

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JA, DL, EL, JL, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JESSICA ANDRICK,

Respondent-Appellant,

and

MICHAEL LONG,

Respondent.

UNPUBLISHED

June 12, 2001

No. 231357

Midland Circuit Court

Family Division

LC No. 99-000439-NA

Before: Hood, P.J., and Whitbeck and Meter, JJ.

PER CURIAM.

Respondent-appellant Jessica Andrick appeals as of right challenging the family court's order terminating her parental rights to her minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j).¹ We affirm.

I. Basic Facts And Procedural History

According to photographs and the original and amended petition filed in this case in October 1999, the Family Independence Agency (FIA) asked the family court to make the children temporary court wards because protective services worker Dennis Zimmerman, case worker Sheree Murray, and a volunteer discovered that they were living in a filthy home that was in poor repair. The home smelled of urine and lacked beds, heat, and hot water. Clothing, toys,

¹ JA's father died before these proceedings commenced and Michael Long, the other children's father, relinquished his parental rights and does not appeal. Thus, we address only those circumstances concerning Andrick's parental rights.

and garbage were strewn throughout the home. A space heater was in the living room surrounded by blankets that were growing warm to the touch, creating a fire hazard. The investigators found JA eating potatoes and ketchup, DL was naked and jumping on the furniture, EL, who had opened the door, attempted to hit Zimmerman with a stick, and infant JL, who had bronchitis, was asleep in a car seat in the home. Whether the children, who ranged in age from 5½ years to seven months, were alone in the home is not clear.

Andrick and her children had come into contact with the FIA on other occasions, at which time FIA staff had observed that the children were dirty, they had matted hair, and they had strong body odor. Even before the FIA filed the petition in this case, Andrick and her children had received a variety of services. Evidently, the FIA was concerned that Andrick was neglecting to care for JA's medical needs when she failed to take JA to scheduled medical appointments in 1995 and 1996. Andrick failed to take JA to appointments at the intermediate school district for her special needs² and, three days before Zimmerman filed the original petition in this case, Andrick apparently visited an FIA office but left her children unattended in the car for approximately fifteen minutes. Additionally, Andrick had been arrested for – though not necessarily convicted of – assault and battery, writing bad checks, and three unpaid traffic tickets.

Andrick admitted to or pleaded no contest to these allegations concerning the condition of her home, her past interactions with the FIA, and her parenting, prompting the family court to make the children temporary court wards. At the time the family court held the first dispositional hearing, in December 1999, Andrick was unemployed, living with her mother, and had attended the scheduled visits with her children, though not always on time. Murray reported that the children had been improving. For instance, JA was more eager to learn at school and her behavior was improving. DL continued to have speech problems, he was going to be assessed for a hearing loss, and his behavior at his foster home was improving, though his behavior at visits had not improved. EL was participating in Head Start. JL had made the most progress, coming close to the developmental abilities of other babies her age.

At the dispositional hearing Murray also said that she had briefly informed Andrick about the results of the psychological testing she had undergone, stressing the need for Andrick to bond with the children. However, Murray stated, she was unable to explain the test results to Andrick fully because that was not her area of expertise. Murray said that Andrick claimed to have enrolled in parenting classes, but was unable to confirm this assertion. Murray's impression was that Andrick was willing to participate in the services offered, but that Andrick did not believe that she needed the services because she did not understand her problems.

Following this dispositional hearing, the family court continued the children's foster care placements. The family court also ordered Andrick to undergo psychological and substance abuse evaluations and follow the evaluators' recommendations, participate in parenting classes, obtain and maintain employment and housing, visit the children, participate in counseling, and pay \$20 per month while the children remained in foster care. After subsequent dispositional

² All four children have special needs due to developmental, behavioral, and educational delays.

review hearings, the family court also ordered Andrick to participate in a variety of other services, including anger management treatment and substance abuse counseling.

At best, Andrick's compliance with and benefit from these requirements over the following months was inconsistent. For instance, Andrick did undergo a psychological evaluation as ordered. The psychologist, interpreting the results of a variety of tests, determined that Andrick functioned on the borderline between a "low" and "average" intellect, she appeared "angry," "confused," "immature," and "reactive," had a "passive/aggressive" personality disorder, and did not seem emotionally attached to her children. Because Andrick tended not to "view herself as having any difficulties that need to be resolved or changed in order to parent the children appropriately," the psychologist questioned whether she would actually benefit from services.

When offered the opportunity to enter psychological counseling, Andrick originally attended most appointments with her first counselor, but did not acknowledge any problems with her parenting skills or judgment. Nevertheless, her second counselor said that Andrick missed most of the appointments. On the occasions when she called to cancel an appointment, she waited a long time to reschedule. When she did attend counseling, her counselor observed that she was often angry and hostile, resisted efforts to help her, showed signs of denial and an inability to form insight into her situation, and made only "minimal" improvement in understanding that she would need to be less hostile and aggressive toward FIA staff.

Andrick's anger management counselor at the Shelter House program reported that she had not made any progress and had not attended all her scheduled sessions. Similarly, Andrick's substance abuse counselor reported that she attended only five sessions before stopping her sessions altogether, making it impossible for him to assess her progress with her ability to deal with her history of growing up in a home with alcoholics and her own past alcohol abuse. Andrick's advocate at the program where she was receiving domestic violence counseling reported that she had attended four out of six appointments, but appeared "antagonistic" and in "denial" that her children had been living in an "unhealthy environment" when they were with her. Though Andrick she said that she loved her children, she did so in a way the advocate found unconvincing.

Andrick did visit her children as ordered. However, she was rough with them and often yelled, prompting the FIA staff members supervising the visits to instruct her not to yell at the children. Andrick was able to stop yelling at the visits, but FIA staff continued to observe that the visits were "chaotic and unstructured," perhaps because she "seem[ed] to struggle with follow through with discipline, safety, sitting down, and constructively interacting with the children." Andrick could not pay attention to more than one child at a time, or even notice what the other children were doing when she was playing with one child. Though she had attended parenting classes, Murray did not see any difference in Andrick's parenting skills. Further, she observed that the visits with Andrick were often stressful for the children. On one occasion, Murray had to pick DL off the floor and carry him to the visit because he was refusing to go. EL was no more happy at the prospect of visiting Andrick, screaming and crying all the way to the visit. Murray and other FIA staff had concerns for the children's safety, which caused them to

intervene in the visit every time there was a problem. Murray also said that the children's foster mother reported seeing improvement in the children when they did not see Andrick.

Andrick lost the mobile home where she had been living after failing to pay rent. She subsequently moved into her mother's two-bedroom apartment, which she shared with her mother and half-sisters. Andrick informed Murray that she intended to pay some of her debts before getting a home of her own. Though she found a number of jobs, she did not find a home for herself and her children while this case was pending, which also made it difficult for her to receive the homemaker services offered to her.

At the termination hearing, social worker Laurie Clements testified regarding JA and DL's progress during their placement in foster care and each child's emotional problems. JA was timid, angry, had difficulty expressing her feelings, threw "extreme" temper tantrums, and had indicated on one occasion that she was sad because her mother had not taken care of her or fed her. JA indicated to Clements that her memories of her mother made her feel sad and suggested that someone, perhaps a young cousin or neighbor, had unsuccessfully tried to sexually molest her while she was living with her mother. JA, who had delayed speech, had also started to make unusual noises that reminded Clements of a bird. When Clements asked JA about the sounds, the little girl explained that it was something that children needed to do, which why she was practicing the sounds every day.

DL also made nonverbal, animalistic sounds, but in a way that was more "primal" and "unsettling" to Clements. When she first met him, Clements thought that DL was autistic because he did not make eye contact or respond to her. He also had behavioral problems, frequently kicking and spitting. Clements ultimately concluded that he had a pervasive developmental disorder, which was on the continuum with autism, but not as severe. Though DL still had impaired speech, he had made significant progress, especially in controlling his behavior and in interacting with Clements and his foster mother, for whom he began expressing affection. His progress made Clements believe that his problems could be attributed to his environment rather than an organic cause. DL said very little about Andrick, and Clements had seen signs of regression in him after his visits with Andrick.

Murray mirrored Clements' comments regarding JA and DL's progress, noting that, for children who did not even know how to use utensils to eat food when they were placed in foster care, they had made significant advances, though they had more to accomplish. She added that JL appeared to have been left in a car seat for long periods of time before being placed in foster care because her head was flat, she lacked the skills to push or pull herself, and appeared not to recognize food. However, soon after being placed in foster care, JL had blossomed, her foster reported, as if "a world opened up to her." EL still had behavioral problems, but had begun to develop attachments.

Overall, Murray was concerned that Andrick simply had not made any significant progress in her ability to be a good parent despite the many services offered to her. In the week before the termination hearing, Murray told Andrick how important it was for her to attend her counseling sessions because it helped the individuals involved with her case to gauge her improvement. Though Andrick said she understood, she insisted that her failure to attend counseling should not be held against her. At the same time, Andrick still failed to understand

that her children had special needs. Additionally, Murray said, Andrick's attempt to find her own place to live with her children had fallen through because the money she had saved for a deposit had been stolen. Nor had Andrick been able to pay any of her outstanding bills. When Murray asked her, Andrick could not explain how she was spending the money she was earning. Andrick became angry when Murray pressed her to explain how she could care for her children. Murray also pointed out to her that if she was having a hard time attending counseling because of her work schedule, life would only get more hectic if she had all four children returned to her, despite her claims that she could care for the children.

Though Murray believed that Andrick loved her children, she saw no real improvement in Andrick other than improved hygiene, noting that Andrick had not inquired about her children's welfare in the time leading up to the termination hearing. Nor did Murray see any progress occurring in the foreseeable future; she estimated that it would take Andrick much longer than six months to make progress, while waiting would be detrimental to the children, especially DL and JA, because they needed stability, permanence, nurturing, a safe environment, and to have their physical needs met. Murray was not certain whether Andrick, who had been rough with the children, posed a danger of future physical harm to the children, but she saw the possibility of emotional, educational, and physical neglect in the future. Murray did not think gradually increasing Andrick's parenting time and reintroducing the children one at a time into her home was a realistic option.

When asked to reflect on why the FIA had removed her children from her in the first place, Andrick said that it was because she had no heat in her home and because the home was messy; she claimed that the home was messy because she was actually living elsewhere and only returned for brief periods to retrieve things she needed. Andrick did not acknowledge that any of her children other than DL had any serious special needs. She denied that the children exhibited some of the behavioral or emotional problems that Clements had observed when the children were with her.

Andrick admitted that, at the time of the termination hearing, she was sleeping on the couch at her mother's apartment. She said she would "love" to have the children with her, but knew that she was not prepared. Andrick noted that she had a job cleaning rooms at a hotel for approximately thirty hours per week and would start receiving benefits soon. The inconsistent scheduling for that job prevented her from attending all her appointments even though she knew that she risked losing her children by not attending counseling. Andrick acknowledged that her income from the job would not be enough to support all four children. She had also found an apartment, but had not yet applied for it.

Andrick did not understand why, when she thought she had been making progress, Murray petitioned to terminate her parental rights. She agreed that the FIA had legitimate concerns about her ability to house the children and provide for them financially, but disagreed that returning the children to her would jeopardize their safety. Andrick suggested that she would be able to demonstrate that she was a good parent more effectively when the children moved home because that would be a better and more relaxed environment. In contrast, trying to meet with the children for an hour in a small room during a scheduled visit, during which time the children knew that they have very little time with her, was very stressful and did not allow her

to show her full potential as a parent. Further, she had not called Murray to ask about the children's welfare because she trusted that the children were being cared for appropriately.

Andrick intended to go to credit counseling as soon as she retrieved some documents from storage, where they had been for five or six months. Andrick thought it would take two months to find housing and straighten out her finances so she would be able to care for one of the children and about six months until she could care for all four children. She indicated that she understood that, during this time, she would also have to work, complete counseling, and demonstrate good parenting skills so that she could provide for the children's basic needs. She planned to "regain" her driver's license so she could take the children to counseling, which she thought they needed because of the trauma of being removed from her care and for the short time the three older children were separated from JL. She anticipated solving her problems in the future by herself and stated that she had learned to control her anger, though she was still angry at the FIA for taking her children. Andrick also stated that JA and DL has asked her when they would be able to go home with her.

The family court issued an extensive written opinion, first summarizing Andrick's substantial noncompliance with the services she was ordered to participate in or complete, the children's progress while in foster care, and Andrick's projection of when she would be prepared to take the children. The family court specifically incorporated by reference the guardian ad litem's report and recommendation favoring termination,³ as well as noting that it found the various therapists' and counselors' opinions of Andrick convincing. The family court found that Andrick had not taken advantage of or benefited from the services offered to her and that the statutory bases for termination had been proved. Commenting on the effect Andrick's failure to improve would have on her future as a parent, the family court noted:

Of great concern to the Court is that [Andrick] will still not admit that all her children were delayed and that she is emotionally detached from her children. [DL's] therapist reports that his "regressed, avoidant and violent behavior was the result of environment[al] factors, specifically neglect and positive emotional deprivation." The Court does not feel it would be in the best interest to return the children to an environment that the mother does not see the difficulties these children had and is not amenable to receive and benefit from services to help them and herself.

As the therapist stated [DL] needs a home and school environment that consistently provides safety, security, a great deal of patience, affection, nurturing and attention. The Court finds by clear and convincing evidence that [Andrick] cannot provide that care. The children have been in care for a year and it is time they have some permanence in their lives. It is [in] the children's best interest to terminate the rights of their parents.

³ Evidently, however, the family court rejected the guardian ad litem's conclusion that there was insufficient clear and convincing evidence to terminate Andrick's parental rights under MCL 712A.19b(3)(j) because there was no evidence that Andrick would physically harm her children.

On appeal, Andrick now argues that the evidence supporting termination under any of the three statutory grounds was not clear and convincing because she loves her children and was working steadily so that they would be returned to her. Further, she contests the family court's conclusion that terminating her parental rights was in the children's best interests.

II. Standard Of Review

Appellate courts review a family court's decision to terminate parental rights for clear error.⁴

III. Statutory Grounds

The family court must find clear and convincing evidence on the record proving that at least one statutory ground for termination exists before it terminates parental rights.⁵ In this case, the family court found clear and convincing evidence to terminate Andrick's parental rights under three separate statutory provisions.

MCL 712A.19b(3)(c)(i) permits a family court to terminate parental rights if (a) if the parent was a respondent in a child protective proceeding, (b) 182 or more days have elapsed from the time the family court issued the original dispositional order, (c) the "conditions that led to the adjudication continue to exist," and (d) "there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age." There is no question that there was sufficient proof of these first two elements. Andrick also concedes that the conditions leading to adjudication continued to exist at the time the family court terminated her parental rights because she acknowledges in her brief on appeal that "she ha[s] more progress to make" The crux of her argument is that she would have cured those conditions that led to the adjudication within a reasonable amount of time considering her children's ages.

We disagree. The conditions leading to the adjudication in this case were far ranging, including basic neglect, poor hygiene, inappropriate supervision, inadequate housing, financial instability, and a failure to respond to the children's special needs or ensure their appropriate development. The evidence on the record overwhelmingly indicates that any progress Andrick had made, such as refraining from yelling at her children and improving her own hygiene, was minimal. She had not completed any one of the various types of counseling the family court ordered her to complete, which might have helped her develop the insight necessary to be a good parent. Nor had she shown any benefit from the services she had used briefly. For instance, though Andrick attended parenting classes twice, she still did not demonstrate appropriate discipline techniques when visiting her children. She neither recognized her children's special needs nor indicated that she knew how or was willing to ask for help in the future, which does not inspire confidence in her ability to meet her children's rather serious needs in the months and years to come. Andrick's refusal to discuss how she would care for her children if they were returned to her coupled with her anger at the FIA for intervening, as if there were no cause for

⁴ *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 5.974(I).

⁵ MCL 712A.19b(3); see *In re IEM*, 233 Mich App 438, 450-451; 592 NW2d 751 (1999).

that intervention, clearly prevented her from understanding her shortcomings as a parent and making necessary changes.

Critically, Andrick had not secured appropriate housing or held a job for very long. Though her job at the hotel was promising, she admitted that it did not provide her with sufficient income to care for all her children. While Andrick had promised to take action with regard to her finances, the offer came too late in the proceedings to suggest that she would follow through with that plan any better than she had been able to comply with any other aspect of her case service plan.

While Andrick said that she would be able to care for one of her children within two months, she did not explain how. She also conceded that it would take at least six months for her to prepare to take care of all the children. However, she never explained how that length of time would be reasonable considering the children's young ages and their needs for stability and permanence. In contrast, Murray estimated that it would take Andrick much longer to make permanent progress in light of her continuing cycles of making some advancements only to regress somewhat.

Though Andrick now contends that Murray impermissibly compared her to the people who might adopt the children, the record simply does not bear out this inference.⁶ Murray did not specifically compare Andrick to the children's current foster parents or anyone else. While Murray discussed the children's progress in foster care, her testimony, as well as Clements' testimony, illustrated that Andrick was neglecting the children's needs. Further, Murray's conclusion that terminating Andrick's parental rights was in the children's best interests was relevant to the decision the family court had to make. Murray simply made clear that, regardless of where the children were after termination, termination was in their best interests because Andrick could not care for them. In light of the evidence as a whole, we cannot conclude that the trial court clearly erred when it found clear and convincing evidence to terminate Andrick's parental rights on this basis.

MCL 712A.19b(3)(g) permits the family court to terminate Andrick's parental rights if she, "without regard to intent, fail[ed] to provide proper care or custody for the child[ren] and there is no reasonable expectation that [she] will be able to provide proper care and custody within a reasonable time considering the child[ren]'s age[s]." In large part, the reasoning that justified terminating her parental rights under subsection (c)(i) also justified terminating her parental rights under this provision. For instance, there is no question in the record that Andrick failed to provide proper care and custody when she left the children alone in her car, when she failed to provide adequate housing, when she failed to supervise the children in her home, and when she did not seek care for their special needs or use appropriate discipline techniques. That she had inadequate income, inadequate insight into her shortcomings, and an inadequate understanding of her children's needs after a year of being offered services and an opportunity to

⁶ See *In re Miller*, 433 Mich 331, 343, n 8; 445 NW2d 161 ("[I]n determining whether to terminate parental rights, the relative value of other placements for the child is not a consideration.").

improve only indicated that she was unlikely to make sufficient progress within a reasonable time considering the children's ages.

MCL 712A.19b(3)(j) permits a family court to terminate parental rights if "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." This provision does not specify the nature of harm that the child will suffer if returned to the parent. Though it may reasonably be interpreted to refer to physical harm, there is nothing in the plain language of this statute that would lead us to conclude that the trial court's determination that the children will be harmed "academically, developmentally, and emotionally if they are returned to [Andrick's] home," was outside the scope of the provision. More importantly, Andrick does not challenge the family court's conclusion on this issue, a family court needs only one statutory basis to terminate parental rights,⁷ and we have concluded that, minimally, termination was warranted under subsections (c)(i) and (g).

IV. Best Interests

MCL 712A.19b(5) states that a trial court "shall order termination of parental rights" if it finds clear and convincing evidence to terminate under one of the statutory grounds. In other words, termination is mandatory once the court finds evidence of at least one statutory ground to terminate.⁸ Only if the trial court finds evidence on the record as a whole that termination is *not* in a child's best interests can it refuse to terminate parental rights.⁹

Andrick contends that terminating her parental rights was not in her children's best interests because she loves them and the separation will be traumatic for them. However, she fails to acknowledge the evidence of her detachment from these children, her ability to ignore them, and the trauma they experience during visits with her. While we agree that the process of visitation may be stressful and we would not expect children as young as EL and JL to ask to be reunited with their mother, JA and DL showed far more ambivalence at being with her. The record suggests that returning the children to Andrick would be problematic for them all. Thus, we cannot conclude that the family court clearly erred when it concluded that termination was in the children's best interests.

Affirmed.

/s/ Harold Hood
/s/ William C. Whitbeck
/s/ Patrick M. Meter

⁷ See *IEM*, *supra* at 450.

⁸ See *Trejo*, *supra* at 344.

⁹ *Id.* at 353-354.