

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of DAWN MARIE CLYNE and  
TIFFANY RENEA CLYNE, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JOAN CLYNE,

Respondent-Appellant.

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UNPUBLISHED

September 18, 2007

No. 276709

Oakland Circuit Court

Family Division

LC No. 03-684002-NA

Before: O’Connell, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

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

The trial court may terminate a parent’s parental rights to a child if the court finds that the petitioner has proven one of the statutory grounds for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo Minors*, 462 Mich 341, 350; 612 NW2d 407 (2000). “If the court finds that there are grounds for termination of parental rights, the court shall order termination of parental rights . . . , unless the court finds that termination of parental rights to the child is clearly not in the child’s best interests.” MCL 712A.19b(5); see also *Trejo, supra* at 350.

“The clearly erroneous standard shall be used in reviewing the court’s findings on appeal from an order terminating parental rights.” MCR 3.977(J). The review for clear error applies to both the trial court’s decision that a ground for termination of parental rights was proven by clear and convincing evidence and the court’s ruling regarding the child’s best interests. *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). The trial court’s determination to terminate parental rights is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake had been made on consideration of all the evidence. *Id.* at 209-210.

MCL 712A.19b(3)(c)(i)<sup>1</sup> provides for termination when “[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] 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.”

MCL 712A.19b(3)(g) provides for termination 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.”

MCL 712A.19b(3)(j) provides for termination when “[t]here is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.”

Respondent argues that the trial court clearly erred in terminating respondent’s parental rights because the testimony revealed that she loved her daughters and was doing her best to supervise them and address their rebellious adolescent behavior. Respondent contends that Tiffany’s accusations regarding the alleged assault with a vehicle against Dawn, the observance of a firearm, and respondent’s drinking were all fabricated because of respondent’s refusal to allow Tiffany free reign with respect to boys and activities in general. Respondent, arguing that there was a dearth of physical evidence relative to the claims against her, points out that the police did not find any alcohol or firearms in her home, and she denied removing anything from the home prior to the arrival of the police. According to respondent, Tiffany’s acknowledgement that she had boys in her room and that she ignored respondent’s advice about boys reflected consistency with respondent’s testimony that Tiffany’s motive for making various accusations was respondent’s efforts to curb Tiffany’s rebellious behavior. In further support of reversal, respondent argues that Tiffany stated that she wanted to return to respondent and that Tiffany conceded that Dawn was not struck by the vehicle because respondent hit the brake.

With respect to respondent’s use of alcohol, respondent maintains that there was not clear and convincing evidence establishing alcoholism. The positive result for use of alcohol on a recent test was caused by toothache medicine, and respondent testified that she had not been drinking since the filing of the petition. In sum, respondent contends that the trial court’s clearly erroneous ruling constituted a refutation of the legislative philosophy that seeks to reunite families, not split them apart.

We conclude that the trial court’s rulings with regard to the establishment of §§ 19b(3)(c)(i), (g), and (j), as well as on the issue of the children’s best interests, were not clearly erroneous. Much of respondent’s appellate argument focuses on the credibility of the witnesses and the amount of weight to give the evidence, but such an argument does not afford a basis for reversal here. Our Supreme Court in *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989), stated:

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<sup>1</sup> The trial court cited § 19b(3)(c)(i) in support of termination with respect to Dawn only.

The Court of Appeals did not address the important question of the deference to be accorded to the findings of the trier of fact. MCR 2.613(C) requires that in applying the principle that findings of fact may not be set aside unless clearly erroneous, regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.

The deference required by MCR 2.613(C) can make a critical difference in difficult cases such as the one before us. In contrast to the reviewing court, the trier of fact has the advantage of being able to consider the demeanor of the witnesses in determining how much weight and credibility to accord their testimony.

Here, the trial court found Tiffany to be the more credible witness, and her testimony established that respondent was continuing to consume alcohol, which was prohibited, that respondent utilized a firearm in reacting to an altercation with Dawn, that respondent made threats of physical violence, that respondent used her vehicle in a manner that placed Dawn in danger of injury, and that respondent, in general, engaged in inappropriate parental behavior. We have no quarrel with the trial court's acceptance of Tiffany's testimony, and it supported the decision to terminate. The record further reveals that respondent's use of alcohol and instances of neglect resulted in separate protective proceedings regarding her two daughters back in 1996, that respondent was actually intoxicated at an initial pretrial proceeding in the current action in 2003, and that respondent tested positive for alcohol consumption about a month before the termination trial in 2006. While respondent denies imbibing alcohol since the filing of the 2003 petition, claiming that the positive test in 2006 was the result of toothache medicine, the trial court chose to give little or no weight to her claims. We find no error with the trial court's assessment that respondent lacked credibility. The assertion regarding toothache medicine was extremely vague, calling into question the validity of respondent's testimony on the matter. We also note that, as to Tiffany's credibility, she apparently desired to remain with respondent, which would give her a motive to compliment respondent's parenting skills and to otherwise testify favorably on behalf of respondent. However, Tiffany nonetheless testified in a manner that harmed respondent's chance to avoid termination of her parental rights. This gives credence to the trial court's conclusion that Tiffany was a credible witness. We further note that respondent's testimony was, in several instances, unnecessarily combative, inconsistent, and reflected efforts to be less than forthcoming.

In light of respondent's continuing use of alcohol over many years, which has resulted in multiple protective services proceedings, respondent's threats of physical violence and display of a firearm, respondent's poor parenting judgment, and the incident in which Dawn was threatened with harm by respondent's use of her motor vehicle, we find no clear error with the court's ruling. The evidence supported the ruling that there is a reasonable likelihood that the children would be harmed if they are returned to respondent's home, § 19b(3)(j), that respondent failed to provide proper care or custody for the children, with no reasonable expectation that she will be able to provide proper care and custody within a reasonable time, § 19b(3)(g), and that 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. Moreover, the trial court did not clearly

err in failing to find that termination of parental rights to the children was clearly not in the children's best interests. MCL 712A.19b(5).

Affirmed.

/s/ Peter D. O'Connell  
/s/ William B. Murphy  
/s/ E. Thomas Fitzgerald