STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of M.T., D.T., D.T., Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LINDA TOLBERT,

Respondent-Appellant.

UNPUBLISHED
May 25, 2001

No. 230713
Genessee Circuit Court
Family Division
LC No. 93-096110-NA

Before: Holbrook, Jr., P.J., and Hood and Griffin, JJ.

PER CURIAM.

Respondent, biological mother of the involved minor children, appeals as of right a family court order terminating her parental rights to the children pursuant to MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g). We affirm.

We review for clear error both the family 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 child's best interest. MCR 5.974(I); *In re Trejo*, 462 Mich 341, 355-357; 612 NW2d 407 (2000); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding of fact is clearly erroneous if, although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake has been made. *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). To terminate parental rights, the family court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Once a statutory ground is established, the court must terminate parental rights unless "there exists clear evidence, on the whole record, that termination is not in the child's best interests." MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Trejo*, *supra* at 354.

Respondent argues on appeal that there was not clear and convincing evidence of parental unfitness sufficient to warrant termination of her parental rights. She maintains that her alleged behavior was not abandonment, but rather an intra-family transfer of custody of her minor children which did not rise to the level of neglect. Respondent further argues that she was not

given adequate services and opportunities in light of her mental impairment (attention deficit disorder) to allow her to comply with the court-ordered treatment plan. Finally, respondent contends that the family court erred by terminating her parental rights without specifying the statutory grounds or authority for termination. We disagree.

As a preliminary matter, respondent argues the trial court failed to establish jurisdiction by affirmatively showing that respondent and the relative caretakers failed to agree on a custody arrangement or that the relative caregivers' homes were unfit. However, because respondent pleaded no contest to the termination petition filed by petitioner to initiate this matter, she has waived the issue of jurisdiction. See *In re Hatcher*, 443 Mich 426, 439; 505 NW2d 834 (1993); *In re Powers*, 208 Mich App 582, 587-588; 528 NW2d 799 (1995).

We conclude the family court did not clearly err in finding that § 19b(3)(g) was established by clear and convincing evidence. Under § 19b(3)(g), parental rights may be terminated if a "parent, without regard to intent, fails to provide proper care and 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." The record indicates that respondent appears to have simply abandoned her three minor children. The uncontested proofs reflect that during the second week of January 2000 respondent left two of the minor children, her two-year-old twin daughters, in the care of their great aunt, informing the aunt that she was unable to care for the children. She later attributed her inability to care for her children to depression and the lack of financial resources. During the third week of January 2000 respondent contacted the paternal grandmother of the third minor child involved in this matter (a son then 5 1/2 years of age), and asked her to "watch him" for a while; respondent did not return for five weeks. The initial petition in this matter was filed in the family court on February 25, 2000, by petitioner after respondent made no further effort to contact or care for her children. Although respondent subsequently had some contact with her children, she never visited the children on her own initiative; rather, she only saw them when the relatives brought the children to her. The testimony indicated that respondent had not been involved in the twins' lives on a consistent basis since approximately two weeks after they were born. She regularly left the children with relatives not only for days, but months at a time. It is significant that respondent's behavior reflected a pattern of abandonment: in 1994, she voluntarily terminated her parental rights to her two oldest children, twin boys, following the initiation of termination proceedings based on similar allegations that she would leave those children with relatives for prolonged periods of time without making any provisions for their basic needs. A family court may apprise itself of all relevant considerations. *In re Jackson*, 199 Mich App 22, 26; 501 NW2d 182 (1993). Evidence of the mistreatment of one child is probative of the treatment of other children of the party. *Id.*

Respondent suffers from attention deficit disorder. In a psychological evaluation entered as evidence at trial, the examiner, retained by petitioner, opined that respondent is intellectually impaired, with poor comprehension and erratic in her ability to verbally integrate information. The examiner further concluded that respondent's prognosis for independently parenting her children was "guarded and poor" due to psychiatric problems much more severe than depression. The evaluation indicated that respondent has the symptoms of a characterilogical disorder including symptoms of paranoia, withdrawal, and delusions. Such a condition would cause respondent to be guarded, mistrustful, suspicious, and very prone to perceive people as being

motivated antagonistically towards her. The examiner, retained by petitioner, concluded that respondent had long-term deficiencies in her ability to function consistently, was neglectful and had abandoned her children. In sum, she had significant difficulty taking care of herself, let alone her children.

Petitioner's foster care worker assigned to the case testified that pursuant to the parent agency agreement, respondent was required to maintain a stable residence, maintain monthly contact with the caseworker, participate in educational planning for her child, attend a life skills course, abstain from any illegal substances, and maintain a legal source of income. The foster care worker testified that, with the exception of the required psychological evaluation, respondent failed to complete any of the portions of the parent agency agreement. Respondent failed to complete random drug screens and another drug screen tested positive for cocaine and marijuana. Respondent herself admitted to using illegal drugs within two weeks of the permanent custody hearing. Respondent was discharged from the life skills class due to erratic attendance. She never obtained any employment and was without income at the time of trial. The foster care worker opined that due to respondent's instability, as manifested in her psychological state and inability to function in a consistent manner, she was unable at the time of the permanent custody hearing to parent the children alone. A second foster care worker who testified at trial reached a similar conclusion with regard to respondent's ability to assume custody of her children. In fact, respondent admitted that the representations of the foster care workers were true.

Although respondent commendably turned to her relatives when she realized that she was unable to provide for her children, and the children remained in the care of respondent's chosen caretakers at the time of trial with the approval of petitioner, we conclude on the basis of the above record that the family court did not clearly err in finding that termination of respondent's parental rights pursuant to § 19b(3)(g) was warranted by clear and convincing evidence. Moreover, respondent's contention that the family court did not adequately specify the authority for termination is without merit. In its bench opinion, the court articulated and set forth in detail the relevant considerations supporting its decision to terminate respondent's parental rights. Further, in light of the available evidence, we cannot conclude that termination was not in the children's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Trejo*, *supra* at 354.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Harold Hood
/s/ Richard Allen Griffin