STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ARIEL BURDIN, DAVIERRE CORTEZ BURDIN, and DARNELL CORTEZ BURDIN, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

COLLEEN MICHELLE HOPE,

Respondent-Appellant,

and

DWAYNE CORTEZ BURDIN,

Respondent.

UNPUBLISHED
February 20, 2001

No. 226512
Wayne Circuit Court
Family Division
LC No. 95-325901

In the Matter of ARIEL BURDIN, DAVIERRE CORTEZ BURDIN, and DARNELL CORTEZ BURDIN, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DWAYNE CORTEZ BURDIN,

Respondent-Appellant,

and

No. 226533
Wayne Circuit Court
Family Division
LC No. 95-325901

COLLEEN MICHELLE HOPE,

Respondent.

Before: Whitbeck, P.J., and Murphy and Cooper, JJ.

PER CURIAM.

In docket number 226512, respondent-mother appeals by right the trial court's order of February 21, 2000, terminating her parental rights to three children, Ariel Burdin (d/o/b 2/11/97), Davierre Cortez Burdin (d/o/b 9/6/98) and Darnell Cortez Burdin (d/o/b 12/2/99). In docket number 226533, respondent-father appeals by delayed leave granted the same trial court order which also terminated his parental rights to these three children. These appeals were consolidated by order of this Court.

The court terminated respondents' parental rights to Darnell pursuant to MCL 712A.19b(3)(g), (i), (j) and (4); MSA 27.3178(598.19b)(3)(g), (i), (j) and (4). It terminated their parental rights to Ariel and Davierre pursuant to MCL 712A.19b(3)(a)(*ii*), (b)(*i*), (c)(*i*), (g), (i) and (j); MSA 27.3178(598.19b)(3)(a)(*ii*), (b)(*i*), (c)(*i*), (g), (i) and (j). We affirm the court's orders with regard to all three children.

The court initially assumed jurisdiction over Ariel and Davierre on March 18, 1999, pursuant to a petition filed after Davierre tested positive for cocaine at birth. At that time the court both denied petitioner's request that it take permanent custody and terminate respondents' parental rights, and authorized parent-agency agreements which required, among other things, that respondents submit to random drug screens and participate in drug treatment programs. By December 8, 1999, when the court conducted a second permanency planning hearing, respondents' individual failures to comply with the parent-agency agreements was well documented. The court accordingly authorized a supplemental petition requesting permanent custody of the two children. Petitioner filed that petition on January 23, 2000. Around the same time, petitioner filed a separate petition requesting that the court take permanent custody of respondents' newborn son, Darnell. He had also tested positive for cocaine at birth, just days before the December hearing. The court conducted a joint hearing on the separate petitions on February 4, 2000. At its conclusion, the court first found that a preponderance of the evidence supported the assumption of jurisdiction over Darnell, then found that clear and convincing evidence supported termination of respondents' parental rights to all three children.

On appeal, respondent-father for the first time raises three allegations of procedural error. Due to his failure to object to the claimed errors below, respondent-father has failed to preserve these challenges. *Phinney v Perlmutter*, 222 Mich App 513, 528; 564 NW2d 532 (1997). We nevertheless briefly address the lack of merit in each of these contentions.

Respondent-father first contends that the court erred by admitting medical records pertaining to Darnell's birth. The records indicate that at the time of his birth both Darnell and

respondent-mother tested positive for cocaine. They also indicate that respondent-mother had received little or no prenatal care during the pregnancy. Contrary to respondent-father's argument, these records were admissible pursuant to MRE 803(4) and (6).

Respondent-father also contends that with respect to the decision to terminate his parental rights to Darnell at the initial hearing, the court erred by accepting and relying on hearsay evidence. Pursuant to MCR 5.974(D), when an original petition contains a request for termination the trier of fact can, in a single proceeding, find by a preponderance of the evidence that a child comes under the court's jurisdiction on the basis of MCL 712A.2(b); MSA 27.3178(598.2)(b), and then find, based on clear and convincing legally admissible evidence introduced on the issue of assumption of jurisdiction, that one or more of the facts alleged in the petition supports termination pursuant to the grounds contained in MCL 712A.19b(3); MSA 27.3178(598.19b)(3). This is precisely what occurred in the instant case.

With regard to Darnell, the court relied on the above discussed medical records in finding that a preponderance of the evidence supported the assumption of jurisdiction. See *In re Baby X*, 97 Mich App 111, 116; 293 NW2d 736 (1980) (a mother's conduct while pregnant can establish jurisdiction over a newborn child). Counsel for respondent-father even conceded during argument that the court's assumption of jurisdiction over Darnell was appropriate. In addition, respondent-father stipulated to the court taking judicial notice of the case file. Accordingly, sufficient legally admissible evidence supported the court's findings and conclusions with respect to termination of respondent-father's parental rights to Darnell. Although consideration of this original petition respecting Darnell occurred during the same hearing in which the court considered the supplemental petition respecting Ariel and Davierre, the court's separate reports and recommendations demonstrate that the petitions were individually and correctly evaluated under the appropriate evidentiary standards.

Next, respondent-father contends that the court erred by not differentiating between the parents, who were not planning together, in its findings of fact and conclusions of law. MCL 712A.19b(1); MSA 27.3178(598.19b)(1) provides, in pertinent part, that "[t]he court shall state on the record or in writing its findings of fact and conclusions of law with respect to whether or not parental rights should be terminated." See also MCR 5.974(G)(1). However, nowhere in the relevant statutes or court rules is it required that the court make separate findings when dealing with two parents who are planning separately. Here, the court's findings and conclusions on the record, and in the reports and recommendations, sufficiently identified respondent-father's failure to adequately address his drug problem as the basis for termination of his parental rights to the three children.

Having considered these procedural issues, we now address respondent-father's claim that the court erred in terminating his rights to the three children. The same claim represents respondent-mother's only issue on appeal.

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, 364-365; 612 NW2d 407 (2000).

Among the statutory grounds on which the court found reason to terminate was MCL 712A.19b(3)(i); MSA 27.3178(598.19b)(3)(i). Pursuant to § 19b(3)(i), the court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, that "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."

The case file includes copies of documents associated with previous court proceedings which resulted in the termination of respondents' parental rights to an older daughter, April. The family had come to the attention of the court in early 1995, when April was born to respondent-mother with evidence of cocaine in her system. Respondent-mother also tested positive for cocaine and respondent-father admitted he used drugs. The court assumed temporary custody of April and required respondents to comply with treatment plans that included drug assessments, drug screens and counseling. Due to respondents' failure to make progress in treatment, in July 1996 the FIA filed a petition to terminate respondents' parental rights to April. A hearing on that petition was conducted on January 9, 1997, and finding that respondents had failed to comply with the treatment plan, specifically that they had failed to undergo drug treatment, the court terminated their parental rights to April pursuant to MCL 712A.19b(3)(c)(*i*), (g) and (j); MSA 27.3178(598.19b)(3)(c)(*i*), (g) and (j). The court's order was entered on January 22, 1997.[1]

The court's order regarding April demonstrates that respondents were provided the opportunity to rehabilitate themselves, that petitioner provided assistance, but that over the eighteen months April was a ward of the court those attempts were unsuccessful. Respondents' continued drug use was the primary reason the court took jurisdiction over the children in the instant case. Accordingly, clear and convincing evidence supported termination under § 19b(3)(i).

We note that clear and convincing evidence also supports termination on most of the additionally identified statutory grounds.[2] Extended discussion of these remaining bases is unnecessary, however, because only one statutory ground is required for this Court to affirm the

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[1] This Court, in a December 19, 1997, unpublished opinion, affirmed that decision following respondent-father's appeal. Respondent-mother did not appeal the decision.

[2] Noting that no evidence was presented that respondents caused physical injury or physical or sexual abuse, petitioner concedes that the court erred in terminating respondents' parental rights to Ariel and Davierre pursuant to MCL 712A.19b(3)(b)(*i*); MSA 27.3178(598.19b)(3)(b)(*i*).

trial court's order. *Sours, supra* at 632. Accordingly, we conclude that the court did not clearly err in terminating respondents' parental rights to the three children. *Trejo, supra* at 356-357.

Affirmed.

/s/ William C. Whitbeck
/s/ William B. Murphy
/s/ Jessica R. Cooper