

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CHELSEY BURTON, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CYNTHIA BURTON,

Respondent-Appellant,

and

TERRY BURTON,

Respondent.

In the Matter of LASHONDA BURTON, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CYNTHIA BURTON,

Respondent-Appellant,

and

TERRY BURTON,

Respondent.

UNPUBLISHED

May 12, 2000

No. 222435

Calhoun Circuit Court

Family Division

LC No. 0-001236

No. 222652

Calhoun Circuit Court

Family Division

LC No. 0-001236

Before: Fitzgerald, P.J., and Neff and Smolenski, JJ.

PER CURIAM.

In these consolidated cases, respondent Cynthia Burton appeals as of right a family court order terminating her parental rights to her children Chelsey (born December 21, 1989) and LaShonda (born November 20, 1988, pursuant to MCL 712A.19b(3)(a)(ii), (g), (i), (j) and (l); MSA 27.3178(598.19b)(3)(a)(ii), (g), (i), (j) and (l). We affirm.

In an action to terminate parental rights, the petitioner bears the burden of showing a statutory basis for termination by clear and convincing evidence. MCR 5.974, *In re Hamlet (After Remand)*, 225 Mich App 505, 522; 571 NW2d 750 (1997). Once the trial court finds at least one statutory ground for termination by clear and convincing evidence, the court must terminate parental rights unless it finds that there has been a showing by respondent that doing so is clearly not in the best interests of the child. MCL 712A.19b(5); MSA 27.3178(598.19b)(5), *In re Hall-Smith*, 222 Mich App 470, 472; 564 NW2d 156 (1997). In an appeal from an order terminating parental rights, this Court reviews the family court's decision for clear error. MCR 5.974(I), *In re Miller*, 433 Mich 331, 337, 445 NW2d 161 (1989). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *Id.*

The trial court terminated respondent's parental rights pursuant to five statutory criteria:

(a) The child has been deserted under either of the following circumstances:

* * *

(ii) The child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period.

* * *

(g) 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.

* * *

(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

(j) 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.

* * *

(l) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.¹ [MCL 712A.19b(3); MSA 27.3178(598.19b)(3).]

In rendering its decision, the court commented on the long history of the Burton children's case, noting that it began with their eldest child in 1985. With regard to Chelsey, the trial court found that respondent had deserted the child under subdivision a(ii) because she had had no contact with Chelsey for eleven months, since Christmas 1997, and had not sought custody during that time. Further, subdivision 3(g) was met because respondent had not provided appropriate care for Chelsey, including food, clothing, monetary support, or emotional support, other than an occasional call from prison. The parents had cared for Chelsey for only about one-and-a-half years during her life. Even that contact was, in the court's belief, harmful, exposing the child to criminality, depravity, and substance abuse. The couple had been provided ample opportunity to overcome their shortcomings as parents, but failed to comply with the case service plan over a two-year period. The history and nature of the parents' crimes, including pandering, prostitution and probation violations, reflected upon respondent's parenting skills and ability.

The court found that there was no reasonable likelihood that respondent would provide proper care and custody within a reasonable time. Chelsey's special needs, given the severe psychiatric and emotional trauma she had experienced, could not be addressed by either parent, having demonstrated an inability to care for a normal child. Finally, respondent had had her rights to two other children terminated for serious, chronic neglect.

In Docket No. 222345, respondent argues that the court erred in terminating her parental rights in the manner it did because the welfare of her children was provided for under a guardianship, there was no determination as to when she could participate in the case service plan, and no reasonable attempt to secure her participation in the termination proceedings. Respondent cites no authority for these contentions. A party may not merely announce a position and leave it to this court to rationalize the basis for the claim *Hamlet, supra* at 521. Moreover, the record reflects that attempts were made to secure respondent's participation.

In Docket No. 222652, respondent argues that the court erred in terminating her parental rights without giving her the opportunity to be released from prison and show that she had made adjustments in her life that enabled her to parent LaShonda or to find a successor guardian. Even if the proffered evidence had been considered, it likely would not have altered the court's disposition in light of the extensive evidence of the children's behavioral and emotional problems, their need for a stable environment and intensive therapy, and their increasing problems over their nearly lifelong deprivation of consistent parental care. *Hamlet, supra* at 520-521.

Once a court finds that a statutory ground for termination is met by clear and convincing evidence, termination is nondiscretionary. *Hall-Smith, supra* at 472. The court must terminate parental rights unless it is clearly not in the child's best interests. *Id.* The burden of going forward with evidence

that termination is not in a child's best interests rests on the respondent. *Id.* at 473. "Absent any evidence addressing this issue by the parent, termination of parental rights is mandatory." *Id.*

The court's decision was not clearly erroneous. Respondent failed to properly care for her children for several years before her incarceration. Respondent's chronic abuse and neglect of her children resulted in them being under the wardship of the court for most of their lives. There was extensive testimony that the children suffered severe psychological and emotional trauma, resulting in extreme behavioral problems, requiring psychiatric care and intensive outpatient counseling.

There was clear and convincing evidence that respondent failed to provide proper care or custody for the children and there was no reasonable expectation that she could do so within a reasonable time. MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g). Respondent was incarcerated at the time her rights were terminated and had a lengthy criminal history involving drug-related charges and probation violations. The evidence showed that respondent could not provide proper care for the children. Respondent failed to comply with the case service plan during the years that FIA attempted to work with her. Expert testimony and evidence indicated that even if respondent were not incarcerated and could physically assume Chelsey's care, she would be unable to provide the care that Chelsey needed, and that being in an unstable environment would be harmful to Chelsey. The court did not err in terminating respondent's rights on the basis of her fitness as a parent, MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g); *Hamlet, supra* at 515-516, 520, 525, and the likelihood that the children would be harmed if returned to respondent's home, MCL 712A.19b(3)(j); MSA 27.3178(598.19b)(3)(j).

Additional grounds existed for terminating respondent's parental rights in that her rights to two other children were previously terminated because of chronic abuse and neglect. MCL 712A.19b(3)(i) and (l); MSA 27.3178(598.19b)(3)(i) and (l). However, there was some evidence that respondent recently may have written a letter to the children, which was not delivered, thereby refuting evidence of desertion under MCL 712A.19b(3)(a)(ii); MSA 27.3178(598.19b)(3)(a)(ii). Nevertheless, four statutory grounds for termination of parental rights were met by clear and convincing evidence. MCL 712A.19b(3)(g), (i), (j), and (l); MSA 27.3178(598.19b)(3)(g), (i), (j), and (l).

Respondent argues that the termination of parental rights was not in the children's best interests because it was the children's actions and not her actions that led to removal from the guardian's home. Given the children's needs and respondent's lack of parental care for the greater part of their lives because of her substance abuse and criminal history, her argument that termination is not in the children's best interests is without merit.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Janet T. Neff

/s/ Michael R. Smolenski

¹ The statute, as quoted, was amended, effective July 1, 1999. Chelsey's termination proceedings on November 11, 1998 were subject to the former statutory provisions, while LaShonda's proceedings on

August 11, 1999, were subject to the current version. However, because the changes to the provisions at issue were merely grammatical, they do not affect our disposition.