

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of LAWRENCE DEAN BURCH III,  
Minor.

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FAMILY INDEPENDENCE AGENCY,  
  
Petitioner-Appellee,

UNPUBLISHED  
February 15, 2005

v

TRACI BURCH,  
  
Respondent-Appellant.

No. 257414  
Ingham Circuit Court  
Family Division  
LC No. 00-573161-NA

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

PER CURIAM.

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

In reviewing a trial court order terminating parental rights, we review conclusions of law on legal issues de novo. *In re CR*, 250 Mich App 185, 200; 646 NW2d 506 (2002). We review the trial court’s findings of fact to determine whether they are clearly erroneous, a standard requiring more than that the decision is “maybe or probably wrong.” *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). A factual finding is clearly erroneous, even if there is evidence to support it, if the reviewing court forms a clear and definite conviction upon review of the entire record that a mistake has been made, after giving due deference to the ability of the trial court to observe the demeanor of witnesses and to evaluate the weight and credibility of testimony. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Only one statutory ground need be proven by clear and convincing evidence to terminate parental rights. MCL 712A.19b(3); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

The trial court assumed jurisdiction of this case after respondent was involved in a physical tussle with the minor child’s father over the child, whom she had left behind at a party where she engaged in underage drinking. The child sustained minor injuries. Subsequent evaluations of respondent indicated that she had problems with alcohol use and with difficulty in planning her actions in advance rather than reacting impetuously to circumstances.

Respondent received services from the Family Independence Agency (“FIA”) for over a year before the trial court ordered termination. During the year, respondent’s performance was spotty. At first, by her own admission, she continued to use alcohol, and was less than consistent in her progress toward the goals set for her by the FIA and the court, such as obtaining her high school degree, improving her parenting skills, and obtaining full-time employment. In the few months before the bench trial on termination, however, respondent achieved most if not all of these goals. She found and kept a full-time job, obtained a high school degree and a valid driver’s license, visited regularly with the minor child, prepared her home to be safe and well-supplied for a baby, and took two breathalyzer tests a day – twice what she was ordered to take – consistently indicating that she was free of alcohol use. The trial court found, however, that continued impulsivity and inability to plan by respondent created a risk of injury or harm to the minor child, who previously had been injured in an incident for which respondent bore some responsibility, and that respondent was not able to provide proper care and custody for him. Therefore, the court found that there was clear and convincing evidence for termination under MCL 712A.19b(3)(b)(i), (g), and (j).

Respondent argues, first, that the trial court’s finding that grounds for termination of parental rights existed was clearly erroneous. We disagree. We do agree with respondent, as did the trial court, that respondent made efforts to improve her ability to be a fit parent and that these efforts were “commendable.” However, respondent also unfortunately continued to exhibit signs of the inability to plan ahead for the consequences of her actions that had created concerns about her ability to parent in the first place. Probably the most serious of these was that she became pregnant for a second time, while still a minor, with the father being a man who proved to have a criminal record and who was ultimately incarcerated for a parole violation. Although it may be true, as respondent says, that she was unaware of his criminal background when she became pregnant, it still exhibits an inability to plan ahead responsibly that she would have become so deeply involved with a man about whom she apparently knew too little. Similarly, respondent allowed another male friend access to her website to post a photograph embarrassing to her. Further, there was an incident in which respondent briefly went on a trip to another state with an older man. Respondent also had problems, albeit less serious ones, that were exhibited in her visitation with her minor child, bringing into question her judgment in parenting matters. Taken together, these incidents, read in light of the earlier evaluation performed on respondent and expert testimony recommending termination, lead us to say that we cannot find that the trial court committed clear error in finding grounds for termination to exist under MCL 712A.19b(3)(b)(i), (g), and (j), due to respondent’s inability to provide proper care and custody, and the risk of injury or physical harm to the minor child.

Respondent next argues that the trial court committed clear error in not finding termination to be against the best interests of the minor child. Again, we disagree. Pursuant to MCL 712A.19b(5), once the court has determined that statutory grounds for termination have been established by clear and convincing evidence, the court is required to order termination unless it is *clear* that it is not in the child’s best interests. Respondent argues that there is evidence of a strong mutual affection between the minor child and herself. We agree that the record supports this argument. However, such mutual affection, standing alone, is not sufficient to negate the significance of the risks to the welfare of the minor child from respondent’s apparent lack of ability to engage in clear foresight. At any rate, there was sufficient evidence

for the trial court to make this finding, and because the finding was not clearly erroneous, we cannot reverse it.

Finally, respondent argues that she complied in full with the conditions the trial court had imposed upon her at the pretrial hearing. Our review of the record indicates that the trial court entered an order essentially leaving in place the earlier orders it had made in the case. It never stated that if respondent complied strictly with these orders, she would be able to avoid termination. The record indicates that, by the time of trial, respondent had complied with most if not all of the conditions that had been set. However, there was no guarantee that such compliance would prevent termination. We have already stated that the trial court did not clearly err in finding grounds for termination to exist. Because this is the case, the fact that respondent may have substantially complied with the court's interim orders is not a basis for reversal.

Affirmed.

/s/ Jane E. Markey

/s/ William B. Murphy

/s/ Peter D. O'Connell