

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of STACEY CHALMERS, XAVIER
MILLER, JANAY MILLER, WILLIAM MILLER,
BRAYLON MILLER, JAYLON MILLER, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JANICE CHALMERS,

Respondent-Appellant.

UNPUBLISHED

June 12, 2001

No. 225577

Genesee Circuit Court

Family Division

LC No. 97-109422-NA

Before: K. F. Kelly, P.J., and Smolenski and Meter, JJ.

PER CURIAM.

Respondent appeals as of right from a decision of the circuit court terminating her parental rights to her children¹ pursuant to MCL 712A.19b(3)(b)(i); MSA 27.3817(598.19b)(3)(b)(i), MCL 712A.19b(3)(c)(i); MSA 27.3817(598.19b)(3)(c)(i) and MCL 712A.19b(3)(g); MSA 27.3817(598.19b)(3)(g). We affirm.

I. Basic Facts and Procedural History

On November 12, 1997, the Family Independence Agency (FIA) received a complaint alleging improper supervision by respondent after three of her minor children ingested psychotropic medications and were subsequently rushed to the hospital for emergency treatment. All three children reacted severely to the medication, and one child required hospitalization. Additionally, at the time of the initial referral for investigation, respondent's home had burned down because one of the children was playing with a lighter while respondent slept.

¹ Respondent's six children have two different fathers. Both of the respective fathers' parental rights were terminated during these proceedings. Neither father is a party to this appeal.

Less than three weeks later, respondent's second home also burned down. On this occasion, respondent left her eldest daughter, then twelve years old, in charge of the younger siblings while respondent left the home entirely. When questioned, the daughter did not know respondent's whereabouts or when respondent would return. Fortunately, the daughter managed to evacuate the burning home before she or any of her younger siblings sustained any injuries.

On January 6, 1997, the children became temporary wards of the court and were placed into foster care. At this time, respondent was directed to comply with the Case Service Plan that required respondent to: attend the Life Skills program, attend domestic violence classes, complete a psychological evaluation, and obtain a stable residence. Over the course of two years, respondent failed to satisfactorily comply with the terms of the Case Service Plan or the Parent/Agency Agreement².

On May 4, 1999, the FIA filed a petition to terminate respondent's parental rights on the grounds that: 1) Respondent failed to provide proper care and custody; 2) there was a reasonable likelihood that the children would be harmed by neglect if returned to respondent's home; 3) it is in the best interest of the children to grow up in a stable environment and respondent was not able to provide that environment.

The termination trial began on September 22, 1999. At the close of proceedings, despite all of respondent's failures, the trial court decided to afford respondent one final opportunity to regain custody of her children³. Despite the trial court's effort to allow respondent one final opportunity to succeed, respondent again failed to comply. Accordingly, on January 19, 2000, the trial court found, by the requisite clear and convincing evidence, the statutory grounds upon which to terminate respondent's parental rights. Respondent appeals of right.

II. Standard of Review

This Court applies a two prong test to a trial court's decision to terminate parental rights. First, the trial court must find, by clear and convincing evidence, one of the grounds for termination delineated in MCL 712A.19b; MSA 27.3178(598.19b). *In Re Terry*, 240 Mich App 14; 610 NW2d 563 (2000). This court applies the clearly erroneous standard when reviewing a trial court's factual findings and will decline to disturb those findings unless we are "left with a definite and firm conviction that a mistake has been made". *Id.* at 22. (Citations omitted.)

² Respondent failed to obtain a stable residence, failed to attend and complete the Life Skills program, failed to attend substance abuse treatment, failed to submit to requested and random drug tests, failed to complete domestic violence classes, failed to regularly visit the children and failed to procure individual counseling.

³ The trial court required respondent to do the following: 1) Continue and complete domestic violence classes; 2) continue in the substance abuse program four times per week; 3) submit to all drug screens; 4) obtain psychological counseling or participate in services at the Genesee County Community Mental Health for the developmentally disabled; 5) continue the Life Skills Program; 6) communicate with the FIA caseworker and advise of all residences; 7) maintain a legal source of income; and 8) advise the FIA caseworker of all employment.

Once the requisite statutory ground for termination is established by clear and convincing evidence, it is incumbent upon the parent to come forth with some evidence indicating that termination will not serve the child's best interests. *Id.* If the parent does not meet these burdens of production and of going forward with the evidence, then the family court's discretion is eliminated and the court has no other option but to terminate parental rights. *Id.*

II. Termination of Parental Rights

In the case at bar, the trial court terminated respondent's parental rights on the authority of subsections 19b(3)(b)(i), (c)(i) and (g) which provide that:

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:

* * *

(b)(i) The parent's act caused the physical injury . . . and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

* * *

(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 lead 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.

Respondent takes issue with the trial court's findings and argues that respondent attempted to comply but failed because the State did not "make sufficient efforts" to assist her in securing her children's return. We disagree.

A review of the entire record in the instant matter reveals that there is a reasonable likelihood that if these children were returned to respondent's care and custody, they would suffer physical injury. Respondent's judgment and poor parenting decisions, which ultimately lead to her children ingesting psychotropic medications as well as lead to the destruction of two homes by fire, continue. Respondent failed to satisfactorily complete any of the programs that

would assist her in making better parenting decisions. Yet, instead of consistently attending class and learning how to generalize the information obtained to become a better parent, respondent elected not to participate in the program to the extent that respondent was dismissed on two separate occasions. Accordingly, termination of respondent's parental rights was proper pursuant to subsection 19b(3)(b)(i).

Further, a review of the complete record clearly establishes that respondent failed to provide proper care and custody for the children and that there is no reasonable likelihood that respondent will be able to do so given the children's age. Respondent did not procure a stable residence. Respondent had thirteen different residences, and as of the date of the termination trial, still did not have suitable housing. In fact, respondent argues on appeal that her transitory lifestyle was one of the reasons she was not able to attend the substance abuse treatment program. At the time of termination, respondent was not any closer to providing a safe and secure home environment for her six children than she was when the children were initially placed into foster care two years earlier. Accordingly, termination was proper on the authority of both subsections 19b(3)(c)(i) and (g).

III. Best Interests

Respondent also argues that the trial court erred by determining that termination of her parental rights would serve the children's best interests. We disagree.

At the termination trial, testimony established that respondent did not consistently visit her children. In fact, the testimony revealed that at best, respondent appeared at the scheduled visitations approximately fifty percent of the time. Additionally, respondent appeared at the foster parents' home without invitation in contravention of FIA's clear policy. Moreover, respondent verbally threatened agency workers and physically assaulted one caseworker in front of the children. After visitations with respondent, the children became agitated and invariably acted out in school. Because of respondent's inability to act appropriately during the visitations and the children's residual negative reactions to respondent's visits, the agency terminated all visitations.

Because respondent did not come forth with any evidence indicating that it would clearly not serve the children's best interest to terminate her parental rights, the trial court's discretion was eliminated leaving no other alternative but for the court to enter an order terminating respondent's parental rights. *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000).

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Michael R. Smolenski
/s/ Patrick M. Meter