

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of RAB, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MELANIE BAILEY,

Respondent-Appellant,

and

PATRICK WILLIAM BAILEY,

Respondent.

UNPUBLISHED

March 11, 2003

No. 241942

Allegan Circuit Court

Family Division

LC No. 00-026471-NA

Before: Whitbeck, C.J., and Cavanagh and Bandstra, JJ.

PER CURIAM.

Respondent-appellant Melanie Bailey appeals as of right from the trial court order terminating her parental rights to the minor child, RAB, under MCL 712A.19b(3)(c)(i), (c)(ii), and (g). Bailey's former husband and RAB's father surrendered his parental rights, and does not appeal. We affirm.

I. Basic Facts And Procedural History

The Family Independence Agency (FIA) originally filed a petition in this case because of concerns that Patrick Bailey was behaving in a sexually inappropriate manner with RAB, who was six years old at the time. Although the petition named RAB's mother, Bailey, as a respondent in the protective proceeding, none of the supporting allegations concerned her. Consequently, the family court initially left RAB in Bailey's care while the case was pending.

The FIA became concerned with Bailey's continuing custody of RAB in May 2000. At that time, school officials reported, RAB repeated an alleged threat Bailey made against a teacher's aide. Additionally, school staff noted bruises on RAB. When RAB's court appointed special advocate (CASA) attempted to check on him, the CASA worker learned from RAB's

grandmother that Bailey had taken RAB out of the state. Having learned more of Bailey's own background as a victim of abuse and other trauma, and noting the threats and departure from the state, the FIA then amended the petition to include these allegations concerning Bailey. This amended petition also included the new allegation that Patrick Bailey could not care for RAB because he (the father) was incarcerated.

In September 2000, before the trial court held the adjudication, Patrick Bailey admitted that he was incarcerated and could not care for RAB. He then relinquished his parental rights. Bailey, however, did not appear at this hearing.

By October 2000, Bailey had evidently returned to Michigan with RAB. On October 11, 2000, the FIA filed an emergency motion to remove RAB from Bailey's home and place him in foster care, alleging that Bailey refused mental health therapy and did not bring RAB to a September 12, 2000 medical appointment. The FIA also claimed that Bailey had told school personnel that she could not handle RAB and "should just give him up." RAB attended special education classes at his elementary school and suffered from Attention Deficit Hyperactivity Disorder (ADHD), for which he had been prescribed medication.

At the October 12, 2000 emergency removal hearing, the support teacher at RAB's elementary school, Mary Jo Kooiker, testified that she had observed Bailey spanking RAB for refusing to come into the classroom. Bailey was also upset that she had to miss work to bring RAB to school. RAB was often tardy or absent. According to Kooiker, Bailey had said that she could not handle things anymore, and that if other people thought they could do a better job, she wished they would take RAB. Because he had missed his medical appointment, RAB could not continue his behavior medication, causing him to become aggressive, yell, swear, and throw furniture. Kooiker felt that RAB's emotional health was at risk.

Protective Services employee Randy Content also expressed concern for RAB's emotional state, which he characterized as fragile. Content felt that Bailey did not provide appropriate parental care, and that her emotional problems and single-parent status were detrimental to RAB. The family court authorized the petition and ordered RAB placed in foster care.

The family court, sitting as the fact finder, held the adjudication on March 5, 2000. Kooiker again testified that Bailey said she could not handle RAB and wished someone would take him, and also asserted that Bailey did not bring RAB to the doctor. Content stated that he removed RAB because of numerous referrals indicating that Bailey could not control RAB, she and RAB were living with a chronic alcoholic, and she did not feed RAB consistently. Content explained that Bailey had refused counseling ever since a previous counselor revealed information that led her to suspect that Bailey abused or neglected RAB.

RAB's first-grade teacher, Georgiana Lowry, testified that she would talk to Bailey when she brought RAB to school and found her to be nervous, paranoid, and prone to cry. Although RAB was doing well at the beginning of the year, Lowry said that his behavior degenerated as the year progressed, causing school personnel to become concerned that RAB was not receiving his medication consistently. Lowry stated that, although Bailey was generally cooperative in procuring services for RAB, and RAB was usually clean and well fed, there were occasions in the winter when there was no running water at their home.

RAB's mental health therapist Atis Kleinbergs told the family court that it was difficult to schedule appointments with RAB. Although Bailey came to the first meeting, she did not bring RAB, and neither of them came to the second meeting. Their meetings were scheduled at a rescue mission because Bailey did not know where she and her son would be living. Kleinbergs described Bailey as emotional, agitated, and paranoid, and RAB as distracted and destructive. At one meeting, according to Kleinbergs, Bailey mentioned suicide in RAB's presence, but did not want to seek counseling for herself. Kleinbergs felt that Bailey was unable to meet RAB's emotional needs or provide an adequate living situation. Kleinbergs reported that RAB had shown improvement since being removed from Bailey, including academic progress and increased ability to take redirection. RAB told Kleinbergs he was happy, and did not mention Bailey or express a desire to return home.

The family court also heard testimony from Nelba-Jean Vandenberg, an instructional aide in the learning center at RAB's school who spent every day with him. Vandenberg recalled that Bailey would often lose her temper and be distraught when she brought RAB to school in the morning. According to Vandenberg, Bailey would blame RAB for being late and for not getting any sleep. On one occasion, Bailey yelled at RAB and pushed and shoved him through the door to the classroom. Bailey also yelled at Vandenberg several times. In Vandenberg's opinion, Bailey was not giving RAB his medication at the correct time in the morning. On three or four occasions, RAB needed to be restrained physically because of a tantrum. At one point, RAB did not have medication for over a week because he had not gone to the doctor. Also, Bailey once told Vandenberg that if the family court thought it could take better care of RAB, then it should try to do so.

Bailey denied many of these allegations. With respect to RAB's difficulties in school, Bailey said that the teachers at his original school were physically abusive and, on one occasion, temporarily misplaced RAB's medication, leading Bailey to enroll RAB in a different school. Bailey said she always brought RAB to his medical appointments, and that he only went without medication for four days because she had been denied assistance by Medicaid and could not afford it. Bailey explained that they stayed temporarily in a shelter because she thought their home had been burglarized, although the police told her it had not been burglarized. Bailey denied discussing suicide in RAB's presence.

Bailey's boyfriend, Robert Christopher Maccune, testified on Bailey's behalf. Maccune lived with RAB and Bailey for a month after she was involved in a car accident in April 2000. He asserted that RAB was well behaved, went to bed every night without problems, and got up on his own to go to school. The home was in good condition, there was plenty of food, and Bailey told RAB she loved him every day.

Maccune accompanied Bailey and RAB to RAB's school five or six times, and observed that the teachers would never talk to Bailey and would never look her in the eye. Maccune said he once witnessed the teachers dragging RAB down a hallway. According to Maccune, school personnel told him that he could not return to the school because of what he witnessed. Maccune maintained that Bailey never had any problems with RAB. He maintained that Bailey took her medication every day, and he saw Bailey distraught only once in a great while. He also saw RAB comfort Bailey sometimes. Bailey's friend, Rosetta Christman, added that Bailey was

excellent with her son. According to Christman, Bailey and RAB were very close and she never used physical force to discipline him. At the close of proofs, the family court found sufficient evidence to take jurisdiction over RAB.

At the March 26, 2001 dispositional hearing, case worker Linda Hartman testified that an agreement between Bailey and the FIA required Bailey to do the following things: (1) attend and benefit from counseling with Lutheran Family Services to provide better care for RAB; (2) attend regular supervised visitation with RAB; (3) acquire safe, clean housing; (4) maintain no alcohol or drug abuse; (5) maintain an abuse-free home by not living with anyone abusive; (6) attend ninety percent of parenting classes and demonstrate better parenting; (7) contact Linda Hartman once a month; (8) take prescribed medications; (9) undergo a psychiatric evaluation; (10) maintain employment; and (11) keep Hartman informed of her residence. Bailey told the family court that she would not be treated like a child, and no one could tell her how to pay her bills or whom she could date. The family court adopted Hartman's recommendations.

The family court held a dispositional review and pretrial conference November 13, 2001. At the hearing, therapist Beth Mellin, who counseled RAB and supervised twenty visits RAB had with Bailey, testified that when RAB first came into care, he was angry and assaultive, but had improved since being placed. Mellin believed that Bailey generally did well and responded to criticism during supervised visits. Bailey tended to treat RAB as a peer, pushing him to congratulate her for getting a job and sharing information with him in a way that was not typical of parent/child relationships, while also getting absorbed in playing with toys. When RAB was not present, however, Bailey would become upset and yell.

Mellin was also concerned that Bailey seemed to relate to RAB in a flirtatious way. On one occasion, after Mellin complimented Bailey's appearance, Bailey pulled RAB close and told him she dressed that way for him, then showed him her toe ring. Mellin considered this type of interaction very unhealthy. Mellin noted that RAB occasionally displayed sexual behaviors. Mellin observed that RAB did not seem to be attached to Bailey. When Mellin told RAB about the possibility of discontinuing visits with Bailey, RAB did not seem bothered.

Mellin related that Bailey had completed parenting classes and began taking a new behavior medication, and she seemed to have improved her ability to maintain control of herself in RAB's presence. However, on one occasion, Bailey told Mellin that she did not want to take her medication because it affected her ability to be creative and write poetry. Furthermore, Mellin was not sure where Bailey lived. When Mellin tried to contact Bailey at her grandparents' home, the grandmother would say that Bailey was staying with a friend. Mellin added that Bailey had not made progress in accepting responsibility. Accordingly, Mellin recommended that the family court terminate Bailey's parental rights because she was not emotionally stable, had not acquired housing, and had not demonstrated good parenting skills.

At a show cause hearing held January 30, 2000, Bailey requested that Mellin be removed from the case because her dual role as caseworker and RAB's therapist presented a conflict of interest. Bailey also requested that Mellin be held in contempt for denying Bailey visitation. The court ordered that FIA worker Regina Ambs investigate the potential conflict and report back to the court, and also ordered that FIA supervise visitations.

The family court held a termination hearing on May 6, 2002. At the hearing, Ambs testified that she had been monitoring the case since October 15, 2001. After investigation, she decided that Mellin should stay on the case because she had not done anything inappropriate. Ambs felt that Bailey had made progress with counseling as well as with mood stabilization. Although Bailey's employment history was sporadic, at that time she was employed for thirty hours a week. However, Bailey had not yet saved one month's rent, as required by the FIA agreement, and Ambs was concerned that Bailey's grandparents' house was not a permanent residence. Ambs testified that Bailey still lacked emotional stability and structure. With respect to RAB, Ambs said that after a year of foster care, he was emotionally stable and improving because of the increased stability, medication, and counseling. Ambs noted that there was still no indication of an emotional bond between RAB and Bailey.

Mellin, who testified as an expert in child therapy, said that she had not had contact with Bailey for months, although she continued to be RAB's caseworker and therapist. Although Bailey said she was living with her grandparents, when Mellin called there the previous month, her grandparents did not know where she was. According to Mellin, during the most recent two months, Bailey and RAB had visits twice a week; however, RAB told her that he would prefer to visit less frequently. Mellin again expressed concern with Bailey's behavior during visits with RAB, noting her flirtatious behavior toward RAB, her failure to address RAB's tendency to act out sexually, and her reliance on RAB for consolation. RAB told Mellin that Bailey did not love kids and would not have another child because he was so difficult, and also told Mellin that Bailey's father had abused her and tied her up in the basement.

Mellin testified that Bailey had problems with her employment because she was hostile and angry. On one occasion, Bailey became angry at Mellin after a scheduling misunderstanding and shouted and cursed at her. Bailey had been fired as a waitress and lost her job in a retirement home after she pushed a co-worker. Bailey also told Mellin that her relationships with her ex-husband and Maccune were physically abusive. Although Mellin tried to address these concerns, Bailey instead spent the time discussing how her needs were not being met. Bailey repeatedly told Mellin that she was not interested in receiving suggestions about parenting, saying she was a fine parent and asking why everyone else's opinion mattered. Bailey requested to continue her counseling at community mental health because no one there would tell FIA or Lutheran Family Services anything about her. Mellin testified that Bailey would not sign a release so Mellin could talk to Bailey's therapist. Mellin claimed that one of Bailey's therapists withdrew because Bailey threatened her. In Mellin's opinion, Bailey had not met her parenting goals. RAB's psychological report indicated that he was unattached to his biological parents, and Mellin testified that RAB felt abandoned.

FIA worker Chelle Kenyon testified that she supervised visits with Bailey and RAB from February 2002 through April 2002. Although Bailey's behavior seemed inappropriate at times, Bailey's demeanor was satisfactory, and she would bring RAB snacks, cards, and activities. Kenyon testified that she never observed any flirtatious behavior, but did notice RAB comforting Bailey and taking charge of situations. Kenyon also observed that Bailey seemed competitive when playing games with RAB, and when he needed discipline, Bailey would harshly tell him "no" instead of trying to redirect him. Once, Kenyon said, when RAB brought Bailey flowers for Mother's Day, she became very agitated and said that a bee might sting her if she had flowers. Apparently, Bailey had once experienced a near-fatal reaction to a bee sting. Kenyon had to tell

Bailey that RAB did not intend to hurt her by giving her flowers. Although Bailey eventually tried to comfort RAB, he had nightmares after the incident. Kenyon also reported that RAB once told Bailey that he had changed his mind and would rather live with her. However, although RAB was usually excited to see Bailey, Kenyon stated that he was generally ready for the visits to end by the time they were over. Kenyon testified that RAB's foster mother said that he had behavior problems before and after his visits with Bailey.

Case manager Crystal Parker said that she met with Bailey twice a week to help with housing and employment issues. Parker testified that Bailey had participated in the process fully, and, after filling out several job applications, had been employed for eight months. Bailey seemed highly motivated and acknowledged several times that she had made bad choices. However, Bailey had outstanding debts and had her car impounded for driving with a suspended license, and still did not have independent housing.

Bailey's therapist, Sharon Murphy, said that Bailey's attendance record was good and that she had taken responsibility for RAB's removal. Murphy noted that Bailey had made progress stabilizing her moods since changing her medication. Nevertheless, Murphy testified that a meeting with Bailey and Mellin scheduled to discuss the case had to be cancelled because Bailey had been arrested for driving with a suspended license.

Sabrina Sherwood, Bailey's cousin's fiancée, saw Bailey five days a week to provide Bailey transportation. Sherwood said that Bailey was very good with Sherwood's son and controlled her temper; however, Sherwood testified that she did not spend time with Bailey when she had RAB. She added that Bailey took her medication every day.

When Bailey testified at the hearing, she denied threatening her former counselor, and asserted that her behavioral problems had improved since her medication had been changed. Bailey admitted that she had had abusive relationships with her ex-husband, Maccune, and another boyfriend with whom she lived for one week while RAB was in foster care. If she could do it over, Bailey said she would have asked for more support with RAB, taken more time off work, and dealt with RAB differently.

Bailey testified that no one volunteered to help her, and that although she asked everyone for help, no one would listen. Bailey explained that she did not know what parenting skills she had to improve because the term "parenting skills" was too vague. According to Bailey, no one ever told her that she needed to learn appropriate ways to discipline RAB. Bailey claimed that she was treated unfairly because she was not offered any help except a counselor. No one ever explained to her what she was supposed to do or helped her with housing, and she even lost her state assistance when the family court placed RAB in foster care. According to Bailey, Mellin did not tell her how to improve, but only told her things she did wrong. If RAB were returned, Bailey testified that she would cooperate, and that both of them would continue with counseling.

At an in-camera interview, RAB told the family court that he preferred being in foster care because he had fun there and got to play games. At the close of evidence, the family court found that there was clear and convincing evidence to terminate Bailey's parental rights under MCL 712A.19b(3)(c)(i), (c)(ii) and (g), and that termination was in RAB's best interests.

II. Termination

A. Standard Of Review

Appellate courts review a family court's decision to terminate parental rights for clear error.¹

B. Clear And Convincing Evidence

The family court must find clear and convincing evidence on the record proving that at least one statutory ground for termination exists before it terminates parental rights.² Once there is clear and convincing evidence of at least one statutory ground for termination, the family court "must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests."³

The family court terminated Bailey's parental rights under MCL 712A.19b(3)(c)(i), (c)(ii) and (g), which provide:

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 either of 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.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

¹ *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 5.974(I).

² MCL 712A.19b(3); see *In re IEM*, 233 Mich App 438, 450-451; 592 NW2d 751 (1999).

³ *Trejo*, *supra* at 354; MCL 712A.19b(5).

(g) The 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 main condition that led to adjudication was Bailey's inability to handle RAB and meet his special needs. Bailey had been referred to the FIA numerous times, and Bailey said on more than one occasion that she could not handle caring for RAB anymore and asserted that someone else should care for him. Workers and school personnel were concerned that Bailey lacked the basic skills to discipline RAB, provide a safe and healthy childhood, and ensure that he take his medications consistently. They also testified that Bailey frequently focused only on her own needs rather than RAB's.

Bailey relies heavily on the argument that she did not receive proper assistance in finding housing. However, the condition that led to adjudication was not her lack of housing, but rather her demonstrated inability to properly parent RAB. As Bailey's caseworker expressly testified, even if Bailey had housing, a car, and a job, she would not change her recommendation that the family court terminate Bailey's parental rights unless Bailey's parenting skills changed dramatically. Witnesses also consistently testified that Bailey relied on RAB to comfort and console her, and had difficulty controlling her temper. The testimony also indicated that RAB had increased behavioral problems before and after his visits with Bailey. Although Bailey complained about the lack of support she had received, the evidence indicated that she had been uniformly unreceptive to those who suggested she needed help with her parenting skills. Indeed, Bailey told the family court that no one had the right to tell her how to be a mother.

To constitute clear error, a decision must be "more than just maybe or probably wrong."⁴ In light of the fact that RAB was removed because Bailey could not parent him appropriately and the fact that she failed to make improvements during the year and a half he was in care, the family court did not clearly err when it determined that the conditions that led to adjudication continue to exist and were unlikely to be rectified within a reasonable time. Because the family court did not clearly err when it found clear and convincing evidence to terminate Bailey's parental rights pursuant to MCL 712A.19b(3)(c)(i), we need not address the additional statutory grounds it cited for its decision.⁵

C. Best Interests

MCL 712A.19b(5) states that a family court "shall order termination of parental rights" if it finds clear and convincing evidence to terminate. In other words, termination is mandatory once the court finds evidence of at least one statutory ground to terminate parental rights.⁶ Only

⁴ *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999), quoting *People v Cheatham*, 453 Mich 1, 30, n 23; 551 NW2d 355 (1996) (internal citation omitted).

⁵ See *In re IEM*, *supra* at 450-451.

⁶ See *In re IEM*, *supra* at 450-451.

if the family court finds evidence on the record as a whole that termination is *not* in the child's best interests can it refuse to terminate parental rights.⁷

The evidence did not show that termination of Bailey's parental rights was clearly not in RAB's best interests. Rather, the evidence indicated that RAB was not bonded to his mother, and he informed the family court in camera that he did not want to leave his foster home. Therefore, the family court did not clearly err in finding that termination was in RAB's best interests.

Affirmed.

/s/ William C. Whitbeck

/s/ Mark J. Cavanagh

/s/ Richard A. Bandstra

⁷ See *Trejo, supra* at 353-354.