

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JESSICA LYNNE POWELL, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

STEVEN KLIZA,

Respondent-Appellant.

UNPUBLISHED

September 29, 2000

No. 222979

Wayne Circuit Court

Family Division

LC No. 97-359530

In the Matter of JESSICA LYNNE POWELL and
ERIC ANTHONY NEIL POWELL, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner - Appellee,

v

CHRISTINE MARIE POWELL,

Respondent - Appellant.

No. 223018

Wayne Circuit Court

Family Division

LC No. 97-359530

Before: Murphy, P.J., and Griffin and Wilder, JJ.

PER CURIAM.

In these consolidated appeals, respondents Christine Powell and Steven Kliza appeal as of right from a family court order terminating their parental rights to minor children, Jessica Lynne Powell and

Eric Anthony Neil Powell, pursuant to MCL 712A.19b(3)(c)(i), (g), and (j); MSA 27.3178(598.19b)(3)(c)(i), (g) and (j).¹ We affirm.

Docket No. 223018

Respondent Christine Powell argues the trial court clearly erred in finding that the statutory grounds for termination under MCL 712A.19b(3)(c)(i), (g), and (j); MSA 27.3178(598.19b)(3)(c)(i), (g), and (j)² were established by clear and convincing evidence. Respondent maintains that it was against the best interest of the minor children to terminate her parental rights. We disagree.

We review for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the children's best interest. *In re Trejo Minors*, 462 Mich 341; ___NW2d ___(2000). If a trial court determines that a statutory ground for termination exists on the basis of clear and convincing evidence,

¹ Respondent Steven Kliza, father of Jessica, appeals the termination of his parental rights with regard to Jessica only. The father of Eric, Anthony Spilko, also had his parental rights terminated but has not appealed the termination.

² MCL 712A.19b(3); MSA 27.3178(598.19b)(3) provides in pertinent part:

(3) The Court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The 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 either of the following:

(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.

* * *

(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.

* * *

(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.

then MCL 712A.19b(5); MSA 27.3178(598.19b)(5) mandates that the trial court terminate the parent's rights "unless there exists clear evidence, on the whole record, that termination is not in the child's best interests." *Id.* at 354.

This case came before the family court pursuant to a petition for temporary custody filed in September 1997 alleging neglect and abuse. Respondent signed a copy of the parent-agency agreement on November 5, 1997, the elements of which required drug assessment and treatment, random drug screens, maintenance of a legal source of income, safe and suitable housing, participation in parenting classes, and weekly visitation with the children. A permanent custody hearing ensued on January 8, 1999, as a result of respondent's alleged minimal efforts to avail herself of the services offered.

We find from a review of the record the trial court did not clearly err in finding that each of the above-referenced subsections of MCL 712A.19b(3); MSA 27A.3178(598.19b)(3) was established by clear and convincing evidence. The record shows that respondent was unable to sustain a drug-free lifestyle and comply with the parent-agency agreement and treatment plan. Respondent entered an outpatient program at Eleanor Hutzel Recovery Center in June 1998, but was discharged in August 1998 for lack of attendance. She re-entered the program in September 1998 and was again discharged for lack of attendance. Respondent re-entered the outpatient program for a third time in November 1998 and was still enrolled at the time of the permanent custody hearing. A progress report from Hutzel dated January 1999 indicated that despite respondent's repeated enrollment and participation, her prognosis was "guarded" and Hutzel was unable to give a firm termination date for respondent's treatment. Respondent had attended only nine out of twenty-two therapy sessions between November 1998 and January 1999.

Respondent's persistent drug problems were more concretely evidenced by the fact that contrary to the parent-agency agreement, respondent failed to provide weekly random urine screens on a regular basis. Between November 20, 1998, and December 28, 1998, respondent provided four urine samples that tested positive for opiates. Respondent's last positive urine screen was only ten days prior to the permanent custody hearing. At the time of the permanent custody hearing, respondent was pregnant with her third child and admitted to using illicit substances during her pregnancy.

The record of the permanent custody hearing further reflects that in addition to respondent's unresolved substance abuse problems, other deficiencies detrimentally affected her ability to care for the minor children. Although respondent completed parenting classes in December 1997, the evidence indicates she failed to benefit from the classes. At observed visits, although it was apparent to the foster care supervisor that respondent loved her children, she did not exhibit satisfactory parenting skills during visitations with her children, interacting and arguing with the other adult family members that were present rather than engaging in activities with the children. Moreover, respondent never maintained consistent employment, holding only a series of "odds and ends" jobs during the pendency of the proceedings. In fact, respondent was unemployed at the time of the permanent custody hearing. Further, respondent did not have housing of her own at the time of the permanent custody hearing, but resided in a home with her own mother and numerous other family members, one of whom physically abused one of the children. Thus, this living environment was determined by the foster care supervisor

to be unsuitable for the children on the basis of the conditions therein and the number of people living there.

On the basis of the above record, we conclude that neither the trial court's finding that the enumerated statutory grounds for termination were established by clear and convincing evidence, nor the court's finding with regard to the children's best interests, were clearly erroneous. *In re Trejo Minors, supra*. We therefore affirm the termination of respondent's parental rights.

Docket No. 222979

Respondent Steven Kliza argues on appeal that the trial court clearly erred in finding the statutory ground for termination under MCL 712A.19b(3)(j); MSA 27.3178(598.19b)(3)(j), with regard to Jessica Lynn Powell, his daughter, was established by clear and convincing evidence and that such termination was in the best interests of the child. In so doing, respondent maintains that despite the trial court's order terminating his parental rights pursuant to three statutory grounds, subsections (3)(c)(i), (g) and (j), only the latter subsection applies to him, and "it is from this finding of fact that [a]ppellant Steven Kliza appeals by right."

As a preliminary matter, we note only one statutory ground is required for termination, *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991), and contrary to respondent's assertion, the three statutory grounds cited by the trial court as justification for termination were directed to respondent as well as correspondent Christine Powell. Because respondent selectively challenges only one of the three statutory grounds for the termination of his parental rights, issues regarding the two remaining unchallenged bases for termination have been waived on appeal and provide adequate justification for affirmation of the trial court's order. In any event, addressing respondent's appellate claims, we conclude the trial court did not clearly err in its ultimate conclusion.

The testimony at the permanent custody hearing indicated respondent did not comply with the parent-agency agreement and the goals set forth therein. See MCL 712A.19a(4); MSA 27.3178(598.19a)(4). Despite court orders to provide weekly random drug screens, respondent submitted to only three, the last of which was only 2½ months prior to the permanent custody hearing and tested positive for opiates. In addition, respondent failed to pursue any type of drug treatment.

According to the testimony of the foster care supervisor, respondent was developmentally delayed with attention deficit hyperactivity disorder and epilepsy. From April 1997 until January 1998, respondent was evaluated by Family Neighborhood Services, undergoing psychological and psychiatric evaluations resulting in a diagnosis of mild mental retardation. Family Neighborhood Services recommended that respondent live in a residential setting in adult foster care, receive counseling, and participate in drug treatment. However, such adult foster care never came to fruition. Instead, respondent lived with his mother prior to and during the pendency of these proceedings. Respondent's mother acted as his legal guardian and controlled his financial affairs. She also prepared his meals and took care of his personal needs. The testimony indicated respondent was unable to drive and often unable to find the location of programs for required services due to his disabilities and illiteracy.

Although respondent complied with the visitation requirements of the parent-agency agreement, interacted appropriately and bonded well with the minor child,³ he did not follow through on referrals to parenting classes. Respondent was also referred for individual therapy but likewise did not follow up on any of the twelve referrals made by petitioner. A referral for an intellectual assessment was similarly ignored.

The foster care supervisor testified that respondent wanted his daughter returned to the custody of her mother and that he did not wish to plan for the child. Respondent proposed his own mother as a possible placement plan for Jessica, but such placement was not feasible due to his mother's age and the fact that she already had another grandchild in her care. Although respondent testified he would provide care for his daughter, he also acknowledged that he needed his mother to provide for him and to care for his needs.

On the basis of the record, we conclude the trial court did not clearly err in terminating respondent's parental rights on the designated grounds and in finding such termination to be in the best interests of the child. *In re Trejo Minors, supra*. The evidence demonstrates that respondent failed to comply with virtually every aspect of his parent-agency agreement and despite numerous referrals for individual therapy, parenting classes, and substance abuse treatment, respondent did not avail himself of any of the offered services. He failed to remain drug free, and in light of his disability and consequent incapacity to care for himself, the trial court correctly determined that he would be unable to provide the necessary care for his own child. We thus find no clear error in the trial court's determinations that a statutory ground existed for termination of respondent's parental rights and that such termination was in the best interests of the child.

Affirmed.

/s/ William B. Murphy
/s/ Richard Allen Griffin
/s/ Kurtis T. Wilder

³ Respondent had not been a custodial parent of the child for several years prior to the court's involvement.