

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BRANDON RICHARD
FREDRICKSON, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ANNTOENETTE LYNN FREDRICKSON,

Respondent-Appellant,

and

KEVIN JAMES FREDRICKSON,

Respondent.

UNPUBLISHED

July 27, 2004

No. 249959

Macomb Circuit Court

Family Division

LC No. 01-052108-NA

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

PER CURIAM.

Respondent-appellant appeals as of right from the order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (c)(ii) (new conditions exist), (g) (failure to provide proper care and custody), and (j) (child will be harmed if returned to parent).¹ We affirm.

Respondent first argues that the trial court clearly erred in terminating her parental rights to her son, who was eight years old at the time of the termination proceedings. Specifically, respondent alleges that, prior to March 2003, petitioner made no referrals for services to respondent, and that this failure to provide timely referrals impeded respondent's compliance with the terms of the parent/agency agreement. Respondent contends that, in light of petitioner's

¹ The court also terminated the parental rights of the child's father, Kevin James Fredrickson, who has been in a North Dakota prison since 2001. He has not appealed that decision and is not a party to this appeal.

minimal assistance and the fact that referrals were not made in earnest until three or four months prior to trial, the trial court clearly erred in concluding, despite findings of partial compliance on the part of respondent, that termination of her parental rights was warranted.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination listed in MCL 712A.19b(3) has been established by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). Once a statutory ground has been established by clear and convincing evidence, the court must order termination of parental rights, unless the court finds from the evidence on the whole record that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000). The court's decision is reviewed for clear error. *Id.* at 356-357. A finding is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a firm and definite conviction a mistake was made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). In applying the clearly erroneous standard, regard must be given to the special opportunity of the trial court to assess the credibility of the witnesses who appeared before it. MCR 2.613(C); *Miller, supra* at 337.

This case began in December 2001, when the minor child was removed from respondent's custody. The principal conditions that led to the adjudication were respondent's alcohol and substance abuse, mental health issues, domestic violence, and neglect. The petition alleged that respondent had been found passed out in the grass with a blood alcohol level of 0.30. Her son helped a neighbor get his mother back in the house. On more than one occasion, respondent was found to be intoxicated to the point that she was unable to care for her son. Respondent suffers from an alcohol addiction that has spanned a period of at least twelve years. Respondent admitted to an amended petition in January 2002, and her son became a ward of the court in April 2002.

At the termination proceedings which began in April 2003, respondent admitted that she was given a parent/agency agreement in February 2002, which required parenting classes, a psychological evaluation, psychiatric services, substance abuse assessment, domestic aggression counseling, suitable housing and income, and regular visitation. However, in April 2002, shortly after adjudication, respondent moved to Colorado, where her parents lived, and remained there for approximately seven months. She was extremely ill and suffering from liver failure at this time due to her drinking. Respondent unsuccessfully attempted to obtain an interstate compact to allow her son to move in with her parents. Respondent testified that she was sober for six of the seven months she spent in Colorado, but started drinking again before she returned to Michigan. Respondent admitted that she had made poor choices and had chosen not to do anything about recovery between the time she returned from Colorado until she finally entered her current treatment beginning in early 2003. Indeed, the record indicates that on her return to Michigan, respondent was hospitalized from mid-November to mid-December 2002, on account of her excessive drinking and a kidnapping that resulted in a rape and beating. She was hospitalized again on December 24, 2002, for three days for alcohol poisoning. Respondent was sent to a "three-quarter" house at Faith Recovery Center in Lincoln Park, but she was terminated from the program because she left for an extended period of time without permission.

Respondent testified that after her return from Colorado, her "main issue" had been to focus on her substance abuse problem. Respondent explained that she did not start attending

parenting classes or domestic aggression therapy because her therapist wanted her to concentrate only on her dual diagnoses. Respondent admitted, however, that her therapist did not specifically state that she should not do any other classes; rather, respondent simply assumed that was what the therapist had intended.

Respondent testified that she had been sober since February 18, 2003. She stated that she was attending AA or NA meetings on a regular basis, had started a twelve-step group in her church, attended group counseling twice a week, continued individual counseling, and met with her sponsor on a regular basis. Respondent acknowledged that she was working hard to stay sober and, realistically, was just at the beginning of recovery and mental health treatment. At the time of the termination hearing, she was on a waiting list for parenting classes and had started an anger management class. Respondent felt that she was bonding with her son and stated that her visits with him had gone well, although she had missed some visits or was late because of transportation problems. Respondent testified that she had turned her life around and wanted her son to be part of it. Respondent repeatedly claimed that she had not received any referrals for any treatments required under the parent/agency agreement until March 2003, following a court hearing. In essence, respondent blamed petitioner for her inability to follow through with the requirements of the parent/agency agreement during the fifteen-month period preceding the termination hearing.

However, the testimony provided by respondent's current caseworker and her foster care worker contradicted respondent's contention that petitioner's failure to provide referrals in effect precluded respondent's compliance with the parent/agency agreement. The caseworker testified that she had given respondent referrals for parenting classes after respondent returned from Colorado and that respondent had not completed the classes. The caseworker spoke to respondent weekly while respondent was in Colorado, mailed her a copy of the parent/agency agreement, and advised her to find a place to go for parenting classes and to provide documentation. However, such documentation was never forthcoming. When respondent returned from Colorado in October 2002, the caseworker met her for the first time at the permanency planning hearing on December 4, 2002, and gave her another copy of the parent/agency agreement. The caseworker testified that shortly thereafter she gave respondent parenting, substance abuse, and psychological referrals. Respondent, however, was hospitalized on December 18, 2002, and never attended the parenting classes or the substance abuse evaluation and did not obtain a psychological referral.

Upon respondent's return from Colorado, she was referred by her caseworker to treatment and parenting programs in Ann Arbor. According to the caseworker, respondent's boyfriend had indicated that he was attending treatment in Ann Arbor three or four times a week, and respondent would therefore be able to attend therapy and classes there. Drug screens were also set up in Ann Arbor at respondent's request. However, the caseworker testified that respondent missed phone calls and urine tests and failed to complete twelve weeks of drug screens as required by the parent/agency agreement. Those drug screens that actually were done were negative. The caseworker testified that respondent likewise failed to provide the requisite documentation showing compliance with portions of the parent/agency agreement. In addition, the caseworker testified that respondent was required to participate in psychiatric services and had, in fact, been seeing a counselor since April 2003. The caseworker also gave respondent a

referral for anger management in March 2003. The caseworker testified that, because of respondent's hospitalizations and the like, some referrals were not made until early 2003.

Respondent's caseworker opined that respondent had not complied with the requirement that she provide suitable housing. Since returning from Colorado in October 2002, respondent had lived at various addresses with her boyfriend's parents, with a friend, and at places in Brighton, Taylor, Lincoln Park, and the Cass Corridor, in addition to time at Faith Recovery and in Brighton Hospital. Her longest stay had been three months at a trailer in Taylor. She had also been homeless, apparently after being terminated from Faith Recovery. Respondent acknowledged that these frequent moves did not provide a stable environment for her son. At the time of the termination hearing, respondent and her boyfriend lived with his cousin in the upper portion of a duplex, but she testified that they were remodeling the lower portion to turn it into a three-bedroom home for themselves and her son.

The caseworker further testified that at the time of the termination hearing, respondent was unemployed, having been fired from her job at a gas station, and received disability income that was insufficient to provide for her son or to allow her to be self-sufficient. Respondent had not gone to all of her visits with her son; some were suspended, respondent missed one, she was hospitalized for several, and she was usually late. Respondent had missed several drug screens, but those actually done were negative. According to the caseworker, respondent had continually failed to follow through with the required documentation requests to confirm her alleged compliance with parts of the parent/agency agreement. The caseworker ultimately recommended termination of respondent's parental rights, concluding that the conditions of the original petition still existed and would not be rectified in the near future. The caseworker specifically noted that, at the time of the termination hearing, respondent had only been sober for three or four months; in addition, there was a problem with her housing and employment.

Another foster care worker who had been supervising respondent since March 2002 testified at the termination hearing that she referred respondent for a psychological evaluation in December 2002 and made a second referral for evaluation in Monroe County three weeks before the termination hearing. Despite respondent's assertions that she could not contact the doctor, the foster care worker had no difficulty reaching his office. She also gave respondent detailed advice about services to seek in Colorado, but testified that respondent did none of them. The foster care worker testified that respondent had not completed the twelve weeks of drug screens as required by the parent/agency agreement.

The trial court concluded that termination had been substantiated under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). In so holding, the court noted that respondent had continually tried to maintain sobriety, but the court expressed concern about the magnitude of the problem and discounted her claims regarding the length of her sobriety in the past. The court further noted that, although respondent had some income, it was insufficient to support respondent and her son. The court found partial compliance with the parent/agency agreement, but found on the basis of the testimony that respondent had housing, transportation, and health problems that made her compliance inconsistent at best. The court believed that some of respondent's testimony concerning referrals, or the lack thereof, might have been inaccurate because of her drinking. In addition, the court concluded that while respondent's boyfriend was a vital support person, they had been together for only a short time and had met in rehabilitation, making joint relapses possible. Moreover, the court opined that respondent's partial compliance

with visitations detrimentally affected her bonding with her son. The court concluded under the circumstances that termination of respondent's parental rights was warranted.

Having thoroughly reviewed the record, we conclude that the trial court did not clearly err in finding that the statutory grounds for termination of parental rights had been established by clear and convincing evidence. Respondent's recent period of sobriety, standing alone, was insufficient to preclude termination of her parental rights. See *In re CR*, 250 Mich App 185, 194-197; 646 NW2d 506 (2002). The testimony shows that despite petitioner's assistance, respondent was unable to fulfill the requirements of the parent/agency agreement. Respondent's testimony reflected that she blamed petitioner for her inability to follow through with the requirements of the parent/agency agreement. However, the record indicates that, while some referrals were not made until early 2003, this was attributable in significant part to respondent's own actions, i.e., her hospitalizations and inconsistent contact with her caseworkers.

In fact, the evidence indicates that respondent was only able to concentrate on her substance abuse therapy at the time of the termination hearing. Respondent testified that her therapist did not feel she was able to handle the parenting classes or the anger management classes, which the trial court ordered. While respondent has apparently remained sober since February 2003, this case has been pending since December 2001, and respondent, by her own admission, did nothing to address the requirements of the parent/agency agreement until the case was almost at termination. Respondent also failed to provide documentation, as requested by petitioner, concerning her AA attendance and social security assistance. Moreover, her income and housing situation were problematic.

Under these circumstances, the trial court correctly found that the evidence supported the termination of respondent's parental rights, since more than 182 days had elapsed, the conditions which led to the adjudication continued to exist, and there was no reasonable expectation, given the minor child's age, that they would be rectified within a reasonable time, despite the assistance of petitioner. In light of all of the evidence which was presented, the trial court did not clearly err in finding that MCL 712A.19b(3)(c)(i) and (ii) had been established by clear and convincing evidence.

The trial court likewise did not clearly err in finding that the statutory requirements of MCL 712A.19b(3)(g) had been established because the evidence clearly and convincingly indicated that respondent was unable to care for her son, and there was not a reasonable expectation that this would change in the foreseeable future. As previously noted, while respondent was making progress toward maintaining sobriety, she was focusing on her substance abuse problem, to the exclusion of the other issues that also needed to be addressed. Respondent was unable to devote the time necessary to complete the parent/agency agreement and, thus, could not devote the time and resources necessary to care for an active eight-year-old boy. The evidence showed that respondent was unable to financially support her son or herself independently of her boyfriend, whom she had known for only six months. In the eighteen months that this case was pending, respondent was only able to maintain sobriety for the last four or five months and to attend substance abuse therapy two times per week. Respondent only partially fulfilled the remaining requirements of the parent/agency agreement. Consequently, the trial court did not clearly err in concluding that respondent cannot provide proper care and custody for her son, and there is no likelihood that this will change in the foreseeable future. See *In re CR*, *supra* at 194-197.

Finally, the evidence did not establish that termination of respondent's parental rights was contrary to the child's best interests. *In re Trejo, supra*. Once the trial court finds that at least one of the statutory criteria has been met, the court shall order termination of the parental rights, unless the evidence demonstrates that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo, supra* at 353. Although there was evidence of a bond and that respondent and her son loved each other, termination was clearly in the child's best interest in light of respondent's failure to consistently address and fulfill the requirements of the parent/agency agreement. Despite the ample time given to respondent, she still has not addressed the problems which led to the minor child being taken into care. As noted above, respondent has not been able to demonstrate a consistent treatment plan to maintain her own stability. Therefore, the trial court did not err in terminating respondent's parental rights.

Affirmed.

/s/ Richard Allen Griffin

/s/ Helene N. White

/s/ Pat M. Donofrio