

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JESSICA ROBINSON, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

GENEVA ROBINSON,

Respondent-Appellant.

UNPUBLISHED

October 27, 2000

No. 222292

Wayne Circuit Court

Family Division

LC No. 95-328022

Before: Markey, P.J., and Murphy and Collins, JJ.

PER CURIAM.

Respondent appeals as of right from a July 28, 1999 order of the trial court terminating her parental rights to the minor child, Jessica Robinson (d/o/b 5/6/95), pursuant to MCL 712A.19(b)(3)(c)(i), (g) and (j); MSA 27.3178(598.19b)(3)(c)(i), (g) and (j) (conditions that led to adjudication continue to exist), (failure and inability to provide proper care and custody) and (risk of harm to the child if returned to the parent). We affirm.

The child was made a temporary court ward based on respondent's admissions at a June 8, 1995 preliminary hearing. Respondent testified that she used alcohol and crack cocaine during the first five months of her pregnancy, before she learned she was pregnant. She also acknowledged and accepted that she needed to successfully complete a substance abuse treatment course before she could take custody of the child. In a short time it became clear that the child had in fact been born with multiple severe medical conditions and that she will need assistance and therapy throughout her life. According to the testimony of the foster mother, the child has a microcephalic condition, cerebral palsy, developmental delays, seizures and a neuroblastoma cancer condition which has been in remission since mid-1996. The child's speech is severely limited, she can speak only a few words and uses a narrow range of sign language to communicate, her sight and hearing are impaired, and she is unable to walk without assistance. The child's care involves feeding by mouth and through a feeding tube with specific measures of Pediasure with fiber, medication for her seizures, and regular blood tests to monitor for signs of premature puberty, a possible consequence of her hormone imbalance.

From the start of the trial court's involvement in this case, respondent was ordered to complete various parent/agency treatment agreements with the dual goals of rehabilitating respondent and putting her in a position where she was capable of caring for the child. Respondent was to maintain a drug and alcohol free lifestyle, undergoing treatment and submitting to screens. She was to attend parenting classes and counseling in order to develop and maintain the appropriate emotional and psychological capacity to care for the child. She was to obtain a suitable and stable residence and source of income, and was to demonstrate commitment to the family bond by attending visitation, the child's medical treatment, and training sessions relating to the special needs. Ultimately, the trial court concluded that despite respondent's efforts toward complying with the agreements, with respect to those portions of the agreements directly relating to her ability to care for the child, respondent's efforts had been insufficient.

A two-prong test applies to a decision of the family division of circuit court to terminate parental rights. "First, the probate court must find that at least one of the statutory grounds for termination, MCL 712A.19b; MSA 27.3178(598.19b), has been met by clear and convincing evidence." *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). We review the family court's decision for clear error. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). 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 had been made. *Miller, supra*. Once a statutory ground for termination of parental rights is established, the court must terminate parental rights unless it finds that termination of parental rights to the child is clearly not in the child's best interest. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); MCR 5.974(E)(2); *In re Trejo*, 462 Mich 341, 356-357; ___ NW2d ___ (2000).

The applicable statutory subsections, MCL 712A.19b(3)(c)(i), (g) and (j); MSA 27.3178(598.19b)(3)(c)(i), (g) and (j), provide:

(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.

Respondent challenges only the court's conclusion that clear and convincing evidence supported termination under these subsections. Accordingly, this appeal involves no question with respect to the court's best interests determination.

Subsection (3)(g) requires clear and convincing evidence of both a failure and an inability to provide proper care and custody. *In re Hulbert*, 186 Mich App 600, 605; 465 NW2d 36 (1990). With regard to the potential for improvement relevant to both this subsection and subsection (3)(c)(i), the determination of what is a reasonable time properly includes both how long it will take for the parent to improve conditions and how long the child can wait for the improvement. *In re Dahms*, 187 Mich App 644, 647-648; 468 NW2d 315 (1991). The conditions which led to adjudication were the child's severe medical problems at birth and respondent's substance abuse issues, issues which both led to the child's condition and rendered respondent incapable of adequately caring for the child. The evidence presented essentially indicated that while respondent had ultimately complied with the court's parent/agency agreement, the fact that she had turned her life around was of negligible impact on the underlying concern regarding her capacity to care for the child.

Although respondent has never been in the position to actually demonstrate her aptitude to care and provide for the child, it is fair to say that the requisite standards for "failure" and "inability" to provide care and custody are satisfied by the facts of this case. Through no fault but her own, respondent failed the child during her pregnancy - when she exposed the child to harm through her abuse of drugs and alcohol - and upon birth. Contrary to respondent's claims that a finding she failed the child cannot be supported where she never had the chance to fail, the facts that the child's immediately apparent medical problems and respondent's equally obvious substance abuse problems resulted in respondent never having initial custody are sufficient to satisfy such a finding. Moreover, respondent's seemingly successful substance abuse treatment unfortunately failed to realize a sea change in her daily intellectual functioning and capacity to manage the responsibilities attendant to the care of her medically challenged child. Respondent's various case workers during the four years these proceedings were ongoing were essentially unanimous in their assessment that despite respondent's wealth of love for the child, she was simply incapable of mastering the multitude of tasks needed to ensure the child's health and well-being.

Respondent places great weight on the singular fact that when case workers were unable to arrange specific training with regard to the use of the child's feeding tube, she took the initiative to secure a nurse who provided her with said training. Notwithstanding this fact, the additional evidence showed that in the months after receiving this training respondent either refused or was unable to demonstrate what she had been taught. The child's foster parent understandably testified that she had no confidence in respondent's ability to safely and correctly feed the child. Given the remaining evidence showing that respondent missed critical doctor's appointments, even after the trial court issued a clarified order

requiring one hundred percent attendance at such appointments, it cannot be said that the witnesses conclusions regarding respondent's inability to provide proper care were misplaced.

The underlying condition of respondent's inability to care for the medically challenged child had not changed after four years of effort and assistance on the part of the court and state agencies. With evidence indicating that despite respondent's desire and efforts she simply did not have the capacity to provide proper care and custody, in the opinion of the case workers and counselors, respondent's failure to satisfactorily demonstrate otherwise in the four years since the child's birth indicated that she would not be able to do so in a reasonable time. We hold that the trial court did not err in finding that subsections (3)(c)(i) and (g) were met by clear and convincing evidence. See *In re Terry*, 240 Mich App 14, 23; 610 NW2d 563 (2000).

In addition, we hold that the trial court did not err in finding that subsection (3)(j) had been met by clear and convincing evidence. It was conclusively shown that given the child's various medical conditions, even one minor mistake in treatment could result in her death. For the same reasons supporting the trial court's findings with regard to respondent's ability to provide care and custody, the risk of harm were the child to be returned to respondent is evident.

Affirmed.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Jeffrey G. Collins