

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MA'SHRIA MARIE DESHAWN
CAMPBELL and MIKALA ROSHUNDRA
CAMPBELL, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LAVETTE ELAINE CARLOCK,

Respondent-Appellant,

and

MICHAEL DESHAWN CAMPBELL,

Respondent.

UNPUBLISHED

May 27, 2004

No. 251071

Wayne Circuit Court

Family Division

LC No. 96-347987

Before: Fitzgerald, P.J., and Jansen and Talbot, JJ.

PER CURIUM.

Respondent-appellant Lavette Carlock ("respondent" herein) appeals as of right the order terminating her parental rights to her two daughters under MCL 712A.19b(3)(i), (j) and (l), at the initial dispositional hearing. We reverse the trial court's decision terminating respondent's parental rights and remand for further proceedings before a different judge.

In 1998, respondent's parental rights to five other children were terminated because of neglect. In 2001, respondent gave birth to Ma'Shria. Caseworkers subsequently monitored respondent's care of the child and offered assistance in the family home. The child appeared to be well-cared for, clean, nourished, and attended regular medical checkups. In August 2002, petitioner became aware that in July 2002 the police had raided the home that respondent shared with Michael Campbell, the child's father, because of suspected narcotics trafficking by Campbell. As a result, a petition was filed requesting that the court exercise jurisdiction over Ma'Shria, and the child was removed. As it turned out, the police did not find any narcotics during the July 2002 raid, and there was no evidence that respondent was involved in either drug use or trafficking. Nor was it shown that respondent was aware of Campbell's suspected

involvement in drug trafficking before the raid. Shortly after the raid, respondent moved out of the home that she shared with Campbell and ended her romantic involvement with him.

Although petitioner had included within the petition for jurisdiction over Ma'Shria a request that respondent's parental rights to Ma'Shria be terminated at the initial dispositional hearing, petitioner subsequently moved to amend the petition to request only temporary custody. Petitioner decided not to pursue termination at the initial dispositional hearing because respondent had made significant changes in her life since her parental rights to her five older children were terminated. The trial court delayed ruling on the motion. Several hearings were subsequently held over an eight-month period during which petitioner repeatedly renewed its request that the petition be amended to request only temporary custody. The court continued to delay ruling on this request and eventually denied it. While the matter was pending, Mikala was born and was added to the petition.

At trial, caseworkers who worked with respondent both before and after Ma'Shria was removed testified that respondent provided a neat and clean home and was able to meet the child's needs. Additionally, respondent was cooperative with the caseworkers, followed their suggestions, and benefited from the services that were made available to her. She demonstrated a strong bond with her children and interacted with them in very appropriate ways. She attended every available visit and voluntarily provided clothing and other necessities for the children. Although respondent had previously had a problem with alcohol abuse, she reportedly stopped drinking in 1999, and all subsequent drug tests were negative. According to her therapist, respondent was participating and progressing in her therapy. A psychiatrist who evaluated respondent felt that she had made sincere changes in her life and recommended that she be given the opportunity to plan for her children.

Respondent's principal difficulty was locating safe and stable housing that fit within her budget after the home she was living in was destroyed by an electrical fire. She also had a substantial debt for past-due utility bills. In order to address both problems, respondent planned to enroll in a training program to obtain a license to work as a nail technician so she could supplement her income.

Despite respondent's efforts and record of substantial progress, and petitioner's repeated requests that the court not proceed to termination, the trial court found that there were statutory grounds to terminate respondent's parental rights pursuant to §§ 19b(3)(c)(i), (j) and (l), and that termination of her parental rights was in the children's best interests.

On appeal, we first conclude that the trial court erred by initially delaying and then denying petitioner's repeated requests to amend the petition to request only temporary custody of the children. "A petition or other court record may be amended at any stage of the proceedings as the ends of justice require." MCL 712A.11(6); *In re Slis*, 144 Mich App 678, 684; 375 NW2d 788 (1985). It is apparent that petitioner was familiar with the case and that the request was factually appropriate. Moreover, not only was there no risk of prejudice to the other parties, but also all parties were in agreement with the request. Further, MCL 722.638 did not preclude the court from amending the petition as requested. Although petitioner may have initially believed it was required to request termination of respondent's parental rights at the initial dispositional hearing pursuant to MCL 722.638(2), as the evidence ultimately disclosed, the facts did not show that respondent's children were subject to an unreasonable risk of harm.

Because the court proceeded to termination, we agree that it was justified in finding that §§ 19b(3)(i) and (l) were both established in light of the evidence that respondent's parental rights to five older children were previously terminated in 1998. But we also conclude that several of the court's findings are clearly erroneous. See former MCR 5.974(I) [now MCR 3.977(J)]; *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The trial court erred in finding that respondent did not have safe, suitable and stable housing. Although respondent's housing situation was not stable at the time of the hearing due to frequent moves, the testimony established that she consistently kept a clean and organized home and could provide suitable and safe housing. We also agree that the trial court clearly erred to the extent that it found that respondent was involved in obtaining the unauthorized usage of utilities. The testimony did not establish that respondent was responsible for the unauthorized usage in some of the homes in which she resided.

The court also erred in finding that respondent failed to make sufficient progress in her therapy. Respondent's own therapist testified regarding the progress that respondent made. While the trial court faulted respondent for not addressing certain issues in therapy, including her choice of partners and her own childhood abuse, the report from the Clinic for Child Study did not recommend that respondent receive therapy in these specific areas. Instead, it was recommended that respondent receive counseling for her depression, which was the principal focus of therapy. Because the other issues were not recommended and the trial court never ordered respondent to address these other issues in therapy, it was improper for the court to fault respondent for not addressing those issues.

We also conclude that the court clearly erred in finding that § 19b(3)(j) was established. The evidence did not support a finding that there was a reasonable likelihood the children would be harmed if returned to respondent.

Although we have concluded that statutory grounds for termination existed under §§ 19b(3)(i) and (l), we conclude that the trial court clearly erred in its best interest determination.¹ A review of the whole record reveals clear evidence that termination of respondent's parental rights was not in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). Respondent's bond with the children was strong and the record clearly demonstrates that she had made significant changes in her life and was able to provide appropriate care for her children. Moreover, the evidence demonstrated that respondent had arranged for assistance with housing and other economic problems and was working toward becoming a nail technician in order to supplement her income, thereby enabling her to provide a safe and loving home for the children in the near future. Under the circumstances, it was clearly not in the children's best interests to terminate respondent's parental rights at the initial dispositional hearing.

Accordingly, we reverse the trial court's order insofar that it terminates respondent's parental rights and remand for further proceedings. Because it would be unreasonable to expect

¹ The attorneys for petitioner and the attorney for the children agree in their briefs on appeal that the trial court erred in its best interest determination.

the trial judge to set aside her previously expressed findings without substantial difficulty, this case shall be assigned to a different judge on remand. *People v Pillar*, 233 Mich App 267, 270-271; 590 NW2d 622 (1998).

Reversed in part and remanded for further proceedings not inconsistent with this opinion.² We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald

/s/ Kathleen Jansen

/s/ Michael J. Talbot

² The order is affirmed insofar that it terminates the parental rights of respondent Michael Campbell, who has not appealed the trial court's decision.