

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CHRISTOPHER JOSEPH HAYES,
LORRAINE MARIE HAYES, CAROL LYNNE
ASHLEY HAYES, JESSICA LINETTE HAYES,
PAUL DAVID HAYES II, and STEPHANIE ANN
NICOLE VIOLET HAYES, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

KATHLEEN MARGARET DOUGHERTY,

Respondent-Appellant,

and

PAUL DAVID HAYES,

Respondent.

UNPUBLISHED

April 28, 2000

No. 220439

Wayne Circuit Court

Family Division

LC No. 94-314881

Before: Kelly, P.J., and Holbrook, Jr. and Griffin, JJ.

PER CURIAM.

Respondent-Appellant (hereinafter “respondent”) appeals as of right from the family court’s order terminating her parental rights to her six children pursuant, MCL 712A.19b(c)(i); MSA 27.3178(598.19b)(c)(i) [the conditions which led to the adjudication continue to exist], MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g) [the parent has failed to provide proper care or custody for the child] and MCL 712A.19b(3)(j); MSA 27.3178(598.19b)(3)(j) [there is a reasonable likelihood the child will be harmed if returned to the home of the parent].¹ The six children involved in this case are Christopher J. Hayes (4/23/88), Lorrain M. Hayes (7/8/89), Carol L. Hayes (3/24/91), Jessica L. Hayes (9/19/92), Paul D. Hayes (2/3/95), and Stephanie A. Hayes (5/28/96). We affirm.

This family has been known to Protective Services of the Family Independence Agency since at least January 1993, and to the Wayne County Juvenile Court since at least November 1994. Respondent became involved with the system in 1994 after being arrested for driving under the influence of Toluene, a paint thinning product known to be used by glue sniffers. She had previously been ticketed in Detroit for a similar violation. At the time of the incident in 1994, an inspector from the Department of Social Services inspected the family home and concluded that it was acceptable for the children to continue residing there.

An inspection of the home in May 1997, found the children and respondent to be living in conditions of extreme neglect, with trash and food strewn around the roach-infested house, no food for the children to eat, no juice or milk for the babies to drink, and the filthy children infested with head lice. The children's immunizations and physical examinations were not current, and the children were not attending school regularly. At the time, respondent admitted to infrequent use of marijuana to alleviate stomach discomfort due to ulcers, but denied using any inhalants. She claimed that an empty Toluene can found in the home belonged to the children's father, from whom she had been separated. The father also had a history of substance abuse and had not had much involvement with the family since respondent obtained a PPO against him in September 1996. The children were made temporary wards of the court in July 1997, and the children were placed in foster care.

The parents signed a Parent/Agency Agreement calling for the following: attending weekly family visits; maintaining weekly contact with the caseworker; obtaining and maintaining safe, suitable housing; obtaining and maintaining a legal source of income; attending all court hearings; participating in psychological evaluation at the Clinic for Child Study; attending and completing parenting classes; participating in drug/alcohol assessment; participating and completing outpatient drug treatment; remaining drug and alcohol free; and attending weekly NA/AA meetings.

Dispositional hearings were held over a course of the following year. A permanency planning hearing was held on July 15, 1998, based on respondent's failure to comply with the treatment plan. The permanent custody petition charged that respondent had "not submitted any drug screens, participated in substance abuse treatment, obtained suitable housing, attended NA/AA meetings, or participated in a Clinic for Child Study Evaluation."

Trial on the supplemental petition for permanent custody was held on January 8, 1999. Petitioner presented only one witness, Tracey Ventola, who was the child and family caseworker from Orchards Children's Services assigned to this case on August 25, 1998. Her testimony revealed that respondent had satisfied many of the conditions of the treatment plan. Ventola testified that respondent had attended scheduled family visits and court hearings, and had maintained weekly contact with her case worker. Respondent also participated in a psychological evaluation through the Clinic for Child Study, and she had completed parenting classes. She had secured employment as a waitress at a Big Boy restaurant in Dearborn.²

Ventola also testified that, to the best of her knowledge, respondent was residing with her boyfriend in Macomb County. She knew nothing about the boyfriend's dwelling. She testified that respondent had provided proof of a \$475 deposit on a residence in Detroit, but had not yet provided

proof of rental payments or a lease. She testified that respondent had provided her new address, though she had never visited the site and mail sent to that address had been returned.

Ventola also testified regarding the children's special needs. Specifically, Christopher had educational deficits and behavior problems. Jessica had vision problems. Loraine had "oppositional disorder"³ and "dystemic [sic] disorder."⁴ Carol had demonstrated suicidal gestures in the past. All of the children needed dental work. She noted that all of the children were in therapy and that counseling seemed to be going well.

Importantly, Ventola testified that respondent had submitted only seventeen drug screens of the fifty-seven requested, and three of the seventeen were positive for controlled substances.⁵ The last positive drug screen was from July 1998, and respondent had provided one negative screening in both November and December 1998. Respondent had attended some NA/AA meetings, but quit because she felt the meetings were for hardened drug users. She also participated in individual counseling sessions from July through November 1998, but had quit of her own volition.

Ventola testified that, although respondent had complied with some aspects of her treatment plan, she had not addressed her substance abuse problem or obtained appropriate housing. Ventola noted that respondent had indicated that she did not follow through on drug assessment/treatment referrals because of problems with insurance or Medicaid, invalid identification, and because she was living in communities outside of the referral's location. She was concerned because respondent had left a telephone message on her answering machine and "the messages she left her words were slurred and she sounded very much under the influence." Ventola stated that she was seeking permanent custody because respondent had not addressed her substance abuse problem. She opined that it was best for the children to be placed in a stable environment.

Respondent testified that she could not follow up on the referral to Herman Kiefer for drug assessment because she was living outside of Detroit. She also had problems with the referrals because she had no insurance. She claimed to have gone through six referrals before being accepted by therapists at Burdette and Doss. Respondent explained that she was taking pain medication because of her broken leg at the time of the positive drug screens.⁶ Respondent provided the court with a report from Herman Kiefer that, as of January 7, 1999, respondent did not have a continual substance abuse problem. She offered no explanation for providing only seventeen of the fifty-seven requested urine samples.

Respondent also testified that she had moved into a one-bedroom, month-to-month rental home in November 1998. She provided the court with photographs of the kitchen and living room of the house. She noted she had provided her caseworker with proof of paying a rent deposit. She also testified that she knew her children had special needs. She acknowledged that Christopher had problems with school and needed more attention and structure. In closing, respondent's counsel referred the court to the Foster Care Review Board's agreement with the agency's plan to reunify the family, qualified by its concerns that the parents had not complied with the treatment plan. The family court issued its order terminating respondent's parental rights on February 26, 1999.

On appeal, respondent argues that the evidence did not support the family court's order terminating her parental rights. Specifically, she argues that she had obtained safe, suitable housing for the children, and that she understood and could meet the children's special needs, which needs were not addressed by the Parent/Agency Agreement. We disagree.

We review the family court's decision regarding termination of parental rights in its entirety for clear error. *In re Hall-Smith*, 222 Mich App 470, 472; 564 NW2d 156 (1997). The court must terminate parental rights if it finds clear and convincing evidence that one or more enumerated statutory grounds for termination exist, MCL 712A.19b(3); MSA 27.3178(598.19b)(3), unless it finds that termination is clearly not in the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5). Termination of a parent's rights need be supported by only a single statutory ground. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991).

The burden of proof is on the party seeking by court order to terminate the rights of respondent over the child. MCR 5.974(A)(3). Once the party seeking termination has established by clear and convincing evidence that a statutory ground for termination exists, a presumption for termination is raised "that can only be rebutted by a showing that termination is not in the child's best interest." *In re Hall-Smith*, 222 Mich App 470, 472; 564 NW2d 156 (1997). The parents have the burden of going forward with some evidence of the child's best interests. *Id.* at 473. The parents, however, do not bear the burden of proof regarding the best interests of the child. *In re Boursaw*, ___ Mich App ___; ___ NW2d ___ (2000). If the parent presents some evidence that termination is not in the best interests of the child, then the mandatory presumption in favor of termination is lifted and the party seeking termination must meet its burden of proof. *Id.*

The family court made only one factual finding with which this Court has difficulty. The family court stated that respondent was currently living with her boyfriend in Macomb County. The evidence presented by respondent showed that she had rented housing in Detroit. She provided her worker with a receipt for the rent deposit and she provided the court with photographs of the home. This evidence rebutted the charge that she had not obtained housing, but did not address the Macomb County residence issue. However, since the caseworker had not inspected the home, there is no basis for determining whether the Detroit housing was safe or suitable for the children. Regardless, the family court's remaining findings were supported by clear and convincing evidence.

Respondent agreed to participate in and complete outpatient drug treatment, which she failed to do. She agreed to participate in drug/alcohol assessment. She did not obtain an assessment until the day before trial and nearly eighteen months after her children had been placed in protective custody. She also agreed to remain drug and alcohol free, but submitted only seventeen of the fifty-seven requested drug screens. It was revealed at trial that the screens were not properly set up to test for Toluene, and it was suggested that respondent stopped participating in the screening after the proper tests were requested. She also failed to attend weekly NA/AA meetings.

Based on the evidence, this mother did make some effort to become a better parent, as is demonstrated by her completing parenting classes, keeping up with visitation and court appearances, and finding employment. However, the evidence also shows that respondent failed to address her

substance abuse problem. Had she participated in assessment earlier on, remained drug free after attending NA/AA meetings and participating in treatment, we would have a closer question. However, we agree with the agency recommendation that permanent placement is crucial to the development of the children, and that the children would not be served by prolonging their placement with foster families. There has been no showing that it would be in the best interests of the children to return them to their mother. MCL 712A.19b(5); MSA 27.3178(598.19b)(5). The family court properly terminated respondent's parental rights.

Affirmed.

/s/ Michael J. Kelly

/s/ Donald E. Holbrook, Jr.

/s/ Richard A. Griffin

¹ The family court also terminated parental rights based on MCL 712A.19b(3)(a)(ii); MSA 27.3178(598.19b)(3)(a)(ii) [the child's parent has deserted the child]. The children's father had not visited them since moving to Chicago in September 1997, and thereafter reported no interest in planning for his children. The court concluded that the father had abandoned his children and he is not appealing the court's decision terminating his parental rights. However, there was no evidence that respondent abandoned her children, and we deem this portion of the court's findings applicable to the father only.

² Respondent suffered a broken leg in June 1998 and underwent surgery in July 1998, forcing her off the job. She was back to work by the time of the trial for permanent custody.

³ Oppositional defiant disorder is a pattern of negativistic, hostile, and defiant behavior lasting at least 6 months.

⁴ We presume that the witness meant to state that Christopher suffered from dysthymic disorder, which is characterized by an overwhelming yet chronic state of depression, exhibited by a depressed mood for most of the days, for more days than not, for at least 1 year in children.

⁵ The positive drug screenings were on June 22, 1998 (marijuana), July 17, 1998 (cocaine), and July 28, 1998 (cocaine and morphine). A screen from May 22, 1998, was negative with possible adulteration.

⁶ At trial, respondent produced the discharge report from the hospitalization for her broken leg. It indicated that she had been prescribed codeine, as well as other medications.