

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ELIZABETH ANN HUBBARD
and DESTINY MARIE KLEPACH, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JENNIFER MARIE HUBBARD,

Respondent-Appellant,

and

KAROL IGOREVICH KLEPACH,

Respondent.

UNPUBLISHED
February 19, 2004

No. 250722
Macomb Circuit Court
Family Division
LC No. 01-051632-NA

Before: Cooper, P.J., and O'Connell and Fort Hood, JJ.

PER CURIAM.

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

Respondent-appellant has not shown that the trial court clearly erred in finding at least one statutory ground for termination by clear and convincing evidence. *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Because respondent-appellant does not sufficiently brief the court's findings and conclusions regarding the desertion and abandonment elements of §§ 19b(3)(a)(ii) and (k)(i), we could decline to consider these matters. *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001).

In any event, we conclude that the trial court did not clearly err in finding that §§ 19b(3)(c)(i), (g) and (j) were each established by clear and convincing evidence. Respondent-appellant's reliance on *Fritts v Krugh*, 354 Mich 97, 116; 92 NW2d 604 (1958), overruled on other grounds in *In re Hatcher*, 443 Mich 426; 505 NW2d 834 (1993), for purposes of attacking the court's findings under § 19b(3)(j) is misplaced, because this subsection does not contain the specific "neglect" language that was construed in *Fritts*. Additionally, unlike in *Fritts*, this case

does not involve a termination decision based on a temporary event, such as a child's loss of shelter due to a fire, but rather respondent-appellant's conduct and capacity of creating a likelihood of harm if the children are returned to her home. A child may suffer harm in a number of ways, including harm to the child's life, physical health, or mental well-being. See *In re Trejo*, 462 Mich 341, 346 n 3; 612 NW2d 407 (2000).

While respondent-appellant broadly refers to the condition that led to the adjudication as being abandonment, the record reflects that the amended petition to which she tendered a no contest plea in November 2001, contained specific allegations that she could not provide safe and stable housing for the children, and was unable to care for them, physically and financially. At the time of the termination hearing that began in May 2003, respondent-appellant testified that she still was unable to provide for the children. Further, while the evidence showed that respondent-appellant made some progress with her treatment plan, the evidence was clear that she had not yet established a stable environment for the children or completed other aspects of her treatment plan. The evidence was sufficient to enable the court to find that termination was warranted under §§ 19b(3)(c)(i), (g) and (j).¹

We also reject respondent-appellant's claim that the trial court clearly erred in assessing the children's best interests. *In re Trejo, supra*. The fact that a post-termination order was entered allowing respondent-appellant to have supervised visitation with the children does not compel a different result. The propriety of the post-termination order is not before us on appeal. Nor is the post-termination order inconsistent with the court's earlier determination that respondent-appellant's parental rights should be terminated. The court actually went beyond the statutory best interest inquiry by affirmatively finding that termination was in the children's best interests. MCL 712A.19b(5); *In re Trejo, supra* at 364 n 19. The court did not clearly err in refusing to further delay permanency for the children. *Id.* at 364. The evidence failed to establish that termination of respondent-appellant's parental rights was clearly not in the children's best interests. *Id.*

Affirmed.

/s/ Jessica R. Cooper
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood

¹ In upholding the court's findings, we have not considered the foster care worker's testimony about the contents of a psychological evaluation, which is discussed by petitioner in its brief on appeal, given that the court declined to admit the psychological evaluation and did not consider it when making its decision.