

STATE OF MICHIGAN
IN THE SUPREME COURT

On appeal from the Court of Appeals
Judge Markey Presiding, and Judges Whitbeck and Gleicher

IN THE MATTER OF RICHARD HUDSON,
DENNIS MORGAN, and MICHAEL MORGAN,
Minors.
_____ /

Supreme Court
No. 137362
Court of Appeals
No. 282765

CLINTON COUNTY PROSECUTOR'S OFFICE and
DEPARTMENT OF HUMAN SERVICES,

Family Court
No. 05-018269-NA

Copetitioners-Appellants,

-vs-

MELANIE MORGAN,

Respondent-Mother-Appellee,

ANDREW TANNER,

Respondent-Father.
_____ /

BRIEF IN SUPPORT OF CO-PETITIONERS-APPELLANT'S APPEAL

ORAL ARGUMENT REQUESTED

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STATEMENT OF QUESTIONS INVOLVED

QUESTION I:

WHERE RESPONDENT-APPELLEE HAD NO HOUSING NOR JOB AFTER 2 1/2 YEARS, DID THE TRIAL COURT CLEARLY ERR WHERE IT FOUND CLEAR AND CONVINCING EVIDENCE TO SUPPORT STATUTORY GROUNDS FOR TERMINATION?

Co-Petitioners-Appellants contend the answer is: "No".

Respondent-Appellee's answer is: "Yes."

The Trial Court's answer is "No".

The Court of Appeals answered: "Yes".

QUESTION II:

WHERE RESPONDENT-APPELLEE HAD NO HOUSING NOR JOB AFTER 2 1/2 YEARS, DID THE TRIAL COURT CLEARLY ERR WHEN IT FOUND THAT TERMINATION OF PARENTAL RIGHTS WAS NOT CONTRARY TO THE BEST INTERESTS OF THE CHILDREN?

Co-Petitioners-Appellants contend the answer is: "No".

Respondent-Appellee's answer is: "Yes"

The Trial Court's answer is: "No".

The Court of Appeals answered: "Yes".

QUESTION III:

WHERE THE ISSUES RAISED BY RESPONDENT-APPELLEE IN THE COURT OF APPEALS WERE PROPERLY DECIDED, DOES THIS COURT NEED TO ADDRESS THEM?

Co-Petitioners-Appellants contend the answer is: "No".

The Trial Court's answer is: "No".

The Court of Appeals answered: "No".

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

The Clinton County Trial Court terminated Respondent-mother's parental rights to Richard Ryan Hudson, born April 5, 1991; Dennis Morgan, born July 7, 1999, and Jordan, born October 17, 2002 on November 30, 2007. (Appendix, page 25a)

Over three years ago, in September of 2005, the Respondent made admissions to the Petition. She stated there were some problems. (Appendix, page 145a) Under oath, Respondent admitted that they had previously been substantiated for neglect in 1999 and participated in services at that time as well as received services again between November, 2004 and May, 2005 and participated in Outreach therapy through Family Guidance and drug screens (Appendix, page 146a). She admitted that the home, on September 12, 2005, was in deplorable condition, that dirty dishes and old food filled the kitchen counters, there were piles of clothes throughout the home, and the floors were littered with small items that posed a risk to the two-year old child in the home. (Appendix, page 146a) She admitted that a Jonathan Morgan, an alcoholic, passed out in various places in the house and beer and vodka bottles were throughout the home. He had been so drunk, he'd lost control of his bowels in the home. (Appendix, page 146a) She admitted she had failed to pick up Dennis from school twice during the first week; and the oldest child had anger and aggression issues. (Appendix, pages 147a, 149a) Respondent admitted multiple other people were in the home when Tri-County Metro Narcotics searched the premises on September 12, 2005. (Appendix, page 148a) She was positive for Opiates. (Appendix, page 34a)

Following Adjudication, the Trial Court kept the children in the home and ordered the Respondent cooperate with services. Psychological testing conducted in September of 2005, interestingly noted that patients with Respondent's profile "may make a good impression at first because they can be sociable and outgoing, but their unreliability will frustrate others, as will their manipulateness." (Appendix, page 46a) Respondent was diagnosed with Dysthymic Disorder, Anxiety Disorder, Opioid Dependence and Antisocial Personality Features. (Appendix, page 52a) Her prognosis was poor due to the chronic component of her substance abuse and her depression as well as individual personality related issues. (Appendix, page 67a)

Respondent had already missed drug screens on October 12, 17 and 25, 2005 and tested positive for opiates on November 14, 2005. (Appendix, page 150a) On November 22, 2005, a Show Cause was filed alleging that Respondent tested positive for opiates and that other adults were still at the home contrary to the Court's Order, including a Claude Hubbard, who previously had his parental rights terminated and had a drug problem. (Appendix, page 151a) Respondent admitted going in quite often for her bad teeth and back, on and off, since 2002; that she goes to the ER for vicodin. (Appendix, page 152a). The Court found her in contempt of the Court Order for failing to comply fully with drug screens, her admission of opiates and failure to provide documentation. (Appendix, page 152a) The Court maintained the children in the home, however, stated that her concern was for their well-being and their welfare. The Court authorized removal if drug and alcohol use continued to be a concern. (Appendix, page 153a) Respondent continued to have dirty screens even after the Show Cause Hearing. (Appendix, pages 200a, 202a).

On January 12, 2006, the caseworker stated there were concerns regarding Respondent's level of functioning, that she continued to struggle with sleeping a lot during the day and staying up late with company. She continued to drop positive for opiates without showing prescription documentation. (Appendix, pages 154a, 160a) There had only been minimal progress with Families First, an intensive service, in the home. (Appendix, page 155a) There were four more adults in the home contrary to Court Order. (Appendix, pages 161a, 167a) The oldest child often felt helpless and hopeless and the supervision level was not where it needed to be according to the counselor who had definite concerns about the continued prescription use with Respondent (Appendix, pages 157a, 158a, 159a). The caseworker believed the children were at risk emotionally and that the drug use posed a risk to the children. (Appendix, pages 158a, 163a)

The Guardian ad Litem recommended removal of the children from the home. She believed it was in the children's best interests as the parents needed intensive in-patient drug and/or alcohol rehabilitation and psychological counseling. The home was dirty and there were more dirty drops since the Show Cause Hearing. (Appendix, page 69a) On January 12, 2006, the children were removed from the home due to substantial risk of emotional harm.

All the boys needed to be seen by an ENT for hearing loss and all three had extensive dental needs as well. Treatment plans were formulated for all the children due to the dental decay. (Appendix, page 168a) The caseworker had not received

documentation of AA or her treatment for substance abuse. She was not employed.

(Appendix, page 169a) The caseworker testified:

"When she was evicted from her last rental home she did move back in with Mr. Morgan even though he wasn't cooperating and they were getting divorced; however, today she showed me paperwork that her mother has purchased a trailer, two bedroom trailer, for herself and her mother in Kristana down the street from Mr. Morgan. Another thing that I made clear to her in our meeting is the importance of her having an updated medical and dental exam . . . if there were upfront fees . . . we would try to make arrangements to have those paid . . ." (Appendix, page 169a)

The caseworker noted:

"To date, there still appears to be limited progress with Mrs. Morgan since the children were removed. She still lacks employment and is dropping dirty for both Opiates and Cocaine. Mrs. Morgan does not seem to have accepted her issues with addiction and how these choices negatively impact her children. Mrs. Morgan has also failed to follow through with her need for physical and dental exams nor has she provided DHS with her prior medical records as required." (Appendix, page 140a)

* * *

"In 4/06 Ms. Morgan admitted to Ms. Giordano use of a friend's pain medication. She stated that this resulted in 1 negative drug screen. Ms. Giordano further stated that "Melanie continues to work toward goals but she moves more slowly and completing the areas she needs will be challenging." Mrs. Morgan also reported to her therapist that she missed some sessions of PATS and therefore five more sessions were added to her treatment plan." (Appendix, page 140a)

The caseworker had still received no documentation of medical or dental records, Respondent had failed to follow through with the physical and dental exams and had dropped positive for opiates and denied any use of cocaine. (Appendix, page 140a)

By July 2006, there was little progress with Respondent. She failed to document AA or therapy attendance and failed to follow through with a dental exam. She remained unemployed. She had tested for cocaine positive in May and opiates in June, yet denied use. After testing positive 6/6/06, she went to Sparrow and obtained more vicodin despite being told numerous times to inform the doctor she could not be prescribed vicodin. (Appendix, page 73a) She also had contact with Morgan, whose visitation was suspended. (Appendix, page 74a) Reunification was not seen as likely in the home she was staying in. (Appendix, page 73a)

Ryan had a Baha hearing implant, (Appendix, page 170a) Dennis had eye surgery, (Appendix, page 171a) and extensive dental work was being done due to extreme decay and rotting of the teeth which occurred in the parental home (Appendix, page 172a). The caseworker testified:

"She's currently living in a two bedroom mobile home with her mother. I have some concerns about the reunification plan . . . because how tiny the house is . . . I think that that would be setting her up for failure if we did reunification in that home particularly with Ryan because of the issues that he has . . ." (Appendix, page 173a)

Respondent was not employed and was receiving cash assistance and medicaid. (Tr 7/13/06, p 8). In June, 2006, she had arrived late for a visit and the transporter who

brought the children was getting ready to leave. (Appendix, page 174a) Testimony showed:

"Ms. Morgan kind of flew off the handle and was cussing at the previous caseworker. And at that point Ryan also began cussing at the caseworker . . . she really needs to be modeling appropriate behavior especially to Ryan . . ."
(Appendix, page 174a)

The caseworker was concerned that three more months would go by, and there would be no change at the permanency planning hearing. (Appendix, page 176a)

After a year of Court involvement, at the Permanency Planning Hearing, September 2006, Respondent had finally made some progress in paying bills and had a job. However, a year after jurisdiction, she had tested positive for cocaine and opiates, (Appendix, page 177a) and still did not have a home for the children. She lived with her grandmother in the same two bedroom trailer. (Appendix, page 178a) The caseworker testified Respondent could barely deal with her own emotional problems, let alone Dennis and Ryan's. In addition, although Respondent had earlier indicated that she would be divorcing Morgan, she had maintained a relationship with him, (Appendix, page 180a) and was positive for opiates again in December (Appendix, page 181a). The caseworker wanted Respondent to demonstrate whether or not she had the ability to do more responsible things with the children. However, she had not been honest about her substance abuse issues or her relationship with Michael Morgan, who was not participating in services. The caseworker questioned her credibility. (Appendix, page 179a)

Unsupervised visitation was considered many times. Subsequently, after another three months, in March 2007, the caseworker reported:

"We had discussed at the last court hearing the possibility of unsupervised visits, in fact Ryan had gone for a couple of unsupervised visits prior to that drop, the boys had not yet. As a result we have not had any . . . unsupervised . . . visits for the younger boys with mom. I have serious reservations about setting them up for what they perceive to be a return home. . . and then have that be pulled back because . . . she's got a dirty drop again . . . (Appendix, page 181a)

The caseworker testified that Respondent still didn't have a home for the boys, failed to enroll for health insurance when she'd been eligible and still was not ready for reunification. (Appendix, page 182a) The Court reminded her that:

"We're not at a place to return the children and it is getting tough and... it is getting to a point where we are going to have to make a decision....there comes a point where the lack of permanency no matter how hard you're trying hurts them." (Appendix, page 183a)

The Court advised the Respondent to make progress in areas where she had not because we were getting to a point where we were going to have to get off the fence. (Appendix, page 184a)

Respondent lost her job and benefits in approximately April 2007. (Appendix, page 185a)

"There was an issue at the end of the line where she was working, apparently is very hot, and she--she was working with machinery and she was dosing off as she was standing up there, so there was a concern about her putting her limbs or part of her body . . . in the machinery and it was a liability for the company." (Appendix, page 188a)

She still did not have a home for the boys and had dropped dirty again. During the spring of 2007, Ryan had been going back and forth between a foster home in Eagle to unsupervised weekends with Respondent, at unknown locations at times, Morgan's sister's place where Respondent was staying or grandma's trailer. (Appendix, page 222a) He was spending time in therapy talking about the difficult transition between the two homes because the boundaries, rules and expectations of behavior were different. (Appendix, pages 220a, 223a)

The caseworker stated that there had been some stagnation in terms of Respondent's progress, that there was not much difference than in previous quarters. She had lost her job but found another which paid significantly less and without benefits. (Appendix, page 185a) He further stated:

"The issue is any time we get to the next step where there is a little bit more responsibility we seem to take a bit of a back slide and as a result this case has been going on for 17 months. I feel that I don't have any other choice at this point other than to proceed with termination.

We did have dirty drop over the report period for Vicodin. Mrs. Morgan has explained that that was due to having teeth pulled and she was prescribed Vicodin . . . we have had conversations about the fact that she is an addict . . . She needs to be very clear about that and let the doctor know . . ." (Appendix, page 186a)

A number of times, the caseworker stated, that he looked into expanding or moving to unsupervised visits. However, every time he got to that step, there was a dirty drop, job issue or transportation issue. (Appendix, page 187a) He stated:

"Ryan I know . . . has had ongoing visits unsupervised . . . but I think his dynamic is quite a bit different than the

young boys and I just don't feel comfortable at this point sending a four and a almost eight year old boy for unsupervised visits know knowing what the situation is specifically going on over there." (Appendix, page 187a)

She still didn't have a home; she still lived with her grandmother. There was not adequate room for the boys. Her grandmother was her mode of transportation.

(Appendix, page 188a) The Court stated:

"It's been 17 months and these children -- you're not ready for them to come back at this point and your children need some permanency and . . . we're not close . . . I think that we are at a point where they will start to suffer if they're held in limbo a lot longer." (Appendix, page 189a)

The Department of Human Services gave Respondent even more time after being authorized to file the Petition to Terminate in June 2007. Respondent failed to attend the September, 2007 Hearing. The Court noted in September 2007:

“. . . based on the information I received it's fairly contrary to the welfare of the minor children to be returned home to their mother. . . it seems to be back sliding the last two reporting periods. And while I respect her therapist, I do agree with the guardian ad litem's statement that this is about the children--they are the ones over whom I have jurisdiction, it is their safety and well-being that I have to look out for. Their lack of permanency is a concern..." (Appendix, pages 190a, 191a)

Testimony on November 30, 2007, revealed that Respondent still had no home and no job. She had not divorced Morgan. She could not care for the emotional or physical needs of the boys. (Appendix, page 217a) Respondent had lived the majority of the time with her grandmother in a two-bedroom trailer. There was absolutely no room to have kids in the home (Appendix, page 215a). She had been staying with Michael Morgan's sister for a time (Appendix, page 221a).

The children now have been out of their mother's care for over three years. Richard, also known as Ryan, excels in his foster home. Dennis is doing very well in the foster home and wants to be adopted and Michael wants to remain there as well. (Order 8/28/08, Appendix, page 124a)

At the conclusion of the Termination Hearings, the Trial Court found the following facts in support of MCLA 712A.19b (3)(c), (g) and (j):

“The reason this came to adjudication were dirty, deplorable home conditions, substance and alcohol abuse in the home, lack of supervision of the children, financial problems, strains for... the family, prior to CPS involvement, Mom's mental health issues and physical health issues, actually to the point where it impacted the care and custody of the children. Services were provided in the form of screens, psychological evaluation, Outreach therapy, ...and a caseworker managing the case. However, today, we still have those conditions. And further other conditions that came within the Court's jurisdiction were housing problems, that she lost her original housing, employment, and this discovery of some of the children's physical and mental health needs.

Today, Respondent Mother is not employed. I understand when she initially lost a job that was not her doing and she did seek immediately to try and find employment because she had been trying to pay down some debt; however, at one point—I was reviewing my orders prior to the hearing today because these are one continuous proceeding—there was a time and place where she quit a job that she actually had. She has no housing. The only housing available to her is being provided by her father and grandmother. She still has, I believe, mental health needs. Her counselor indicated as of this week that she—that the counselor had concerns about her ability to make decisions for the children...It's unclear if she's dealt at all with her dependency issues, not only with regard to possible continued substance abuse but with regard to her relationship with Mr. Morgan.

...There is no financial barrier to filing for divorce. Waivers are signed all the time to waive the fees for that.

She had clearly been recommended, and she had been counseled, to do that because of his inability to want to stay substance free, and so he was a barrier to the children coming home.

...Her father's testimony was concerning that she's never lived on her own, she's never supported herself and the children, and ...he even agrees that she can't support herself right now. And there is no likelihood within a reasonable period of time that, considering the children's ages, that she'll be able to take care of them.

With regard to whether it's contrary to the children's best interests to terminate parental rights, Michael and Dennis ..., I do believe it's not contrary to their best interests. They have physical needs that were neglected. And the mother at this point the testimony was that she's unable to meet their continued physical and emotional needs. They do-particularly Dennis ...he does need to figure out where he belongs and what and where he can settle in, and that we're here two plus years and he's been unable to do that. He needs that. And it will—and even though the case worker said six months, he said minimally six more months, and Dennis cannot wait six more months. It's already been over 24 months.

With regard to Ryan...it is clear that's not contrary to his interests. He also had emotional and physical needs that were neglected and not tended to during the time he was with his mother. The fact that he still, over two years...being held back by a sort of continued role reversal about his worrying about whether he needs to take care of his mother. ...She still can't take care of herself. Her dad's taking care of her. He doesn't need to take care of her, too. He needs the ability to be able to move on. I don't think he wants to hurt her. I don't think he feels that he can say it, and his caseworker yesterday indicated that he needs someone to help him have the opportunity to move forward without carrying that burden with him. And, the testimony was that it would be contrary to his best interest. So, I have no evidence... that it's not contrary to his best interest to terminate parental rights.” (Appendix, page 27a)

A written order was entered terminating Respondent's parental rights. (Appendix, page 25a) Respondent-mother appealed as of right. The Court of Appeals reversed the

Trial Court's Order, remanding for further proceedings consistent with their Opinion. (Appendix, page 7a) Co-Petitioner-Appellant filed an Application for Leave to Appeal. This Court granted said Application. Further facts may be discussed where relevant to the issue presented.

Appellant's appeal from the Court of Appeal's Opinion, dated August 26, 2008, attached as (Appendix, page 7a), *In re Hudson/Morgan*, unpublished opinion per curiam of the Court of Appeals, decided August 26, 2008 (Docket No. 282765). Therein, the Court of Appeals reversed the Clinton County Circuit Court's Order Terminating Respondent's parental rights. (Appendix, page 25a)

ARGUMENT I

WHERE RESPONDENT-APPELLEE HAD NO HOUSING NOR JOB AFTER 2 1/2 YEARS, THE TRIAL COURT DID NOT CLEARLY ERR WHEN IT FOUND CLEAR AND CONVINCING EVIDENCE TO SUPPORT THE STATUTORY GROUNDS FOR TERMINATION.

STANDARD OF REVIEW:

Findings of fact following a termination proceeding are reviewed for clear error. See *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Cornet*, 422 274; 373 NW2d 536 (1985). A decision is clearly erroneous if the reviewing court is left with a firm and definite conviction that a mistake has been made upon review of the entire record. *People v Cheatham*, 453 Mich 1, 30 n 23; 551 NW2d 355 (1996), quoting *Parts & Electric Motors, Inc v Sterling Electric, Inc.*, 866 F2d 288, 233 [CA 7, 1988], *cert den* 493 US 847; 110 S Ct 141; 107 L Ed 100 (1989), "To be clearly erroneous, a decision must strike us as more than just maybe or probably wrong; it must . . . strike us as wrong with the force of a five-week old, unrefrigerated dead fish." See also MCR 2.613(C) which provides:

"Findings of fact by the trial court may not be set aside unless clearly erroneous. In the application of this principle, regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." (emphasis added)

See also *In re Miller, supra*, 337, which affirms that deference must be afforded to a trial court's credibility determinations.

DISCUSSION:

A. THE COURT OF APPEALS IMPROPERLY SUBSTITUTED ITS JUDGMENT FOR THAT OF THE TRIAL COURT.

It is a widely accepted legal principle that a trial court is in the best position to weigh the credibility of witnesses and make factual findings. Consistent with that proposition, a reviewing court will only reverse a trial court's findings of fact where the record reveals clear error. MCR 3.977(J). Deference is given to the Trial Court's special opportunity to judge the weight of the evidence and the credibility of the witnesses who appeared before it. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

In this instance, the Trial Court made findings of fact to determine whether there was clear and convincing evidence establishing one or more statutory grounds for termination of respondent's parental rights. The record below illustrates that one or more statutory grounds were supported by the Trial Court's findings and therefore, the Court of Appeals improperly held that the Trial Court's decision was clearly erroneous. Because the record contains substantial facts supporting grounds for termination, the Court of Appeals decision impermissibly raises the burden of proof, essentially making a showing of clear and convincing an unattainable standard.

At Adjudication, in September 2005, having already received services in 2004, the family's home was found to be in deplorable condition; it was chaotic with multiple people and a risk to the youngest child. (Appendix, page 194a) The Respondent was diagnosed with Dysthymic and Anxiety Disorder and Opioid Dependence and Antisocial

features. (Appendix, page 52a) Respondent was evicted from the house on US-27 and moved to Kristana Trailer Park across the road. (Appendix, page 192a)

Almost one year later, in June 2006, Respondent remained unemployed and still dropped positive for opiates. In addition, despite having repeatedly been told that it was her responsibility to inform doctors she could not be prescribed vicodin, she continued to receive vicodin. Furthermore, Respondent continued contact with her estranged husband who was noncompliant with services. (Appendix, page 72a)

And over two years later, at the time of termination, in November 2007, Respondent could not support herself, and had never supported the boys by herself. (Appendix, page 234a) She still had no home of her own and was still staying with her father and grandmother in the grandmother's trailer in Kristana Trailer Park. (Appendix, page 231a)

Respondent struggled with depression, housing, a job and substances throughout the almost 2 1/2 years of monitoring by the Trial Court. Considering the totality of the case, the Trial Court did not clearly err. Respondent failed to demonstrate she could ever properly care for the three boys. The Trial Court ruled correctly.

The Court of Appeals impermissibly substituted its judgment for that of the Trial Court. For illustrative purposes, *In re Engle*, 480 Mich 931; 740 NW2d 307 (2007), (Appendix, page 78a) this Court recognized that a reviewing court can not substitute its own judgment for that of the trial court under the clear error standard of review. In *Engle*, the Court of Appeals reversed a trial court terminating respondent's parental rights after she failed to protect her children from sexual abuse. The trial court also found that respondent displayed psychological problems that affected her ability to parent, even

though therapists testified that she may benefit from therapy. In its holding, the Court of Appeals concluded that respondent could benefit from services and, therefore, it was clear error to terminate her parental rights.

In reversing, this Court noted in its Order that, “The Court of Appeals misapplied the clear error standard by substituting its judgment for that of the trial court. . .” *Engle, supra*, 480 Mich at 931 (citing MCR 2.613(C); *In re Miller*, 433 Mich 331; 445 NW2d 161 (1989)).

In another example, this Court reversed a Court of Appeals decision that failed to give deference to the Trial Courts finding of clear and convincing evidence to support termination in *In re Ashman*. In *Ashman*, respondent failed to protect the children from molestation by their father and grandfather. *In re Ashman*, Mich # 136358, an unpublished per curiam opinion of the Michigan Court of Appeals decided April 10, 2008 (Docket No. 277222), (Appendix, page 118a) the Trial Court found clear and convincing evidence to terminate respondent’s parental rights despite testimony that respondent had benefited from services, including over 100 parenting classes. (Appendix, page 122a)

In *Ashman*, several therapists testified favorably for respondent and she participated in numerous services. Additionally all of the children testified that they wanted to return home. However, the Trial Court, as in this case, based its decision on testimony regarding respondents repeated set backs. The Court of Appeals held that since some testimony showed that respondent may be benefiting from services, there was not clear and convincing evidence to support statutory grounds for termination. This Court reversed in a peremptory order and reinstated the Circuit Court's Order of

Termination because the Trial Court's decision was supported by clear and convincing evidence despite testimony of progress. There was also clear and convincing evidence that termination was not contrary to the best interests of the children. (Appendix, page 118a)

In addition, this Court reversed the Court of Appeals decision *In re Ross/Fulton*, Mich # 137045; an unpublished per curium opinion of the Michigan Court of Appeals decided September 17, 2008 (Docket No. 137045) and reinstated the Order terminating the Respondent's parental rights. (Appendix, page 79a) This Court found that the Court of Appeals misapplied the clear error standard by substituting its judgment for that of the Trial Court. MCR 2.613(C); *In re Miller*, 433 Mich 331 (1989). This Court found that the Court of Appeals rendered a decision that was contrary to the clear and convincing evidence supporting termination of the Respondent's parental rights.

Although the Court of Appeals Opinion notes testimony of compliance by the Respondent and words of encouragement by the Trial Court, it failed to note the practical and ongoing problems which still prevented Respondent from caring for the boys. The Trial Court, as finder of fact weighed the testimony at the time of termination with the past history and found clear and convincing evidence supporting termination. The facts do not support the Court of Appeal's conclusion that the Trial Court's decision was clear error. The Court of Appeals usurped the Trial Court's deference.

**B. WHERE THERE WAS CLEAR AND CONVINCING EVIDENCE,
THE TRIAL COURT PROPERLY TERMINATED RESPONDENT'S
RIGHTS UNDER MCL 712A.19b(3)(c)(i).**

A petitioner is only required to establish a single statutory ground for termination by clear and convincing evidence. *In re Jk*, 468 Mich 202, 210; 661 NW 2d 216 (2003); *In re Power*, 244 Mich App 111, 118; 624 NW2d 472 (2000). The trial court's findings are reviewed for clear error. MCR 3.977(J); *In re Jk*, supra at 209. Deference is given to the trial court's special opportunity to judge the weight of the evidence and the credibility of the witnesses who appeared before it. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The Trial Court, noting that there had been “times during the course of the proceedings that it thought that there might be a glimmer of hope that she could turn a corner;” (Appendix, page 28a) knew the reality was, after almost 2 ½ years, a decision had to be made. It found that MCLA 712A.19b(3) c, g, and j had been satisfied by clear and convincing evidence. (Appendix, page 29a) The Trial Court was in the best position to assess the credibility of the evidence after monitoring the Respondent’s behavior for almost 2 ½ years. Evidence may be “clear and convincing” despite the fact that it has been contradicted." *In re Martin*, 450 Mich 204, 227; 538 N.W.2d 399 (1995).

As long as a single statutory ground for termination is shown, termination of parental rights is justified. *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). MCL 712A19b(3)(c)(i) provides that the Court may terminate a parent's parental rights if finds that:

“the parent was a respondent in a proceeding brought under the Juvenile Code, 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:

'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.'"

At the time of Adjudication, the Respondent's home was found to be in a deplorable condition and multiple people lived in the home. (Appendix, page 195a) Tonya Bentley, a Protective Services Worker, qualified as an expert in child care and custody, indicated that Michael and Dennis, two and four years old, in September 2005, were being left outside to play alone down by Rotunda, across from Kristana, in front of a two-story house right on 27. They later moved to Kristana trailer park. (Appendix, pages 192a, 193a) The family had already been provided Outreach Counseling Services, and substance abuse services in 2004. (Appendix, page 193a) Metro Narcotics Unit and she went to the home and found dirty dishes all over, clutter all over, red pills, small items on the floor which were a risk to Michael, alcohol bottles, and a large number of people living in the home (Appendix, page 194a). Families First was placed in the home. Despite services and Court Orders that no other adults live in the home, there were still a number of people residing in the home creating chaos and adding to the financial strain. (Appendix, page 196a) At times there were 12 people in the home, (Appendix, page 203a) in addition to relatives and Claude Hubbard, who had a felony drug conviction and his own parental rights terminated. (Appendix, page 206a)

Although the Court of Appeals stated that the Circuit Court opinion that respondent had no housing lacked any support in the record, (Appendix, page 23a) this was and still is wrong. They stated that Respondent lived with her grandmother and then relocated from the trailer to a two-bedroom house her father owned. Actually, during the

case, Respondent was evicted from the original house and moved to the trailer park where she stayed with her estranged husband in 2006. (Appendix, page 104a) Then stayed with her grandmother much of the time in a two bedroom trailer in Kristana Trailer Park in Lansing, Michigan. There was absolutely no room to have the boys there. (Appendix, page 215a) At one point in the spring of 2007, she had tried to get her own place in Kristana but was evicted and moved in with her estranged husband again. She also stayed at her husband's sister's place. (Appendix, pages 221a, 222a). She had not relocated at the time of termination as the Court of Appeals stated, (Appendix, page 20a) to a two bedroom house owned by her father. She was either staying with her grandmother or did not have an address. (Appendix, page 216a) At times she would try to get an apartment or find someone else to live with. (Appendix, page 216a) This was the same grandmother who she had lived with primarily throughout the case. (Appendix, page 216a)

Although the Court of Appeals stated that by the time of the termination hearing, no one contested Respondent had the capacity to maintain a clean home, (Appendix, page 20a) they failed to mention that she had no home at all for the boys! Even Respondent's father testified that he lived with Respondent and his mother in the two bedroom home. (Appendix, page 231a) He was also unemployed but his mother got social security and a pension. He testified that Respondent could not support herself, did not have a vehicle, and that he drove her around. (Appendix, page 232a) He and his mother had not moved out sooner because even when Respondent was working, he didn't think she was making enough to support herself. (Appendix, page 233a) He stated that Respondent had never

lived on her own as an adult and had never supported herself and her children by herself.
(Appendix, page 234a)

Interestingly, toward the beginning of the case, on January 12, 2006, Respondent had stated, although contrary to Court Order, that her dad and stepmother were living with her while they saved for a place. (Appendix, pages 164a, 165a) Additionally, it was requested that 'grandma', who had also moved in, not be 'kicked out' by the court, that 'grandma' had been way up north in the middle of nowhere by herself. (Appendix, page 166a) Given the length of time having passed since then and the circumstances, it is unlikely that Respondent's relatives had any intention of moving.

The Trial Court's statement that Respondent had no housing and that the only housing available to her was being provided by her father and her grandmother, was accurate. The Court of Appeals misconstrued the evidence by failing to defer to the Trial Court, and yet claimed the Trial Court's statement lacked any support in the record. (Appendix, page 23a) Respondent's only housing was the same trailer she'd stayed in on and off through-out the case; the same two bedroom trailer which was too small for three boys.

The Court of Appeals further indicated that Respondent attended nearly all visits and interacted appropriately. Certainly, no one would argue that Respondent could not maintain an appropriate visit in an office with her children. However, that is far different than providing them with a home, food to eat and medical and dental treatment.

Scott Compeau testified that when he became involved in the case, in June 2006, the issues were housing, substance abuse, employment, emotional stability, and parenting. At the time of the termination, he believed the issues were almost identical -- housing, employment, potentially substance abuse and emotional stability. (Appendix, page 213a)

Respondent's use of controlled substances was a concern throughout the case. Tonya Bentley testified that drug screens were instituted even in 2004. In 10/2005, after Court jurisdiction, Respondent was missing drops and had positive drops for opiates. No prescriptions were provided despite requests. Positive drops continued in November 2005. (Appendix, pages 200a, 201a, 202a) Respondent continued to test positive for opiates periodically through out the case. Respondent talked about taking other people's medications. (Appendix, page 215a) The Psychological Assessment in September, 2005, (Appendix, page 37a) and substance abuse assessment in January, 2006, (Appendix, page 117a) both indicated opioid dependence and treatment needs. Prior to ending drug screens, Respondent still tested positive in 2007. (Appendix, page 117a)

Tonya Bentley testified that Respondent was not working at the beginning of the case. (Appendix, page 200a) Compeau testified that Respondent had not been able to maintain employment. (Appendix, page 213a) And she was not working at the time of termination. (Appendix, page 233a) The Trial Court monitored this case for two and one half years. It certainly was well aware of Respondent's current circumstances at all times as well as what impact they would have on the boys.

The Trial Court never specifically indicated it was relying on MCLA 712A.19b(3)(c)(ii) in terminating parental rights, yet the Court of Appeals extensively covered this basis and why the Trial Court did not have clear and convincing evidence to support this ground. It claimed the Respondent received recommendations to address potential child abuse and neglect issues and therefore, the Court ordered therapy. However, they failed to acknowledge that the psychological exam diagnosed Respondent with Dysthymic Disorder and Anxiety Disorder along with Opioid Dependence as well as Antisocial Personality Features on September 29, 2005, shortly after the Court took jurisdiction. Prognosis for the Respondent was poor due to the chronic component of the substance abuse and depression and personality related issues.

Tonya Bentley, the initial worker, indicated that Respondent struggled with depression and was in counseling, and she continued to have concerns with her ability to function based on her depression. (Appendix, page 198a) One of the reasons the children were left unsupervised in the initial Petition was due to Respondent sleeping or it was due to her depression. Respondent said she felt tired due to the medication. (Appendix, page 205a) The school had been concerned because Respondent had failed to pick up Dennis from school. She also failed to show up for the psychological test when it was first scheduled. She claimed she didn't have gas and she'd fallen asleep. (Appendix, page 199a) The depression and opioid dependence were certainly issues which 'led to the adjudication'. They were issues that each worker attempted to assist Respondent with.

Although Respondent appeared to have made some progress, her therapist was concerned whether Respondent would meet friends who used drugs. Scott Compeau

testified that psychological testing showed that Respondent was diagnosed with Dysthymic Disorder, Anxiety Disorder, Opioid Dependence and Antisocial Personality features. Her prognosis was poor. (Appendix, page 211a) Also Appendix, page 67a.

Compeau testified that Respondent had:

“a dependent personality...treatment...revolved around the people that she chose to keep in her life and how they impacted her decision making. She...struggles in terms of ... making decisions, and making appropriate decisions... when she’s around individuals who make poor decisions, she tends to do the same. (Appendix, page 214a)

* * *

In my conversation with Melanie’s therapist yesterday,...she indicated that she didn’t believe...that the separation was complete even at this point today....based on her conversations with Melanie...when pressed on that issue, eventually she admitted to her therapist that it was Mike that she was involved with and continued to be involved with. (Appendix, page 217a)

Compeau had asked her point blank who she was involved with in the Spring of 2007 because her therapist had ongoing concerns then about the people she chose to be around, specifically Mr. Morgan. (Appendix, page 228a) He further stated that Respondent:

"had made it known in her therapy sessions that she was involved with someone, some adult man, and her therapist had concerns at that point in time that it was Mr. Morgan, so I sat down and confronted Melanie on that. She told me, no, it was not." (Appendix, page 229a)

He stated that the issue was not even necessarily that it was Mr. Morgan but that whoever it was, needed to understand what the issues of the case were and he needed information about the person prior to reunification (Appendix, page 229a). It turned out that in fact it was Mr. Morgan (Appendix, page 230a).

Compeau had discussed divorcing her husband with Respondent. He stated:

"And, also discussed the fact that that really needed to be done if she were to have any chance of having her children come home to her as a result of Mr. Morgan's complete noncompliance with the Service Plan and with this Court's orders." (Appendix, page 217a)

On 2/8/06, Mr. Morgan had stated he no longer was willing to participate in the case service plan and wished to release his parental rights. (Appendix, page 218a)

The Court of Appeal's statement that the Trial Court's belief that Respondent still had mental health needs was unsupported, is incorrect in light of the psychological diagnosis, the fact Respondent was basically homeless, had no job at the time of termination and was still apparently maintaining a relationship with Morgan who had been uncooperative throughout the case. Mental health needs were still obviously a concern. In addition, recommendations had been made yet Respondent had not made the changes.

The children had physical and mental health needs at the beginning of and throughout the case. At the beginning, the Respondent admitted that the oldest boy was angry and aggressive and often acted without thinking of the ramifications of his actions. (Appendix, page 209a) He was diagnosed with Oppositional Defiance and Negativistic and Antisocial Personality Features. (Appendix, page 59a)

However, Respondent reported the boys were otherwise healthy and had no special needs at the onset of the case. (Appendix, pages 108a, 109a) On the contrary, Dennis and Michael had to go to the dentist on a number of occasions. They were

sedated and treated for, what the dentist indicated had been no brushing or treatment up until that point. Ryan was also in need of extensive dental work due to excessive decay. In addition, Ryan, was deaf in one ear and had an implant done; Dennis had eye surgery and got glasses. (Appendix, page 212a) (Appendix, pages 108a, 109a) Both the mental and physical difficulties have improved while the children have been in out of home care. Respondent, on the other hand, has missed opportunities and failed to follow through with her own health issues despite much encouragement. This is an indication of how Respondent would follow through for the children if there was reunification.

Despite multiple placements, Ryan, the oldest boy, is now in a very stable home with very good foster parents. He is bright and capable. (Appendix, page 207a) His current therapist indicated that there had been a lack of supervision and boundaries in Ryan and the Respondent's relationship. As a result of poor parenting, he was quite defiant toward adults and avoided accepting responsibility. (Appendix, page 219a) In therapy, Ryan dealt with conflict caused by going back and forth to visits from foster care to the unstable residences of Respondent due to the difference in rules and expectations of behavior in therapy. (Appendix, page 223a)

The Court of Appeals (Appendix, page 22a) stated that Respondent was not afforded an opportunity to demonstrate her ability to parent the children on an extended basis in an unsupervised setting. In the footnote, (Appendix, page 22a) the Court stated that it would have been advantageous to have Respondent visit her children in a more natural environment such as her own home. This may very well be true, however, it could never be done because she never had her own home!

On a number of occasions, the caseworker, had in fact looked into expanding or moving to unsupervised visits. However, he stated that every time he got to that step, there was a dirty drop, job issue or transportation issue. (Appendix, page 187a). Ryan, the oldest, did have numerous unsupervised week-end visits with Respondent. During this time, it was unclear where Respondent was residing (Appendix, page 187a, 222a). The caseworker didn't feel comfortable sending a 4 and a 8 year old for these unsupervised visits. (Appendix, page 187a) And Ryan dealt with the difficult transition between the Respondent's place and the foster home in therapy (Appendix, pages 220a, 221a).

Co-Petitioner-Appellants were only required to establish one statutory ground for termination. MCLA 712A.19b(3)(c)(i) was established by clear and convincing evidence. The conditions that led to the adjudication continued to exist throughout the case despite the efforts of the caseworkers and service providers. And although Respondent intermittently made some progress, finding a place to stay for herself or obtaining employment periodically, there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the children's ages.

C. WHERE THERE WAS CLEAR AND CONVINCING EVIDENCE UNDER MCL 712A.19b(3)(g) AND (j), THE TRIAL COURT PROPERLY TERMINATED RESPONDENT'S PARENTAL RIGHTS.

The Court of Appeals erred when it found the Trial Court did not have clear and convincing evidence under MCLA 712A.19b(3)(g) and (j). Pursuant to MCLA 712A.19b(3)(g), the court may terminate a parent's parental rights if it finds by clear and convincing evidence that:

"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."

MCLA 712A.19b(3)(j) provides that a parent's parental rights may be terminated if it finds by clear and convincing evidence that:

"There 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."

Without regard to intent, Respondent failed to even obtain and maintain a home for her sons. She also had no job again at the time of the Termination Hearing. Considering these factors, there was not a reasonable likelihood that Respondent would provide proper care and custody within a reasonable time considering the children's ages.

Even if this Court was persuaded that the testimony showed that the conditions leading to adjudication were improving, the record clearly shows that the children faced a substantial risk of harm upon returning to Respondent due to Respondent's conduct. She continued to have substance abuse issues, lacked housing, lacked a job and apparently continued her relationship with Mike Morgan.

It was apparent she had not benefited enough from services to be able to care for the boys or lacked the capacity to properly care for them. She couldn't care for the children with her husband, Morgan, and she had not been able to show she could do it on her own.

Although the Court of Appeals Opinion noted the testimony that Respondent's parenting may have improved, (at least during visitations), it brushed off housing and employment issues. The Trial Court found them, however, to be indicative of a substantial risk to the children given the entire context of the termination hearing and the case file. In its totality, all of the testimony illuminated the fact that Respondent never was able or ready to care for the children and always wanted or needed more time. Because the Trial Court incorporated the history of the case with the testimony, the Respondent's failures to maintain a job or home or negative drops constitute a foundation supporting termination.

By concluding that none of these things are no big deal, and dismissing as not important the facts that the Trial Court found so important in making a decision in the boy's lives, that Respondent could not care for the boys, that she had no home for them, and had no way to support them, renders the Court of Appeals holding erroneous. The Court of Appeals substituted its own judgment. As a result, the Court of Appeals decision should be reversed as the Trial Court made a lengthy ruling from the bench clearly illustrating the facts supporting termination by clear and convincing evidence.

There must only be clear and convincing evidence that one or more of the statutory criteria allowing for termination of parental rights have been met. MCR 3.977(E)(3), (F)(1)(b), and (G)(3), and MCL 712A.19b(3). The "clear and convincing evidence" standard is necessary to satisfy the requirements of due process under the Fourteenth Amendment to the United States Constitution. *Santosky v Kramer*, 455 US 745, 767 (1982).

The Court of Appeals in *Kefgen v Davidson*, 241 Mich App 611, 625 (2000), defined "clear and convincing evidence" as follows:

" Clear and convincing evidence is defined as evidence that 'produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue'. . . . Evidence may be uncontroverted, and yet not be "clear and convincing.". Conversely, evidence may be "clear and convincing" despite the fact that it has been contradicted." *In re Martin*, 450 Mich 204, 227; 538 N.W.2d 399 (1995), quoting *In re Jobes*, 108 N.J. 394, 407-408; 529 a.2d 434 (1987); see *People v Williams*, 228 Mich. App. 546, 557-558; 580 N.W.2d 438 (1998)."

If the Court of Appeals Opinion is not reversed, in essence the standard of proof in termination cases would be changed. The meaning of clear and convincing evidence would be changed. Decisions like this could potentially serve to make 'clear and convincing' an impossible standard for petitioners to prove and therefore permanency plans all over the state would have no meaning and children would be left in limbo or uncertainty for much longer. In this case, the evidence was barely contradicted, and the Court found the evidence weighty and convincing to enable it to come to a clear conviction.

ARGUMENT II

WHERE RESPONDENT-APPELLEE HAD NO HOUSING OR JOB AFTER 2 1/2 YEARS, TERMINATION OF PARENTAL RIGHTS WAS NOT CONTRARY TO THE BEST INTERESTS OF THE CHILDREN.

MCLA 712A.19b(5) states as follows:

"If the court finds that there are grounds for termination of parental rights, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made, unless the court finds that termination of parental rights to the child is clearly not in the child's best interests."

In re Gazella, 264 Mich App 668 (2005), the Trial Court entered an order terminating parental rights without making best interest findings. The Court of Appeals in dicta stated:

"Neither the statute nor court rule require the court to make specific findings on the question of best interest, although trial courts usually do. In fact, most trial courts go beyond the question of whether termination is clearly not in a child's best interest and affirmatively find that termination is in a child's best interest. Such a finding is not required, but is permissible if the evidence justifies it. The statute and court rule provide that once a statutory ground for termination has been established by the requisite standard of proof, the court must enter an order of termination unless the court finds that termination is clearly not in the child's best interest. If the court makes no finding regarding best interest, then the court has not found that termination would clearly not be in the child's best interest. While it would be best for trial courts to make a finding that there was insufficient evidence that termination was clearly not in a child's best interest, it is not required where no party offers such evidence as here. In order for a valid termination order to enter, when no evidence is offered that termination is clearly not in the child's best interest, all that is required

is that at least one statutory ground for termination be proved."

The Trial Court found that termination was not contrary to the younger boys interests. The Court found that their physical needs had been neglected while in the care of Respondent and their mother could not meet their continued physical and emotional needs. It found that they needed to know where they belonged. With regard to the oldest boy, the Court found that he also had emotional and physical needs that were neglected during the time he was with his mother. Furthermore, over two years later, the Court found he was being held back by a role reversal because his mother still couldn't take care of herself. The Court stated that he needed the ability to move on. (Appendix, page 29a)

One of Ryan's caseworkers stated that Ryan's behavior had improved because he was in a very stable home, and had very good foster parents. (Appendix, page 207a) Furthermore, his mother was very supportive of his placement, in addition to Ryan being bright, capable and having learned quite a bit. (Appendix, page 207a) The foster parents were committed to taking care of Ryan on a long term basis (Appendix, page 208a).

Although Ryan defended his mother's lifestyle, he participated in therapy with his foster mother to address the difficulty in transitioning between Respondent's place and the foster home as the rules and expectations for behavior varied. (Appendix, pages 220a, 223a) The caseworker was even unclear where Respondent was staying during the spring of 2007 when Ryan was having unsupervised visitation. (Appendix, page 221a) Subsequently, visitation was more limited.

Compeau, one of the foster care workers, did not believe Respondent could meet the emotional needs of her children or provide for their physical needs on a consistent basis (Appendix, page 217a) He believed that termination of parental rights was in Ryan's emotional best interests as well as the other boys. He testified that Ryan had done better when contact with Respondent had been limited, as he had a tremendous amount of guilt for where he was, where his brothers were, for what his mother's station in life was, and had made it clear that he felt some level of obligation to help support his mother and grandmother. Compeau believed the decision needed to be made for Ryan (Appendix, pages, 224a, 225a, 227a).

"Based on the fact that Ryan is doing so much better now that contact is limited and Ryan harbors a tremendous amount of guilt for where he is, where his brothers are, for what his mother's station in life is, and has made it clear that he feels some level of obligation to help support his mother and his grandmother. And, I think that for a 16-year-old boy that that's a tremendously difficult position to be in . . . I think that, unfortunately that decision needs to be made for him, that . . . he doesn't have to be responsible for that, that he has his own life and needs to be responsible, number one, for himself and that once he does that and can be responsible for himself without the burden of guilt . . . and maintaining that relationship in that regard, that his relationship, probably, with his mother will probably be a lot more functional than it is now."

(Appendix, page 225a)

Testimony indicated that Ryan would also receive financial benefits if parental rights were terminated and for a longer period of time. (Appendix, page 223a) It was also in the younger boys' best emotional welfare for parental rights to be terminated (Appendix, page 226a).

The minor children involved in this case would be detrimentally harmed if they were suddenly sent back to Respondent. The Respondent does not have a place for them to live or a job. In addition, state policy supports permanence for abuse and/or neglect victims. If the Court of Appeals reversal of the Trial Court were to remain, the probable consequence would be negative, prolonging this matter even more and prolonging the boys in foster care for an extended period of time.

The result of the termination did not cause substantial injustice, the reversal wreaked havoc in the lives of the children. The two younger children were stable and ready for adoption. The benefit to Ryan was that emotionally a decision was made for him. He could move on without feeling he had to be responsible for his mother. He could finish school. He could have stability. Reunification would merely set him up for failure. As contact became more limited, his behavior and grades had improved.

The Trial Court's findings regarding the children's best interests under MCL 712A.19b(5) were appropriate. The evidence did not clearly show that termination of her parental rights was not in the children's best interests.

ARGUMENT III

WHERE THE ISSUES RAISED BY THE
RESPONDENT-APPELLEE IN THE COURT OF
APPEALS WERE PROPERLY DECIDED, THIS COURT
NEED NOT ADDRESS THEM FURTHER.

The Court of Appeals affirmed the Trial Court's Order Terminating on both procedural issues raised on appeal. Two procedural due process issues were raised on appeal. Neither was preserved for appeal.

When taking a plea to the allegation in an original petition, the circuit court must follow MCR 3.971(B) and (C). Under MCR 3.971(b)(4), the court must advise the respondent, among other things:

"of the consequences of the plea, including that the plea can later be used as evidence in a proceeding to terminate parental rights. . . "

According to MCR 3.971(C), the court cannot accept a plea of admission or no contest without satisfying itself that "the plea is knowingly, understandingly, and voluntarily made," and that "one or more of the statutory grounds alleged in the petition are true."

The Trial Court accepted admissions by Respondent to most of the allegations in the original petition after swearing her in. The Respondent desired to make admissions, actively participated, answered questions of the Court and volunteered information.

The record shows that the Trial Court properly advised Respondent regarding the consequences of her plea and carefully questioned Respondent regarding the veracity and

voluntariness of the admissions made. Although the Trial Court did not advise Respondent that a plea could be used as evidence in a termination proceeding, the admissions were not relied on at the Termination Hearing. In fact the protective services worker, Tonya Bentley, testified establishing the factual bases of adjudication.

Although Respondent first argued on appeal that her due process rights were violated because the Trial Court failed to provide her with court-appointed counsel, Respondent never requested an attorney. During more than two years between adjudication and termination, Respondent never indicated any desire for an attorney. There was no violation of her statutory or court rule right to an attorney. The Trial Court did provide counsel prior to the Termination Hearing.

CONCLUSION

The welfare of Michigan's abuse and neglect victims is a serious matter. The Juvenile Code, along with the Michigan Court Rules recognize the gravity of these circumstances by vesting the Family Division of the Circuit Court with the authority to take jurisdiction and weigh the credibility of witnesses, and to ultimately decide their fate by either working toward reunification or terminating parental rights with an ultimate goal of permanency in either scenario. Contrary to the Court of Appeals Opinion, this is not authority that is taken lightly or exercised without factual basis.

The record reveals Respondent's long and troublesome history and failure to rectify her problems in a way that was definitively permanent. The Trial Court worked with her and monitored her for 2 ½ years. There was no testimony which showed that Respondent could care for the children. There was no evidence that Respondent could cope with, shelter, feed, and provide medically, dentally or financially for all the children at once on daily and permanent basis.

The Trial Court is the body that can properly determine how to weigh the testimony of witnesses. The Trial Court is the one that has been supervising and assessing Respondent throughout the abuse and neglect proceedings. The Trial Court supported its decision with a recital of facts supporting the statutory grounds for termination. The facts relied on sufficiently satisfy the statutory grounds for termination.

Respondents failures caused the children to be neglected in the past and continuing issues would cause the children to face a substantial risk of harm if returned to

her. The Court of Appeals (Appendix, page 7a) stated that in light of the conclusion that none of the statutory grounds found clear and convincing evidentiary support in the record, and the court clearly erred in finding best interests, the duration of the children's foster care does not warrant termination. However, the fact that there is clear and convincing evidence to support one or more of the factors of termination is enough. The Court of Appeals chose not to look at the evidence heard by the Trial Court, improperly judged credibility and usurped the deference of the Trial Court. These children have waited 2 ½ years for Respondent to be able to care for them and yet her circumstances have changed very little. The Trial Court properly terminated Respondent's parental rights based on clear and convincing evidence.

The Court of Appeals misapplied the clear error by substituting its judgment for that of the trial court, MCR 2.613(c); *In re Miller*, 433 Mich 331 (1989), and rendered a decision that was contrary to the clear and convincing evidence supporting termination of Respondent's parental rights.

RELIEF SOUGHT

WHEREFORE, Charles D. Sherman, Prosecuting Attorney in and for the County of Clinton by Mary C. Pino, Chief Assistant Prosecuting Attorney, respectfully requests that this Honorable Court reverse the Court of Appeal's opinion and affirm the Trial Court's Order terminating Respondent-mother's parental rights.

Dated: January _____, 2009

Respectfully submitted,

CHARLES D. SHERMAN

PROSECUTING ATTORNEY

CLINTON COUNTY

BY: _____

MARY C. PINO (P31851)

CHIEF ASSISTANT PROSECUTOR