

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of T.R., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

V

TYRONE ROGERS,

Respondent-Appellant.

UNPUBLISHED

April 19, 2002

No. 233921

Muskegon Circuit Court

Family Division

LC No. 99-026971-NA

In the Matter of T.G., D.R., T.G., and T.R., Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

V

BOBBIE JO GLOVER,

Respondent-Appellant.

No. 234179

Muskegon Circuit Court

Family Division

LC No. 99-026971-NA

Before: Owens, P.J., and Markey and Murray, JJ.

PER CURIAM.

In these consolidated appeals, respondent Tyrone Rogers (“respondent Rogers”) appeals as of right from the order terminating his parental rights to the minor child T.G., and respondent Bobbie Jo Glover (“respondent Glover”) appeals as of right from the order terminating her

parental rights to the minor children T.G., D.R., T.G., and T.R. Respondents' parental rights were terminated under MCL 712A.19b(3)(c)(i) and (g).¹ We affirm.

Generally, we review a trial court's decision terminating parental rights for clear error. *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000). This standard of review applies to a trial court's determination that one or more statutory grounds for termination exist, MCL 712A.19b(3), as well as the trial court's factual findings regarding the best interests of the child or children, 712A.19b(5). As noted above, the relevant grounds for termination in the instant matter are as follows:

(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 led 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.

A finding is clearly erroneous where, after reviewing the entire record, we are "left with a definite and firm conviction that a mistake has been made." *Moore v Moore* 242 Mich App 652, 654-655; 619 NW2d 723 (2000).

Docket No. 233921 (Respondent Rogers)

Respondent Rogers contends that the trial court clearly erred in finding that §§ 19b(3)(c)(i) and (g) were established by clear and convincing evidence. However, we believe that there was ample evidence suggesting that respondent Rogers subjected respondent Glover's children to domestic violence. Moreover, the evidence indicated that this domestic violence was negatively impacting the children. Indeed, it was this "condition" that prompted petitioner's involvement in the first place, and the evidence supported a finding that there was no reasonable likelihood that the domestic violence issues would be rectified within a reasonable time. Further, under the doctrine of anticipatory neglect, it was permissible for the trial court to find that respondent Rogers' conduct with respect to respondent Glover's children could validly be considered with respect to respondents' child. *In re Powers*, 208 Mich App 582, 591-593; 528

¹ Respondent Glover asserts that the court also terminated her parental rights under § 19b(3)(j). However, it is not clear from the record whether the trial court relied on that particular subsection. In light of our disposition, we find it unnecessary to resolve this question.

NW2d 799 (1995). Accordingly, we do not believe that the trial court clearly erred by terminating respondent Rogers' parental rights pursuant to either § 19b(3)(c)(i) or § 19b(3)(g). Finally, we are not persuaded that respondent Rogers has demonstrated any basis for vacating the trial court's order based on his child's best interests. MCL 712A.19b(5).

Docket No. 234179 (Respondent Glover)

Respondent Glover also contends that the trial court clearly erred in finding that §§ 19b(3)(c)(i) and (g) were established by clear and convincing evidence. In regard to respondent Glover's parental rights, there was considerable evidence indicating that she consistently chose her relationship with respondent Rogers over the best interests of her children. There was evidence that respondent Glover's misdirected priorities negatively impacted the emotional well-being of her children, and exposed them to unsatisfactory conditions of care and custody over a substantial period of time. Further, there was evidence supporting a finding that these conditions would not only continue, but be further aggravated by respondent Glover's ongoing struggle to cope with her drug problem. Accordingly, we do not believe that the trial court clearly erred by terminating respondent Glover's parental rights pursuant to either § 19b(3)(c)(i) or § 19b(3)(g). Further, we find that respondent Glover has not demonstrated any basis for vacating the trial court's order based on the children's best interests. MCL 712A.19b(5).

Finally, respondent Glover contends that the proceedings were tainted by a hearing referee's potential conflict of interest at a preliminary hearing that took place several months before the October 1999 adjudication. We note that, following a consultation with her attorney, respondent Glover expressly waived any objection to the hearing referee's participation. Respondent Glover has not demonstrated that her express waiver regarding a potential conflict of interest was invalid. See generally *People v Carter*, 462 Mich 206, 215-219; 612 NW2d 144 (2000). Furthermore, even if the waiver were invalid, we are not persuaded that relief would be warranted. Although there are circumstances in which analogous criminal principles may be applied to child protection proceedings, the latter are not criminal proceedings and are, ultimately, subject to different rules. See *In re Brock*, 442 Mich 101, 108; 449 NW2d 752 (1993). In a child protection proceeding, a trial court's exercise of jurisdiction may be challenged only by direct appeal, not by collateral attack. *Powers, supra* at 587-588. Thus, respondent Glover may not challenge the trial court's exercise of jurisdiction on the basis of an alleged conflict of interest in the instant appeal. Instead, she must establish a basis for vacating the dispositional order to terminate her parental rights. Having failed to argue persuasively that the trial court clearly erred by terminating her parental rights, we conclude that respondent Glover is not entitled to relief on this final ground.

Affirmed.

/s/ Donald S. Owens
/s/ Jane E. Markey
/s/ Christopher M. Murray