

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DESIREE SANDOVAL and
ALYSSA SANDOVAL, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LAURIE SANDOVAL,

Respondent-Appellant.

and

CESAR SANDOVAL,

Respondent.

UNPUBLISHED

April 13, 2004

No. 250634

Kent Circuit Court

Family Division

LC No. 99-194200-NA

Before: Cavanagh, P.J., and Murphy and Smolenski, JJ.

PER CURIAM.

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

The trial court did not clearly err in finding that at least one of the statutory grounds for termination was established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337, 344-345; 445 NW2d 161 (1989). The principal conditions that led to adjudication were respondent-appellant's substance abuse and the irregular school attendance of Desiree and an older sibling. The evidence clearly indicated that respondent-appellant failed to successfully address her drug problem. She reported to her therapist that she was using marijuana and alcohol sometimes on a daily basis, as well as crack cocaine, except for a two-week period when she attended NA and did not use crack. Respondent-appellant submitted no urine screens although she was required to do so by the parent-agency agreement, and two hair follicle analyses came back positive for cocaine and marijuana. Respondent-appellant also failed to address issues of parenting skills, as she did not attend the parenting class to which she was referred. The evidence further indicated no reasonable likelihood that respondent-appellant would resolve these problems in the future. Respondent-appellant's failure to address any aspect of the parent-agency agreement with any consistency over a period of approximately ten months, and especially her failure to carry through with counseling, suggest little likelihood that

respondent-appellant will address the problems existing at adjudication within a reasonable time. Psychological evidence indicated that respondent-appellant's prognosis was not strong, and without intensive therapy she would continue to exhibit the problems that presented at her psychological evaluation, including severe major depression, borderline personality pattern, and severe impairment in social and vocational functioning. The trial court did not clearly err by terminating respondent's parental rights under statutory subsection (c)(i).

We also conclude that the trial court did not clearly err by finding that respondent-appellant failed to provide proper care and custody for the minor children and would be unable to do so within a reasonable time. MCL 712A.19b(3)(g). Respondent-appellant's failure to provide proper care and custody for the children was clearly established by her own admission that her substance abuse interfered with her ability to parent the children, as well as her failure to ensure adequate school attendance by Desiree. The same evidence that demonstrates that the conditions of adjudication will not be rectified in the future also provides clear and convincing evidence that respondent-appellant will not be able to provide proper care and custody for the minor children within a reasonable time. We note that respondent-appellant's failure to follow through with critical aspects of the parent-agency agreement, notably drug testing, parenting classes, and counseling, also constitute evidence of her inability to provide proper care and custody for the minor children. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003).

We find the evidence insufficient to support the trial court's finding of desertion, MCL 712A.19b(3)(a)(ii), as it appears that respondent-appellant's visitation was suspended by the agency during the alleged period of desertion due to her failure to comply with other aspects of the parent-agency agreement. A review of the entire record, however, suggests that the trial court's desertion finding related to respondent Cesar Sandoval, who has not appealed, and not respondent-appellant. Regardless, reversal is not required because termination need be supported by only one statutory ground. *In re SD*, 236 Mich App 240, 247; 599 NW2d 772 (1999).

Respondent-appellant contends on appeal that petitioner failed to make reasonable efforts to reunify the family by failing to provide a psychiatric evaluation for respondent-appellant. In general, when a child is removed from the custody of the parents, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan. MCL 712A.18f(1), (2), and (4). In this case, respondent-appellant was referred for a psychological examination, which resulted in the recommendation that she receive a psychiatric assessment. The evidence indicated, however, that respondent-appellant did not receive a psychiatric evaluation as a consequence of her ongoing substance abuse. The psychiatrist at the agency to which respondent-appellant was referred would not see individuals who were using controlled substances. Moreover, the evidence indicated that respondent-appellant's substance abuse would likely constitute a barrier to psychiatric treatment at other facilities as well. Dr. Spann testified that psychiatrists who thought that someone was abusing substances would tend to require a period of sobriety before prescribing psychotropic medications in order to know which chemical was acting. Given this evidence, we conclude that the alleged failure of services is attributable to respondent-appellant's conduct rather than a failure of petitioner to make reasonable efforts at reunification. We note that respondent-appellant was referred for parenting classes, which she failed to attend, and for counseling,

which she did not continue. Under these circumstances, the trial court did not clearly err by terminating respondent-appellant's parental rights.

Finally, the trial court did not err by finding that termination was not clearly contrary to the best interests of the children. MCL 712A.19b(5). The evidence consistently indicated that Alyssa was doing well in foster care and in preschool. The picture is less clear with respect to Desiree, who has struggled in foster care but done well in school. However, given a record containing no evidence whatsoever that respondent-appellant has addressed any of her problems so as to enable her to parent the children, we find no clear error in the trial court's determination.

Affirmed.

/s/ Mark J. Cavanagh
/s/ William B. Murphy
/s/ Michael R. Smolenski