STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of STEPHAN CHARLES COOPER, SHANTIQUE K. COOPER, SHAN-A KRISTIN COOPER, SHAQUILE COOPER, and SAMUEL ROVELL COOPER, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

STEPHANY COOPER,

Respondent-Appellant,

and

JEROME MCCARY, CHARLES CLARK, AND TYRONE BROWN,

Respondents.

UNPUBLISHED
December 26, 2000

No. 219380
Wayne Circuit Court
Family Division
LC No. 96-364814

In the Matter of SHAMAR JOHNSON and SHATONIA MOORE, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

STEPHANY COOPER,

Respondent-Appellant,

No. 227165
Wayne Circuit Court
Family Division
LC No. 96-364814

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and

JEROME MCCARY, CHARLES CLARK,
TYRONE BROWN, KENNETH JOHNSON, and
ANTHONIO DEWAYNE MOORE,

Respondents.

Before: Bandstra, C.J., and Wilder and Collins, JJ.

PER CURIAM.

Respondent Stephany Cooper appeals, as of right in Docket No. 219380 and by leave granted in Docket No. 227165, the trial court's orders terminating her parental rights under MCL 712A.19b(3)(c)(i), (g), and (j); MSA 27.3178(598.19b)(3)(c)(i), (g), and (j). In Docket No. 219380, she appeals the court's March 22, 1999 order terminating her parental rights to Stephan, Shantique, Shan-a, Shaquile, and Samuel Cooper. In Docket No. 227165, she appeals the trial court's May 20, 1999 orders terminating her parental rights to Shamar Johnson and Shatonia Moore.[1] We affirm as to all orders of termination.

On March 30, 1998, respondent's brother brought three of the Cooper children to a local police station in Detroit, complaining that the children had been left "on the steps." Two days later, the remaining two Cooper children were placed in care for failure to maintain adequate housing. Shamar Johnson was living at the time with his father. A petition was filed asking the court to take jurisdiction over the children. At a hearing on April 9, 1998, respondent admitted that she had left the children with her boyfriend, that she did not return for two days, and that she was using drugs and drinking beer during that period. She testified that she left the children approximately twice per month. Based on respondent's admissions, the court took jurisdiction over the children and directed that respondent comply with the conditions of the parent/agency agreement into which she had entered.

Over the following nine months, there was evidence that respondent complied in a limited fashion with the parent/agency agreement. She took a parenting course, as required by the agreement, and visited her children, but did not comply with any other requirements, including the requirement that she submit weekly drug screens. At a December 2, 1998 hearing, the court was informed that respondent was pregnant with twins. The court directed that petitions be filed on the newborns after their birth, and further directed that a termination petition be filed if she tested positive for drugs at that time.

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[1] The court also terminated the parental rights of Jerome McCary, Charles Clark, and Tyrone Brown, the fathers of the Cooper children. They have not appealed. The court dismissed the petition to terminate with respect to Kenneth Johnson and Anthonio Moore. All references to "respondent" in this opinion shall be to Stephany Cooper.

Petitioner filed a petition to terminate on January 6, 1999, alleging that termination was justified under MCL 712A.19b(3)(c)(i), (g), and (j); MSA 27.3178(598.19b)(3)(c)(i), (g), and (j). On January 15, 1999, Shatonia Moore was born; her twin, a boy, was stillborn. Shatonia tested positive for cocaine and marijuana. Respondent removed Shatonia from the hospital before the results of the drug test were received, and without informing the hospital that FIA would file a petition to take jurisdiction over her. Petitioner filed a petition to terminate respondent's parental rights with respect to Shatonia under MCL 712A.19b(3)(g), (j), and (i); MSA 27.3178(598.19b)(3)(g), (j), and (i).

A hearing was held on the petitions to terminate on March 22, 1999. Laura Ingrao, the caseworker for the Cooper children, testified that respondent had attended 32 of 49 offered visits with her children, but that she was late to 12 visits. She did not have either suitable housing for the children or a legal source of income. In addition, she provided only five of fifty required drug screens; three of the five screens tested positive for drugs and/or alcohol. Respondent had entered drug treatment on January 27, 1999, and was still participating. Ingrao admitted that, since respondent had been in drug treatment, her drug screens had tested negative.

Respondent testified on her own behalf, admitting that she did not comply with the agreement for some time after the case was open. She told the court that after Shatonia's twin was stillborn, she realized how much she needed her children and how much they needed her. She said she was bonded to her children, but that because she was only given an hour with them, the children were uncomfortable with visitation. She also admitted that she had been late to some visitation periods, but explained that her bus had been late. She admitted that she had no job lined up at present, and further that she had no suitable housing.

Following the close of testimony and the argument of counsel, the court terminated respondent's rights with respect to the Cooper children, but set another hearing for May 20, 1999 on the petitions to terminate respondent's rights with respect to Shamar and Shatonia. At that hearing, evidence was introduced that respondent had left drug treatment, that she still had no legal source of income or suitable housing, and that she had contacted her workers sporadically. Ingrao recommended that respondent's rights be terminated with respect to Shatonia. Lakeyla Whitaker, who handled Shamar's case, also recommended that respondent's rights be terminated. The court entered an order terminating respondent's rights with respect to both children.

In a termination hearing, the petitioner bears the burden of showing by clear and convincing evidence a statutory basis for termination. MCR 5.974(F)(3). Once a statutory basis for termination is shown, the trial court shall terminate parental rights unless it finds that termination of parental rights is clearly not in the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Trejo Minors*, 462 Mich 341, 354; 612 NW2d 407 (2000). This Court reviews the trial 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, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Id*., quoting *In re Riffe*, 147 Mich App 658, 671; 382 NW2d 842 (1985).

In the present case, the court terminated respondent's rights under three provisions, MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i), MCL 712A.19b(3)(g); MSA

27.3178(598.19b)(3)(g), and MCL 712A.19b(3)(j); MSA 27.3178(598.19b)(3)(j), which provide as follows:

> The court may terminate the parental rights of a parent to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
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> * * *
>
> (c) The parent was a respondent in a proceeding brought under this chapter, 182 days or more have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds ...:
>
> (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 age of the child.
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> * * *
>
> (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 age of the child.
>
> * * *
>
> (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 had been shown not to be in compliance with the parent/agency agreement, notwithstanding her argument that she was in total compliance with the agreement. As of the time of the March 22 hearing, she had submitted only five of fifty drug screens, had cooperated in only a limited fashion with caseworkers, had been on time for only twenty of forty-nine visits with her children, and had not visited with Shamar for an extended period. She had failed twice to enter drug treatment, and gave birth to Shatonia while still using drugs. At no point did she have a legal source of income or suitable housing. While there might have been extenuating circumstances for respondent's failure to comply with some aspects of the agreement, her conduct justified a conclusion that she would not be able to provide the children with a stable home. See *In re Jackson*, 199 Mich App 22, 27; 501 NW2d 182 (1993) (partial noncompliance with parent/agency agreement may support termination); *In re Hall*, 188 Mich App 217, 223-224; 469 NW2d 56 (1991). The court could conclude that respondent's conduct after the filing of the termination petition showed at best a temporary change in her behavior, and that she would revert to her pattern of drug abuse and neglect of the children if the children were returned to her.

The court further concluded that the children could not wait any longer for respondent to become able to handle their care and custody. The question of what, under MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i) depends on the particular facts of the case

and the amount of time the children can wait for the improvement. *In re Dahms*, 187 Mich App 644, 647-648; 468 NW2d 315 (1991). In this case, respondent had shown some limited attempts to take only recently begun drug treatment after failing to enter it for the first ten months after the case was opened. She did not have suitable housing or a legal source of income. The court's conclusion that the children could not wait any longer was not clearly erroneous.

Further, we conclude that the court did not err in concluding that termination was in the children's best interests. The children had special needs for behavioral and physical problems. They could not wait any longer to have their situation stabilized. While there was some evidence that the children were bonded with respondent, it was clear that respondent would not, within a reasonable time, obtain the wherewithal to raise the children. The termination orders were not clearly erroneous.

We affirm.

/s/ Richard A. Bandstra
/s/ Kurtis T. Wilder
/s/ Jeffrey G. Collins