Order

Michigan Supreme Court
Lansing, Michigan

February 1, 2012

144108 & (45)

In re KRUPA, Minors.

SC: 144108
COA: 302834
Ingham CC Family Division:
08-001600-NA; 08-001601-NA

_____/

On order of the Court, the motion to consider additional transcripts is GRANTED. The application for leave to appeal the October 25, 2011 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals. The Court of Appeals misapplied the clear error standard by engaging in improper fact-finding and substituting its judgment for that of the trial court. MCR 3.977(K); MCR 2.613(C); *In re Miller*, 433 Mich 331 (1989). As a result, the Court of Appeals rendered a decision that was contrary to the clear and convincing evidence supporting the statutory grounds for termination under MCL 712A.19b(3)(g) and (j). We REMAND this case to the Court of Appeals for it to address the remaining issue raised by the respondent on direct appeal—whether the trial court erred in determining that termination of parental rights was in the children's best interests. MCL 712A.19b(5).

We do not retain jurisdiction.

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

February 1, 2012

Clerk

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STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
October 25, 2011

In the Matter of KRUPA, Minors.

No. 302834
Ingham Circuit Court
Family Division
LC Nos. 08-001600-NA
08-001601-NA

Before: SHAPIRO, P.J., and WILDER and MURRAY, JJ.

PER CURIAM.

Respondent-father appeals as of right from a circuit court order terminating his parental rights to the two minor children pursuant to MCL 712A.19b(3)(c)(*i*),[1] (g),[2] and (j).[3] The children's mother's parental rights were also terminated, and she did not appeal.

We reverse and reinstate respondent's parental rights.

I. BASIC FACTS

The Department of Human Services ("DHS") filed a petition for temporary custody of the children in August 2008. It alleged that respondent had been convicted of third-degree child abuse directed against his two year old daughter in 2004. In the same year, respondent and the children's mother separated and have remained so since. The record is unclear as to the how respondent and the children's mother shared custody from 2004 to 2007, but in 2007, respondent was again substantiated for physical abuse when the children were found "with marks on their face that appeared to be a handprint" after being in respondent's custody.

Based on the mother's plea, the court entered an order of adjudication on September 22, 2008; it entered the initial dispositional order on October 22, 2008. The children were placed with respondent's mother, and both parents were ordered to comply with the case service plan.

[1] Conditions that led to the adjudication continue to exist.

[2] Unable to provide proper care and custody.

[3] Child is reasonably likely to be harmed if returned to the parent's home.

The initial service plan recommended a substance abuse assessment, drug screens, individual counseling, parenting classes, employment, suitable housing, and family visits. According to the ISP, respondent was at that time living with his brother and working full time at a Wendy's outlet.

The updated service plan focused primarily on the mother's progress with services. The only information regarding respondent was that he was attending supervised visitation and had "made improvements during his visits making sure that [the children] both have his attention." Respondent had "trouble with getting [the children] to follow directions, cleaning up, putting on their jackets, not climbing all over him at times, and running around the waiting room after visit[s]."

The updated service plan for the December 2008/March 2009 review period reported that respondent had completed a psychological evaluation. Respondent was attending family visits and had enrolled in parenting classes. He had also made an appointment for a substance abuse assessment. The children had apparently been moved from respondent's mother's home to licensed foster care.

The report from the psychological evaluation conducted by Robert Fabiano provided in part:

> [Respondent is] a young man who performs well within the normal range in areas of intellectual functioning and core academic achievement aptitudes. Unfortunately, his educational and vocational development to this point has been grossly underachieving. He is actually a relatively smart young man who could perform additional vocational training or college course work if he had the mind set and motivation. Instead, he finds himself within the service industry in a job which is relatively unskilled and limited in terms of his earning capacity.
>
> [Respondent] does have a past history of child abuse. While he presents himself as being very willing to undergo treatment, I do have considerable concerns in terms of him being able to function as a primary parent. He appears to be marginal at this time and I think at most, he is an individual who perhaps would maintain some degree of joint custody if there was a stable primary parenting responsibility which was not his. He certainly has a number of issues that still need to be addressed before he can be at a better point of stability.

Fabiano recommended a psychiatric evaluation because he believed that respondent reported prior treatment for bipolar disorder. He also recommended individual counseling to address "basic behavioral management and self management skill including further improvement in communication and anger management," and vocational training.

The updated service plan for the June/September 2009 review period reported that respondent had completed parenting classes. He attended family visits regularly and, while the "visits have improved in nature," respondent

> still has a hard time parenting the children. They treat him more like an older brother than a father. . . . Mr. Krupa at times does not show the best judgment

> during his visits. The caseworker has found him playing in a drain field with the children behind the agency after having his daughter put on a bandana as a top. Mr. Krupa has a hard time getting the children to follow directions and often times will not even try to redirect.

Respondent had completed a substance abuse assessment and was found not to require treatment. He had started counseling but had not yet scheduled a psychiatric evaluation. He apparently lost his job at Wendy's but found a new full-time job at another restaurant. Respondent was leasing a two-bedroom trailer owned by his mother. An inspection showed it "to be dirty and being used more as storage then [sic] a home."

The updated service plan for the September/December 2009 review period reported that respondent was still attending family visits and was "good about playing with the children" but poor in exercising parental authority. Respondent had seen his therapist only five times since June and was last seen on October 27, 2009. The therapist had tried without success to contact him. Respondent had yet to complete the psychiatric evaluation. Respondent was still at the restaurant, but was working only part time. A home visit showed that his trailer "smells of cats and their litter" and that the bedrooms were "more storage than livable rooms."

The updated service plan for the December 2009/March 2010 review period reported that respondent was still attending family visits and, while he was still more of an older brother than a father to the children, he was "learning to follow recommendations" and was "getting the children to follow directions and has redirected them when appropriate." Respondent had completed his psychiatric evaluation and was back in counseling; the therapist reported that respondent "has made great improvement and that he is able to identify different areas where he can improve and work out the proper way in which to do so." Respondent was working full time again at the restaurant. He had made "great progress" with the state of the trailer; "he has cleaned out almost all the extra items that were in the home just for storage and has made improvements through out the home."

Respondent saw Susan Michalowski for a psychiatric evaluation in February 2010. She noted that respondent did not display symptoms of bipolar disorder but that he did report having been so diagnosed at one time. After reviewing the report of Dr. Fabiano's earlier psychological evaluation, Michalowski recommended that respondent "return to the clinic to discuss his treatment plan for his Bipolar Disorder with medications and counseling." She stated that respondent "will need ongoing psychiatric care . . . , especially if the children are going to be returned to his care."

Respondent continued to address his issues during the next reporting period, and in June 2010, the court placed the children in his home with directions that he participate in the intensive neglect services program and obtain advance approval for any childcare providers.

Three months later, petitioner sought to have the children removed from respondent's care. The petition alleged that after the children returned home, respondent had become lax with housekeeping. Screens that were torn or missing in July were still unrepaired. Smoke detectors were not working and, when respondent was provided with new ones, he did not install them. Visits in September 2010 revealed that respondent had not enrolled the children in school before

the start of classes, but he did register them in the first week of school. Respondent was having his brother babysit the children while he was at work, but his brother was not an approved childcare provider. Respondent and the children had been missing therapy sessions, and respondent failed to appear for the last two mandated parent support groups through the Intensive Neglect Services ("INS") program. The mother reported that when the children visited her, they were dirty and stated that they were not given baths. The girl reported that respondent "had slapped her on the back and arm" for being disobedient. A home visit on September 2, 2010, revealed that respondent's home was "in deplorable condition." Specifically,

> Clothes were strewn about on furniture and the floor, cat food was scattered about the floor, and an old used carpet had been pulled into the home but rather than being laid flat for use it was heaped across the breadth of the living room floor causing a hazard. Open bags of garbage were strewn about the kitchen and living room floor with some un-bagged garbage also on the floor. There was also a large trash sized plastic bag of cans propped on furniture in the living room, toys were haphazardly thrown about in the garbage and other clutter on the floor and the kitchen table was also littered and dirty. Dirty dishes were also stacked on the kitchen counter top and scattered about the living room area with dried food left on them. On the outside of the home the attached porch was also very cluttered and dirty. The porch is approximately 8 x 12 feet, or more, and was virtually covered. Access to the home was through a very narrow path up the steps and to the door, along with a small patch of clearing for the door to swing open. Clutter, including toys, discarded objects and trash was stacked and tossed as high as four feet.

Respondent was told that the condition of the home was unacceptable and must be rectified. A week later, the conditions were unchanged. The court removed the children from the home, returned them to foster care and supervised visitation was reinstated.

The report for the October 2010/January 2011 period stated that respondent was consistently late for family visits, sometimes by as much as half an hour. During visits, he "appears to have trouble coming up with different ways to interact with the children" and sometimes would "just sit[ ] on the couch or chair talking about the case with the children or how he is very [sic] going to see them again." The children had begun complaining of being "sick" on visitation days. Respondent "started to work on the screens for the windows and installed the working smoke detectors" in the trailer. The worker had since been unable to gain access to respondent's trailer during unannounced visits. Exterior inspection showed that "there are still screens to be replaced, and the items on the porch have increased." The worker reported that "[t]here is trash, noodles in containers, bikes, broken furniture, clothes and more."

In the meantime, the DHS filed a supplemental petition for termination in December 2010. It alleged that respondent had used a babysitter (his brother) who had not been approved, had not registered the children for school in a timely manner, and failed to maintain a clean and safe home for the children despite specific instruction on how to clean up the trailer. In addition, respondent "has been observed to threaten his children with never seeing them again if the daughter dyed her hair; was observed to tickle and wrestle the son to the point that the child was

crying; and in general, not being able to read the behavioral or verbal cues his children were displaying during interactions."

The court held a hearing on the termination petition on January 24, 2011. Respondent testified that reunification efforts included addressing the condition of his home. Respondent believed his compliance with that element was "[n]ot completely" insufficient and that "[t]he stuff that was on the floor in the living room was just a project. And the house was generally childproof, for the most part." Despite the "few slight things wrong with" the home, respondent maintained that "there wasn't anything that could make them sick or hurt them, really."

Respondent admitted to talking with his caseworker about the condition of his trailer and that she had told him to install the smoke detectors, fix the screens, enroll the children in school, and "a couple of various other things that . . . I thought were minor." At the emergency removal hearing, respondent admitted that he "couldn't get it cleaned with them in my care." He explained that he went overboard "hav[ing] fun with" the children and "let the house get a little out of hand." Respondent believed he could keep the trailer clean if the children were returned because he had been managing to keep it clean while living alone and the children "would be in school, anyway." Respondent had installed smoke detectors and removed all the junk. Respondent added that his "stamina has greatly increased, and I have been able to work a lot of hours, and sometimes three or four shifts in a row without sleep," so it should not be a problem to maintain the house and take care of the children. Respondent testified that he had reduced his work schedule and could spend more time with the children if they returned home.

Respondent admitted that he delayed in getting the children enrolled in school because "all my paperwork wasn't all in when I . . . thought it was," but stated that "they were in school the day they were taken out of my care," which was "two days after school started." Respondent testified that he would enroll the children in the same school if they were returned to his care. No one from the school district had ever said that the children could not attend the school.

Respondent admitted that he was told that his brother was not a suitable babysitter and "I went and had him do it anyway, when I shouldn't have. But no one has ever told me why he couldn't watch them."[4] Respondent stated that he would use his mother, an approved childcare provider, as a babysitter in the future.

Respondent testified that because supervised visits were only an hour long, "not a lot gets done mentally," but that the children "adore me and they lay all over me and stuff." Respondent testified that during visits, he wrestled with the children, hugged them, brought them "stuff from home," got them toys or food or books, asked how they were doing in school, talked to them about church, and gave the foster parents "money to get them books."

[4] One witness testified that the brother was not a suitable caretaker because he had bipolar disorder. The foster care worker testified that she advised respondent that his brother was not a suitable caretaker for the children because of the "brother's mental illness concerns and prior CPS removal with . . . his brother being the caregiver in his mother's home."

Respondent testified that he had engaged in services for reunification, that he completed a psychological evaluation had not been referred for any subsequent evaluations. He testified that he had completed parenting classes. He further testified that the children were returned to his care in June 2010 under the INS program and that as part of that program, he was to attend group therapy and "do the Proud Parents" program. However, the Proud Parents program conflicted with his work schedule, so he did not attend, but he intended to talk to the worker about finding something else that would fit into his schedule. Respondent testified that he did not have a substance abuse problem, that he attended church regularly and had

> learned a lot about anger and everything else leading up to if there's a kid, the kid's having problems, I would know how to handle it, spiritually and mentally. I wouldn't have to take as much physical action. I know how to talk to them, and . . . they respect me as a father and they don't . . . misbehave in my care, for the most part.

Deborah Bieman, the INS worker, testified that she worked with respondent from June 14 to September 9, 2010. Bieman testified that the condition of respondent's home was "okay," but "from day one, since I was involved with the family, it clearly was a home that continued to need work." Initially, "there was a lot of clutter throughout the house. There were some repairs that needed to be done too. There was a lot of real general cleanliness issues that needed to be addressed." The foster care worker had discussed the problems with respondent and Bieman continued to do so.

Bieman testified that, on July 16, 2010, she found "a lot of clutter" and "stuff strewn all over the place." "There was a lot of stuff on the floors, a lot of dirt, a lot of clutter, a lot of food, mostly crumbs and stuff like that." "There were things all over the kitchen table" and dishes stacked on the counter. Respondent shared a bedroom with his son and one of the beds was piled a foot high with clothes "thrown all over the place." In addition, respondent needed to fix or replace some screens and replace the smoke detectors.

Bieman testified that in late August, respondent had not yet fixed the screens, although he had purchased the materials for the repairs. Bieman "offered to actually show him how to do it a number of times." Respondent had not replaced the smoke detectors, and Bieman gave him new ones.

Bieman testified that she returned to the home on September 2, 2010, and found the trailer to be in even worse condition than before. It was "deplorable," and Bieman "told Mr. Krupa at that time, it was the worse [sic] I had ever seen." The trailer was in the condition described in the removal petition. Respondent agreed that the condition was "totally unacceptable" and promised to have it cleaned up by the next day. Bieman returned six days later, but it had not been cleaned up. The rolled-up carpeting was still on the floor, there were "things all over the furniture that were just thrown all over the place," and Bieman saw cat food and kitty litter "all over." Bieman stated that "there was so much stuff on the floor that you could not walk probably more than two steps without falling over something." Bieman testified that, around this time, there were problems with the children's personal hygiene. The mother reported that when the children visited, "they were dirty and did not smell right, and they

indicated that they had not bathed for a couple of days." Bieman was not aware of the children sustaining any injuries because of the condition of the home.

Bieman testified that she had been speaking to respondent about enrolling the children in school "for a good month before school started." She offered to help him obtain necessary documents and to give him "a ride over there," but respondent insisted that he would take care of it. When school started on September 7, the children had not been enrolled and were at home with respondent's brother on September 8. The children started school the following day.

Bieman testified that respondent attended parent support groups as recommended until about two weeks before the removal, but then "[a]ll of a sudden he just decided he wasn't going to come, he wasn't calling me as to why." She further testified that while respondent "missed a few sessions [of therapy,] he [had been] relatively good in terms of rescheduling them." However, she stated, "during the same time that he seemed to drop out of the support group, he dropped out of therapy as well."

Bieman testified that respondent had "pretty good" communication with the children. He seemed to be "more of a pal, a friend," than a parent, "but there was good interaction there." Bieman opined that respondent benefited from the INS program "in some respect in terms of interacting with the children[,] but in order to provide them with a clean and safe home, no."

Melissa Ingles, the foster care worker since September 15, 2008, testified that respondent's barriers to reunification included emotional stability, parenting skills, domestic violence, and housing conditions. Respondent had received all the services that could be offered including psychological and psychiatric evaluations, a substance abuse assessment, parenting classes, individual therapy, family visits, bus tokens, and INS.

Ingles testified that respondent completed a substance abuse assessment. It did not reflect a substance abuse concern. Ingles testified that respondent completed therapy and "it recommended no further therapy." Respondent completed parenting classes. After the children were removed from the home in September 2010, Ingles offered respondent the Proud Fathers program but "he said due to his work schedule he was unable to attend it" and that respondent was "unsuccessful" with the INS program.

Ingles testified that respondent had both supervised and unsupervised visitation. Respondent did not attend all supervised visits, but those "he missed were due to work conflicts." She stated that during visits, respondent made an effort to apply the skills taught in parenting classes but problems had occurred during the most recent visits. Ingles explained,

> As of late, Mr. Krupa's visits have been supervised and he has been observed bringing the children gifts and talking to them about the case, . . . telling them, you know, make sure you tell everyone you love me and whatnot. He's also rough-housed with the children to the point that his son has cried. He's also threatened to not come to visits if his daughter had her hair dyed back to its original color. Mr. Krupa has also made negative comments about [the mother] during these visits, . . . very inappropriate. Prior to that, his visits were more like a big brother. He played with the children and interacted with them, helped them

> with homework or math and reading skills, though I would still describe it as an older brother, just due to not consistent with follow-through and just kind of nonchalant.

She also stated that since the September 9, 2010, removal, the children had complained of having a stomachache before "almost every other visit." However, she also thought that respondent was emotionally close to the children.

Ingles testified that respondent's emotional stability was still an issue "due to his interactions with his children at this time during parenting visits." She stated that respondent was "being inappropriate, at times very distant, really emotional with the children." Respondent's parenting skills and housing conditions had not improved to the point of sustained reunification.

Ingles testified that she had been to respondent's home recently. There was "a decrease in the clutter in the home," but the daughter's room was "still messy" and the porch "still had trash and food and broken toys and whatnot." Ingles stated that respondent is able to clean the house, but is "not consistent with it" and he "consistently hasn't had a safe and healthy home." Ingles opined that the children were likely to be harmed if returned to respondent given his "history of being unable to provide the children with a safe and stable healthy environment and using inappropriate childcare providers and not being able to follow up with services the children need."

The trial court took the matter under advisement and issued a written opinion on February 8, 2011, terminating respondent's parental rights as well as those of the children's mother. The court ordered termination of respondent's parental rights under §§ 19b(3)(c)(*i*), (g), and (j). It explained:

> First, the Court finds that 182 days have elapsed since the October 22, 2008 dispositional order and conditions that led to adjudication continue to exist. While it is not likely that the parents would again use excessive physical discipline, the parents have not been able to provide sanitary, stable housing for the children on any consistent basis for over two years. . . .
>
> The Court further finds that there is no reasonable likelihood that the parents will rectify these conditions within any reasonable period of time considering the fact that the children are 8 and 7. Unfortunately, the parents' psychological evaluations in 2009 were predictive. . . .
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> * * *
>
> As for Respondent Krupa, Dr. Fabiano had "considerable concerns in terms of him being able to function as the primary parent." He was characterized as "marginal" with a number of issues to be addressed with a number of structural interventions.

Respondent Krupa was given the structured services of the Court's Intensive Neglect Services Program after he complied with various services provided by the DHS. He was unable to benefit from these services.

It is clear that neither party will be in a position to provide care for these children within any reasonable time. While the Respondent Father did maintain his household for a few months, his home quickly deteriorated as he became overwhelmed by the duties of a custodial parent. . . .

Similarly, this reality establishes that MCL 712A.19b(3)(g) has been met. While both parents love their children and are giving it their best effort, these efforts fail to produce proper care or custody over a sustainable period of time. As discussed above, these parents are not apt to change this within any reasonable time frame, considering the ages of the children.

Finally, there is also a reasonable likelihood that the children would be harmed based on the conduct and capacity of the children's parents if returned to their care. . . .

Mr. Krupa's inability to maintain sanitary conditions poses a direct risk of harm to the children's health. His failure to follow through with simple tasks such as enrolling the children in school and doctor's appointments are of additional concern. Both parents lack also the emotional maturity to be parents. Mr. Krupa threatened never to see his children again if his daughter dyed her hair. The two together continue to argue with each other speaking poorly to the children about the other.

The Court further finds that the children's best interest would be served by termination of parental rights. Multiple removals have a significant impact on the children's emotional well being. The children were pleased that their former foster placement was available to them but this was their third foster home in over two years. While the children have a bond with their parents, this bond has suffered due to the extended time in foster care.

II. ANALYSIS

To order termination pursuant to a supplemental petition, the trial court must first find that at least one statutory ground for termination has been proven by clear and convincing evidence. MCR 3.977(H)(3)(a); *In re Trejo*, 462 Mich 341, 350, 360; 612 NW2d 407 (2000). A trial court's finding that a statutory ground for termination was proven by clear and convincing evidence is reviewed for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich at 356-357. "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

Even though the court expressed justified concerns about respondent's ability to fully meet the duties of parenthood, we nevertheless reverse.

First, we conclude that the trial court erred in determining that § 19b(3)(c)(*i*) was proven by clear and convincing evidence. MCL 712A.19b(3)(c) provides that parental rights can be terminated if

> [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]:
>
> (*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.

The trial court clearly erred in finding that § 19b(3)(c)(*i*) was proven by clear and convincing evidence. The record indicates that the court acquired jurisdiction over the children based on the conditions in the mother's home pursuant to her admission "that she was testing positive for marijuana, was homeless without adequate housing for the children and had used a belt to discipline her 6-year-old inappropriately." Because there were no conditions relating to *respondent* that gave the court jurisdiction over the children, there were no conditions related to *respondent* that led to adjudication that continued to exist. Thus, reliance on this section of the statute was improper.

Second, we conclude that the trial court erred in determining that § 19b(3)(j) was proven by clear and convincing evidence. MCL 712A.19b(3)(j) provides that a court may terminate parental rights if "[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." While respondent failed to properly maintain the home when the children were returned to his care for three months, the evidence did not demonstrate by clear and convincing evidence that the conditions were likely to result in the children being harmed.

At the termination hearing, a DHS case worker testified that there was a reasonable likelihood that the children would be harmed if returned to respondent because of respondent's "history of being unable to provide the children with a safe and healthy environment and using inappropriate child care providers and not being able to follow up with services that the children need." However, that same DHS worker, plus another who testified at the hearing, provided testimony establishing: (1) that respondent had no issues relative to alcohol or drug use; (2) that respondent was gainfully employed; (3) that respondent attended his individual counseling, and the counselor recommended that he needed no further counseling; (4) that respondent had no psychological impairment or condition; and (5) respondent had his own housing. Thus, these facts already take this case out of the "normal" termination case typically reviewed by this Court. However, the concerns outlined by the DHS worker's testimony quoted above, except for that regarding the conditions of the home, proved to be without basis.

For instance, with respect to respondent's use of "inappropriate child care providers," the testimony is undisputed that on *one occasion* respondent had allowed his brother to watch the children (while respondent was at work) even though the DHS worker had told him that he should not leave the children under the supervision of his brother. Obviously, as respondent recognized, he should have listened to the DHS worker, but as respondent also testified, there had never been any problems with his brother watching the children in the past, and nothing

inappropriate occurred during the one time he allowed his brother to watch the children during these proceedings. Additionally, there was only one instance where respondent did not follow up with services the children needed, and that again was because it interfered with his work, and he indicated to the DHS worker that he would continue attending group therapy sessions with INS. And the evidence was undisputed that respondent followed through with all other classes and programs required by DHS during these proceedings.

Additionally, the DHS worker was overly critical of respondent's "emotional instability," particularly when one considers the undisputed fact that respondent had no psychological issues as determined by the psychological evaluation and individual therapy session. The one example of "emotional instability" that the DHS worker referenced was when respondent appeared overly emotional with the children after the children were taken away from respondent (who had been caring for them at home for three months) and only was provided one hour per week of supervised visitation. This is hardly surprising given the bond between respondent and the children that was noted throughout the hearing, and the severe restriction on parenting time placed on respondent who had never caused any harm to these children.

This leaves us with the biggest concern articulated by DHS and the trial court, that being the condition of the home. Unfortunately, we are only provided with testimony regarding the conditions of the home, as apparently either no photographs were taken or, if they were, they were not admitted into evidence. In any event, accepting as true the testimony from the DHS case workers, it is undeniable that the home was – in the last few months leading to the termination petition – usually a mess. The testimony from Ms. Ingles at the termination trial adequately explained the condition of the home:

> Clothes were strewn about on furniture and the floor, cat food was scattered about the floor, and an old used carpet had been pulled into the home but rather than being laid flat for use it was heaped across the breadth of the living room floor causing a hazard. Open bags of garbage were strewn about the kitchen and living room floor with some un-bagged garbage also on the floor. There was also a large trash sized plastic bag of cans propped on furniture in the living room, toys were haphazardly thrown about in the garbage and other clutter on the floor and the kitchen table was also littered and dirty. Dirty dishes were also stacked on the kitchen counter top and scattered about the living room area with dried food left on them. On the outside of the home the attached porch was also very cluttered and dirty. The porch is approximately 8 x 12 feet, or more, and was virtually covered. Access to the home was through a very narrow path up the steps and to the door, along with a small patch of clearing for the door to swing open. Clutter, including toys, discarded objects and trash was stacked and tossed as high as four feet.

However, it is equally true that the children were never harmed by any of the conditions of the home[5] and that the children had been put into respondent's custody for three months, which obviously shows that the home was in a proper or sufficient condition at the time of initial placement. The fact that respondent had difficulty in the latter part of these proceedings maintaining the cleanliness of the home was certainly an issue, but it is also something that he had at times addressed, as conceded to by the DHS worker. In our view, to affirm the trial court's holding would be to condone the State's permanent removal of children from a parent who is otherwise meeting the basic obligations of a parent, because respondent, a young, single, fully employed father has difficulty maintaining a clean home.[6] This is not meant to detract from the poor condition inside the home, but is instead a recognition that more than what was presented at the termination hearing is required before the State should be permitted to permanently cut the legal ties between a parent and his children. *Santosky v Kramer*, 455 US 745, 753-854; 102 S Ct 1388; 71 L Ed 2d 599 (1982).

In addition, the trial court seemed to address both parents together under § 19b(3)(j), and respondent may have been prejudiced by the fact that significant harm did come to the children when they were in their mother's sole care.

Finally, we consider § 19b(3)(g), which provides for the termination of parental rights if "[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." (Emphasis added.) The trial court clearly erred when it determined that respondent failed to benefit from services. Given respondent's efforts and progress, his lack of any substance abuse, his consistent employment, and the limited nature of the problems leading to the most recent removal, we are left with a definite and firm conviction that the evidence did not prove by a clear and convincing standard that there was no reasonable expectation that he would be able to provide care and custody within a reasonable time considering the children's ages.

Reversed.

/s/ Douglas B. Shapiro
/s/ Kurtis T. Wilder
/s/ Christopher M. Murray

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[5] There was no testimony that the clutter contained any sharp or dangerous items. Instead, the only potential danger was from the children tripping over the items.

[6] Although there was some concern about respondent not having operational smoke detectors and carbon monoxide detectors, once the DHS provided them to him, he had them installed. Additionally, respondent had made some effort to repair screens in the home.