

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DEVON LEONARD BLAKE,
CALEB RYAN WESSON, and MIRANDA
DANIELLE WESSON, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LEONARD WESSON,

Respondent-Appellant,

and

MARY ANN BLAKE,

Respondent.

In the Matter of COREY ALAN BLAKE, DEVON
LEONARD BLAKE, NICOLE RACHELLE
BLAKE, CALEB RYAN WESSON, and
MIRANDA DANIELLE WESSON, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MARY ANN BLAKE,

Respondent-Appellant,

and

UNPUBLISHED

May 25, 2004

No. 250674

Macomb Circuit Court

Family Division

LC No. 01-051708-NA

No. 250796

Macomb Circuit Court

Family Division

LC No. 01-051708-NA

ROBERT CHARLES DANIELS and LEONARD
WESSON,

Respondents.

Before: Schuette, P.J., and Bandstra and Cooper, JJ.

PER CURIAM.

In these consolidated appeals, respondent, Leonard Wesson, appeals as of right from the trial court order terminating his parental rights to his children pursuant to MCL 712A.19b(3)(a)(ii), parental desertion for at least 91 days without seeking custody. Respondent, Mary Ann Blake, appeals by delayed leave granted from the same order terminating her parental rights to her children pursuant to MCL 712A.19b(3)(c)(i), conditions of adjudication continue to exist; (c)(ii), failure to rectify existing conditions considering children's ages; (g), failure to provide proper care and custody; and (j), child would be harmed if returned to parent's home. We affirm.

I. FACTS

Between 1993 and 1998, Leonard Wesson, respondent-father,¹ and Mary Ann Blake, respondent-mother, parents of the children involved in this appeal, lived together as a family. In 1998, respondent-father lost his job, and the couple eventually became estranged.² At that point, respondent-father discontinued all contact with and support of his children and later moved to Arkansas. In July 2001, respondent-mother lost her housing, and she and her children were forced to live on the street and in various housing shelters. In September 2001, the family entered Turning Point Shelter. There, respondent-mother admitted her history of substance abuse, including the use of heroin and crack cocaine. She also reported that, in January 2001, she had relapsed from her seven-year sobriety and admitted to ingesting heroin the day before entering the shelter. Upon entry, respondent-mother was suffering from heroin withdrawal and wanted to secure methadone treatment. Meanwhile, Devon Blake, respondent-mother's eleven year old son, expressed suicidal and homicidal ideation after witnesses reported respondent-mother encouraged the boy to kill himself, stating that she too wished she were dead. As a result, Devon was promptly admitted to a Detroit-area psychiatric hospital.

Later that month, Child Protective Services referred the family to Families First for assistance in an attempt to prevent removal of the children from their mother's care. However, Family First authorities advised that, considering respondent-mother's psychological and physical state and the children's aggressive behavior, the Family First Program could not provide the intensive services needed to secure the children's safety.

¹ Devon, Caleb and Miranda's biological father.

² The date is uncertain, sometime after 2000 but before September 2001.

This decision caused the Family Independence Agency (FIA) to petition the court to take temporary custody of the minor children. Regarding respondent-mother, the petition alleged that, because she was suffering from heroin withdrawal,³ she could not meet her children's physical, emotional, and educational needs. Regarding respondent father, the petition alleged that he failed to provide any support and showed no interest in raising his children. This history of neglect, homelessness, and substance abuse led the court to authorize the petition, make the children temporary wards of the court, and provide for foster care placement.

At the pretrial hearing, respondent-mother pleaded no contest to the allegations contained in the petition. After accepting the plea, the children were adjudged protected and court wardship continued. Further, because respondent-father failed to appear for the hearing, the court extended temporary wardship in regard to his parental interest.

Between November 2001 and December 2002, the court held several dispositional hearings and determined that FIA had made reasonable efforts to prevent or eliminate the need for foster placement. However, at every hearing the court determined that returning the children to respondent-mother's care would be contrary to their best interest. Thus, the court ordered foster care to continue and suspended all respondent-mother visits with the children and set the matter for termination trial.

One month before the termination proceedings began, respondent-father reappeared with an interest in resuming a family life. FIA entered into a parent-agency agreement with respondent-father. Under the agreement, respondent-father was to secure housing and employment and was required to participate in random drug screenings and attend parenting classes. Further, the agreement required respondent-father to attend a psychological evaluation and attend a domestic aggression program.

Despite respondent-father's late arrival, the termination trial began April 24, 2003. There, witnesses, including respondents, testified that, although portions of the respondent's parent-agency agreements had been met, the majority of the agreements' provisions had not been fulfilled by either parent.

Particularly, regarding respondent-mother's agreement, testimony and evidence showed that she did complete a psychological exam as required and continuously participated in her substance abuse treatment program, never testing positive for heroin. Further, it was shown that respondent-mother did participate in parenting classes required by the parent-agency agreement, but testimony suggested that respondent-mother failed to utilize the skills taught in her parenting classes and repeatedly acted inappropriately toward her children. Testimony further showed that respondent-mother (1) failed to submit to secondary drug testing as required by the agreement;⁴

³ Because of her substance abuse, Children's Protective Services had already removed the children from respondent-mother's custody, placing them in foster care from 1992 through 1994.

⁴ Although respondent-mother did continuously submit to and pass drug testing during her methadone treatment, she was also order to submit to other testing to ensure she was not using other drugs or alcohol. This she failed to continuously do (participating in nine of twenty-seven tests), despite FIA efforts to arrange for the alternate testing.

(2) failed to attend individual counseling sessions to address psychiatric issues, including post-traumatic stress disorder and depression,⁵ as ordered; (3) failed to secure a sustained or suitable source of income,⁶ as ordered; (4) failed to find suitable housing, as ordered;⁷ and (5) failed to address her physical health issues, as ordered.⁸

Regarding respondent-father, he admitted he had not secured housing or a reliable source of income as required by his parent-agency agreement. Regarding the random drug screenings and parenting classes, respondent-father did go to the classes and did submit to four random drug screens per month. But, of the twelve drug screen, eleven showed that respondent-father either diluted or otherwise tampered with the sample, and one showed that respondent-father had used codeine and morphine. Based on these failures, FIA concluded that respondent-father had breached the parent-agency agreement.

Based on these failures, the court concluded that the conditions that resulted in the initial adjudication persisted and that these conditions would not be rectified within a reasonable amount of time considering the children's respective ages for purposes of MCL 712A.19b(3)(c)(i). Consequently, the trial court terminated respondents' parental rights and committed the children to the FIA for adoptive planning, supervision, and placement.

II. STANDARD OF REVIEW

This Court reviews a trial court's decision to terminate parental rights for clear error. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). If the trial court determines that petitioner established the existence of one or more statutory grounds for termination by clear and convincing evidence, then the trial court must terminate respondent's parental rights unless it determines that to do so is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). We review for clear error the trial court's decision with regard to the child's best interests. *Id.* at 356-357.

III. STATUTORY GROUNDS FOR TERMINATION

A. Respondent Wesson

⁵ Respondent-mother did attend all counseling sessions during her methadone treatment; however, as FIA explained, the individual counseling was ordered to address respondent-mother's other psychiatric issues, those unrelated to her substance abuse.

⁶ Respondent-mother worked for a total of three weeks during this period. Further, FIA tried to help respondent-mother sign up for social-security benefits, which would likely have been granted and would have sufficed this parent-agency agreement provision; yet respondent-mother showed little interest and failed to follow through on the opportunity.

⁷ Respondent-mother made no efforts to find housing, rather staying at friends' homes or in shelter during this period, despite FIA efforts to the contrary.

⁸ Respondent-mother suffered from hepatitis-C, which caused her legs to severely swell and immobilized her. Despite her access FIA-sponsored health care, respondent-mother only visited a doctor on one occasion during this period. One visit was not sufficient to fully address her health problems.

After carefully reviewing the record, we are satisfied that the trial court did not clearly err in finding statutory grounds for termination were established by clear and convincing evidence. Respondent Wesson's own testimony established that in 2000 or 2001 he moved out of the residence that he shared with respondent Blake and their children after their relationship deteriorated. According to respondent, he became "angry" with Blake and unequivocally testified that he did not have any further contact with his children after he moved out. Wesson testified that he lived in Arkansas from June 2002 until January 2003 and, during this time, failed to contact or otherwise provide support for his children. Thus, respondent Wesson deserted his children for more than 91 days without seeking custody for purposes of MCL 712A.19b(3)(a)(ii) and termination of his parental rights under this subsection was not clearly erroneous. Moreover, at the time of trial, respondent-appellant Wesson was not employed and did not have his own independent residence.

B. Respondent Blake

Regarding respondent Blake, evidence showed that her substance abuse and inability to obtain and maintain a stable residence for her children resulted in the children becoming temporary wards of the court on September 22, 2001. When the children entered protective custody, respondent Blake had relapsed from her short-lived sobriety; she was experiencing withdrawal symptoms and therefore requesting methadone treatment. Further, she was homeless. At the time of trial, respondent Blake still did not have independent housing accommodations and still relied on various friends for a place to reside. Respondent Blake testified that if the court returned her children, she would have to enter a shelter until she secured income and housing.

Additionally, at the time of trial, respondent Blake was receiving a full dose of methadone and had not yet begun the detoxification process. Thus, the grounds for suspension of parental rights remained 182 days after the original dispositional order was entered and there was no reasonable expectation that the conditions would be rectified within a reasonable time given the children's ages.

IV. BEST INTERESTS

As a final point, we find that the evidence produced demonstrated that termination of respondents' parental rights was in the children's best interests. MCL 712A.19b(5); *Trejo, supra* at 356-357. Accordingly, the trial court did not err in terminating their parental rights to their minor children.

Affirmed.

/s/ Bill Schuette
/s/ Richard A. Bandstra
/s/ Jessica R. Cooper