds for termination." *Trejo, supra* at 352-353. According to the court in *Trejo*, "[s]ubsection 19b(5) attempts to strike the difficult balance between the policy favoring the preservation of the family unit and that of protecting the child's right and need for security and permanency." *Trejo, supra* at 354.

In the case at bar, the court specifically considered respondent-appellant's twenty-year history with social services and determined that, after exhausting every resource available, parental rehabilitation and family reunification were not even in the realm of possibility. Thereafter, the trial court considered that at best, testimony adduced at trial suggested that continued contact with the children post termination would "probably" not harm the children and "may" be of some limited value. Consequently, the trial court determined that the testimony presented did not clearly indicate that termination was antithetical to the children's best interests, terminated respondent-appellant's parental rights accordingly, but nevertheless allowed visits to continue on a monthly basis contingent upon subsequent adoption.

A review of the record unequivocally establishes that, notwithstanding over twenty years of intervention and services, respondent-appellant's parenting skills did not improve one iota. Moreover, the record is replete with testimony regarding respondent-appellant's lack of interest, interaction, and involvement with his children. Indeed, psychologist Timothy Strauss clearly testified that respondent-appellant was "detached" from his children and that continued contact would likely disrupt the children's development.

Similarly, testimony adduced at trial established that while continued contact may not harm the children, respondent-appellant failed to present evidence to definitively establish that further contact would advance their interests. On the contrary, testimony revealed that continued contact with respondent-appellant would probably delay the children's progress developmentally. To be sure, expert testimony put forth at trial indicated that respondent-appellant's general passivity made it exceptionally difficult for him to impose appropriate emotional and behavioral boundaries upon his children to control their conduct. Further on that point, Strauss testified that respondent-appellant would likely withdraw from the children in the event of any conflict arising among them and leave the situation entirely unresolved. To ensure that these children "catch up" emotionally, intellectually, and socially, Strauss clearly testified that the children need "assertive, supportive, proactive" parents. Given respondent-appellant's globally passive nature, Strauss opined that he could not meet the children's needs in this critical regard.

A review of the entire record reveals that the trial court did not clearly err in terminating respondent-appellant's parental rights. Indeed, all of the witnesses testifying at trial unequivocally agreed that terminating respondent-appellant's parental rights would serve the children's best interests. Consequently, the trial court also did not clearly err by denying continued contact with respondent-appellant post adoption. Therefore, we affirm the trial court's decision in every regard.

Affirmed.

/s/ Pat M. Donofrio
/s/ Richard Allen Griffin
/s/ Kathleen Jansen