

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF VAN BUREN

FAMILY DIVISION

In the matter of:

File No. 10016738NA

RANDY VINCENT, Minor
(9/12/08)

FINDINGS OF FACT, OPINION AND ORDER FOLLOWING HEARING ON REMAND
FROM THE COURT OF APPEALS TO CONSIDER WHETHER TERMINATION OF
PARENTAL RIGHTS IS IN THE BEST INTEREST OF THE MINOR CHILD

At a session of said Court held in
the Courthouse, in the Village of
Paw Paw, in said County and State,
this 30th day of May, 2012.

PRESENT: HONORABLE FRANK D. WILLIS

On April 26, 2012 the Michigan Court of Appeals stated;

"We affirm the trial court's determination that two
statutory grounds supported termination but vacate its best
interest determination and remand for further consideration
of that issue."

In addition in the Remand Order the Michigan Court of
Appeals stated that the remand was for the following purpose;

"The trial court shall determine whether termination of the
respondent's parental rights is in the best interest of the
minor child and in so doing, shall consider whether
termination is appropriate given the minor child's
placement with relatives."

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On May 30, 2012, this Court received evidence from Psychologist Dr. Paul Kitchen and from the caseworker Hope Murray-DeJong, Child Welfare Specialist, Department of Human Services as well.

Randy Vincent was born on September 12, 2008 and his father Shawn Vincent testified at the Permanency Planning Hearing that the last time he saw Randy that Randy was about six months old. Randy is now three and a half years old so he has not seen his father for three years.

The father's earliest release date for the crime of criminal sexual conduct of Randy's half-sister is October 27, 2014. At that time Randy will be six years old. He then will not have seen his father for five and a half years.

Dr. Paul Kitchen testified that he felt that it was not just preferable that Randy be adopted but that it was "crucial". Dr. Kitchen discussed the option of establishing a guardianship for Randy in his current placement and definitely recommended against such an arrangement. Dr. Kitchen explained that if Randy was older his recommendation might be different but at the age Randy is now he is forming a bond and shaping his personality and that if he does not form a bond now "it won't happen".

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Dr. Kitchen noted that a guardianship is much less permanent than an adoption. A guardian can walk away from a child at any time while in an adoption a parent makes a life-long commitment.

In addition in the instant case the child is with maternal relatives and not relatives of the father. There is not an ongoing positive relationship with the present caretakers. Mr. Vincent testified that he did not want his son placed in the current placement so the likelihood of a positive ongoing guardianship relationship between the potential guardians and the father is not probable.

Dr. Kitchen testified that Randy has no bond with his father and as the Court of Appeals noted in their previous opinion;

"Furthermore, the trial court entered several orders when respondent was incarcerated notifying respondent what he needed to do to retain his parental rights. Respondent failed to substantially comply with these orders. Specifically the court ordered respondent to communicate with the minor child by writing two letters each month and sending correspondence on holidays. Respondent did not fulfill the monthly letter obligation and did not send holiday communications. The court also ordered respondent

to obtain employment while incarcerated and to provide support to the minor child. Although respondent obtained employment, he did not provide child support. Moreover, the court ordered respondent to participate in a prison program that serves children, i.e., the "Angel Tree" program; however respondent failed to do so."

Dr. Kitchen also interviewed the father by telephone and his six page report concludes the following;

In conclusion, Mr. Vincent's overall profile would suggest an individual with a very dysfunctional family of origin who admits to having attachment issues in the past. Attachment issues generally become a deeply ingrained way of dealing with the world around an individual and tend to affect future relationship and interpersonal interactions. Mr. Vincent also admits to using marijuana somewhat frequently prior to being incarcerated. Because of these issues, this examiner believes that Mr. Vincent is likely to have difficulty parenting his son effectively upon his release. He will have difficulty developing adequate emotional bonds with his son and his concrete parenting awareness will also make it difficult for him to develop adequate parenting skills. Mr. Vincent certainly does appear to have a genuine desire to be a parent for his son

but this examiner believes that there are some significant concerns that would make it difficult for him to reestablish his parenting relationship with his son upon his release.

The caseworker Hope Murray-DeJong, child welfare specialist, Department of Human Services presented evidence in the form of testimony and a court report. She noted that Randy is at a very young age and in need of permanence and that an alternative arrangement such as placement with relatives in a guardianship does not allow for permanence in Randy's life. In addition three and a half year old Randy is very bonded with "the only family he has known" and Mr. Frisbie is the only father he has known.

Randy refers to Mr. and Mrs. Frisbie as "Mom" and "Dad" and refers to their son, his cousin, as "brother".

As the Court of Appeal stated in the case of Glover v. McRipley, 159 Mich App 130, 147 (1987);

"We also believe that as indicated by the expert testimony in this and other cases, the importance of residence with a biological parent pales beside the importance of stability and continuity in the life of a child."

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THEREFORE, this Court, after fully considering whether termination of parental rights is appropriate given the minor child's placement with relatives, does find by clear and convincing evidence that it is in Randy Vincent's best interest that the parental rights of Shawn Vincent be terminated.

IT IS SO ORDERED.

Dated _____

FRANK D. WILLIS, Judge

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
July 5, 2012

In the Matter of R. L. VINCENT, Minor.

No. 307202
Van Buren Circuit Court
Family Division
LC No. 10-016738-NA

AFTER REMAND

RECEIVED
VAN BUREN COUNTY
JUVENILE COURT

Before: BECKERING, P.J., and OWENS and RONAYNE KRAUSE, JJ.

JUL 06 2012

MEMORANDUM.

FRANK D. WILLIS
JUDGE OF PROBATE

This case returns to this Court after remand to the trial court. Before remand, respondent father appealed as of right the trial court's order terminating his parental rights to the minor child. The trial court concluded that there were statutory grounds for termination under MCL 712A.19b(3)(g) and (h) and that termination was in the minor child's best interest, MCL 712A.19b(5). We affirmed the trial court's determination that two statutory grounds supported termination but vacated its best-interest determination and remanded for further consideration of that issue, including whether termination was appropriate given the child's placement with relatives. See generally *In re Mays*, 490 Mich 993; 807 NW2d 307 (2012) and *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). Having reviewed the trial court's best-interest determination on remand, we affirm.

Once the petitioner has proven a statutory ground for termination by clear and convincing evidence, the circuit court must order termination if "termination of parental rights is in the child's best interests." MCL 712A.19b(5). We review for clear error a trial court's best-interest determination and its decision to terminate parental rights. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A decision is clearly erroneous when, "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C).

We conclude that the trial court did not clearly err in finding that termination of respondent's parental rights is in the child's best interests. See MCL 712A.19b(5). Forensic psychologist Dr. Paul Kitchen testified that, even though the child was currently placed with

relatives, termination was in the child's best interest because of the child's need for stability and permanency at his young age. See *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011) (considering child's need for stability and permanency). According to Kitchen, a guardianship would not provide the child with the stability and permanency needed when compared to adoption because guardianship is much less permanent than adoption. Kitchen emphasized that adoption was not only preferable but crucial to the child because the child would form important bonds, his personality, and his ability to relate to others before the earliest date respondent would be released from prison. According to Kitchen, if the child "doesn't form a bond now . . . it's not gonna happen." Furthermore, the record evidence demonstrates that the child has no bond with respondent. Upon respondent's earliest release from prison, the child would be six years old and would not have seen respondent for about five and one-half years. Moreover, respondent did not comply with his court-ordered obligations: monthly letters to the child, child support, and participation in the "Angel Tree" program that serves children. Accordingly, we are not left with a definite and firm conviction that the trial court mistakenly determined that termination of respondent's parental rights is in the child's best interest.

Affirmed.

/s/ Jane M. Beckering

/s/ Donald S. Owens

/s/ Amy Ronayne Krause