

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of F.D. and D.L.D., Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

STEPHANIE DICKSON,

Respondent-Appellant,

and

VICTOR SHUFFORD,

Respondent,

and

JOHN DOE,

Not Participating.

UNPUBLISHED

April 15, 2004

No. 248507

Wayne Circuit Court

Family Division

LC No. 98-371016

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

MEMORANDUM.

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

Respondent-appellant argues that her due process rights were denied when the trial court found irrelevant the question whether petitioner had evidence that respondent's mental illness actually affected her parenting ability. Custody is a liberty interest, and due process requires clear and convincing evidence of a statutory ground for termination. *In re Trejo Minors*, 462 Mich 341, 356; 612 NW2d 407 (2000). Respondents also have significant procedural due process rights in termination hearings. *In re Vasquez*, 199 Mich App 44, 46-50; 501 NW2d 231

(1993). However, respondent-appellant does not claim she was denied the opportunity to present evidence of her ability to care for the children.

Mere speculation of future neglect based on a respondent's mental condition is an insufficient ground for termination. *In re Hulbert*, 186 Mich App 600, 605; 465 NW2d 36 (1990). However, in the present case, respondent-appellant admittedly drove dangerously with her children in the car and suffered hallucinations. She pursued mental health care only sporadically and failed to find stable, suitable housing. Although failure to comply with a court order cannot be the sole ground for termination, *In re Miller*, 182 Mich App 70, 83; 451 NW2d 576 (1990), failure to comply with a treatment plan is evidence of neglect, *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Further, expert reports opined that respondent-appellant could not consistently provide adequate care and custody, regardless of her love for her children. In its oral opinion, the trial court noted the driving incident and hallucinations and did not rely solely on respondent-appellant's failure to consistently attend mental health sessions and take prescribed medication.

The evidence established that respondent-appellant had failed to provide proper care and custody and was not likely to do so in a reasonable time, and harm was likely if the children were returned, 712A.19b(3)(j). See MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Furthermore, the evidence did not establish that termination was contrary to the children's best interests. Therefore, the trial court did not err in terminating respondent-appellant's parental rights to the children.

Affirmed.

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