

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of WHISPER McCLAIN and
TREASURE McCLAIN, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CANDICE McCLAIN,

Respondent-Appellant,

and

DON McCLAIN and RAYMOND YENDEL,

Respondents.

UNPUBLISHED

January 11, 2002

No. 234487

Manistee Circuit Court

Family Division

LC No. 99-000074-NA

Before: Meter, P.J., and Jansen and R. D. Gotham*, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i) and (g).¹ We affirm.

The trial court did not clearly err in finding that the statutory ground for termination under § 19b(3)(g) was established by clear and convincing evidence. MCR 5.974(F)(3); MCR 5.974(I); *In re Sours Minors*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). Here, the

¹ We note that the trial court, in its written opinion, noted that respondent's parental rights to another child had been previously terminated. Based on the allegations in the petitions, it appears that respondent's parental rights to that child were terminated under § 19b(3)(i), although it is not entirely clear from the record. In any event, the trial court did not appear to place undue emphasis on this fact in its opinion.

* Circuit judge, sitting on the Court of Appeals by assignment.

evidence showed that the twin children were removed from the home when they were just over one year old. They were not thriving while in respondent's care, were developmentally delayed, and were undernourished. Respondent was often harsh with the children and had unrealistic expectations of their abilities. Further, the children would frequently have bruises, scabs, and bug bites. The condition of the home was very poor as well because the yard was cluttered, dirty, and unsafe for toddlers, and the house itself was dirty and in need of repair. During the two years of services with the FIA, respondent did little, if anything, to improve the home for the children. Moreover, once the children were placed in foster care, they gained weight and were generally healthier. Under these circumstances, there was clear and convincing evidence to warrant termination of parental rights under § 19b(3)(g).

Although the required elements under § 19b(3)(c)(i) were not established because the termination of parental rights was ordered at the initial disposition and 182 or more days had not elapsed since the issuance of the initial dispositional order, the error in relying on this section is harmless inasmuch as only one statutory ground need be proven by clear and convincing evidence. MCL 712A.19b(3).

Next, we reject respondent's argument that there were procedural defects in the proceedings that mandate that the order terminating parental rights be set aside. Initially, we note that these arguments were not raised below and are, therefore, not preserved for appellate review. In any event, there was no violation of § 19b(3) because the order of disposition was the order of termination entered on April 26, 2001. No review hearing is required between the time of the filing of the petition and the adjudication trial. Further, there were no violations under MCR 5.973(B) and (C) because the applicable court rule in this case is MCR 5.974, which governs proceedings where termination is sought immediately and there is no lengthy dispositional phase. MCR 5.942(A) is also clearly not applicable in this case because that rule applies to a juvenile delinquency proceeding. To the extent that MCR 5.973(A)(2) and (A)(5)(b) are applicable through MCR 5.974(D), we note that a four-day delay between the disposition and the adjudication does not mandate reversal of the trial court's termination order, and because respondent did not raise this issue below, we are left without a record whether the delay was attributable to good cause, which would be in the trial court's discretion to determine.

Lastly, respondent argues that the trial court failed to state "[b]rief, definite, and pertinent findings [of fact] and conclusions [of law] on [the] contested matters" as required by MCR 5.974(G)(1), and failed to include a statutory basis for the termination order as required by MCR 5.974(G)(3). We believe that the trial court's opinion is sufficient in this case, although the trial court's opinion could have included more fact findings. Although the trial court did not set forth the particular statutory citations in its opinion or order, the trial court did state the statutory language indicating that the grounds for termination were respondent's failure to provide proper care and custody, previous termination of parental rights to another child, and failure to rectify the conditions leading to the adjudication. We agree with the trial court that, based on the evidence, the grounds for termination under § 19b(3)(g) were "thoroughly established."

Affirmed.

/s/ Patrick M. Meter
/s/ Kathleen Jansen
/s/ Roy D. Gotham