

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DIONTE LAVEL GENTRIS-
BROOKS, DEANDRA LAVON GENTRIS-
BROOKS, and KATHILEEN JANEAN THREAT,
Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ROBERT DARYL THREAT,

Respondent-Appellant,

and

BONITA DEVON BROOKS and DIONNE
LARAY GENTRIS,

Respondents.

In the Matter of DIONTE LAVEL GENTRIS-
BROOKS, DEANDRA LAVON GENTRIS-
BROOKS, and KATHILEEN JANEAN THREAT,
Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

BONITA DEVON BROOKS,

Respondent-Appellant,

UNPUBLISHED
June 17, 2004

No. 251959
Wayne Circuit Court
Family Division
LC No. 95-331621

No. 252078
Wayne Circuit Court
Family Division
LC No. 95-331621

and

DIONNE LARAY GENTRIS and ROBERT
DARYL THREAT,

Respondents.

Before: Saad, P.J., and Talbot and Borrello, JJ.

PER CURIAM.

In these consolidated appeals, respondents Robert Threat and Bonita Brooks appeal by right from the trial court's order terminating respondent Threat's parental rights to the minor child, Kathileen, under MCL 712A.19b(3)(c)(i) and (g), and respondent Brooks's parental rights to all three minor children under MCL 712A.19b(3)(c)(i), (g), and (j).¹ Because we find no clear error in the trial court's difficult decision, we affirm.

I. Factual Background

Protective services first became involved with this family in 1995. During the seven years this case was pending, various agencies and professionals have conducted extensive testing on respondent mother. With respect to the testing, the evidence clearly shows that the mother has permanent cognitive and intellectual limitations. The testing psychologists and psychiatrists evaluated her full-scale IQ at 70 or 71. The mother scored well-below average in mathematics reasoning and basic reading, and her intellectual functioning is comparable to that of an 11 ½ year old. During her last testing, respondent mother tested in only the first percentile on the Independent Living Scales, which compelled the psychologist to conclude that respondent mother functioned in daily life as a mildly retarded person.

In May 1995, protective services was called under allegations of neglect and family violence. Deandra was a newborn, and Dionte was not yet two. In July 1995, a health care worker alleged that respondent mother was not properly feeding four-month-old Deandra or filling a necessary prescription. The next month, another referral was made after the boys' paternal grandmother reported that Dionte's face was severely bruised. The police also made a referral after concluding that respondent mother did not take Dionte for medical treatment because she did not have the time and had other things to do that day.

On September 15, 1996, Children's Hospital called police when respondent mother brought 2 ½-year-old Dionte into the hospital with scald burns to both feet, first-degree burns to his abdomen and pubic area, a bruise on his back in the shape of a shoe, and old loop marks on his mid-back and right thigh – injuries that did not comport with her statement that he stepped

¹ Dionne Laray Gentriss, Deandra and Dionte's father, has not appealed the termination of his rights.

into the bathtub and accidentally turned on the hot water. The cause of the burns or other injuries has never been definitively determined.

After the children spent time in foster care, the foster parent testified that Dionte howled at night for hours, pointed at the window, and shook like a leaf. She stated that he wanted to touch her breasts and private areas and had acted out a ritual over ten times with one of her friends where he pretended to tie her hands and feet, dragged her by her hand to another part of the house, and then hit her and pushed her against the wall. She also stated that Deandra cried often and constantly stomped on Dionte's healing feet. The foster mother stated that both boys ate until they vomited and did not respond to time-outs as a form of discipline.

A Clinic for Child Study conducted on September 8, 1999 revealed the following. Dionte, nearly seven years old at the time, was ADHD and prescribed Ritalin, was physically aggressive, still defecated on himself and refused to wipe himself, stole food, stole in the foster home and from others, and received therapy. Deandra, then four years old, was diagnosed with ADHD and Oppositional Defiant Disorder, was prescribed Ritalin and Respidal, and was emotionally impaired and learning disabled. He was asthmatic and required an inhaler. Neither child was potty trained. The children displayed an extreme fear of water and when taking baths needed reassurance that the water temperature was satisfactory. Both children hoarded food at the foster home and would go to the kitchen after the foster family went to bed at night and eat until they vomited.

When Kathileen was born in September 1999, she was immediately placed with her paternal grandmother. Because of the family's constant involvement with the protective services and a plethora of other agencies, respondent mother has interacted with Kathileen almost exclusively through supervised and short unsupervised visitations. According to caseworkers, the day visits were uneventful with regard to respondent mother's interactions with Kathileen, although respondent mother had difficulties handling the boys and difficulties handling all three children at the same time. To the date of the last lower court proceeding in this matter, Kathileen had not exhibited special needs or behavioral issues as had her two half-brothers.

Throughout 2000 and 2001, the respondent mother continued visitations of varying lengths with the children. During the time this case was pending, respondent mother has undergone extensive observation in both clinical and domestic settings. The evidence in that regard indicated that in parent-child play exercises, respondent mother tended to interact with the children inappropriately by insisting on her way of playing, not guiding or encouraging the children, and enjoying frustrating them. Evidence was also presented that respondent mother did not know how to discipline the children or simultaneously handle them at visits.

Generally, the medical professionals involved in this case have concluded that respondent mother would permanently require the help of various social agencies to ensure that the children's emotional and physical needs were attended to. They have also concluded that the type and intensity of help the mother needs does not exist. For instance, one doctor concluded that respondent mother probably functioned in daily life more as a person with mild mental retardation than as a borderline normal person and noted that her ability to address general home, transportation, money management, and health and safety issues was markedly limited. Thus, the doctor recommended that respondent be provided a mentor for childcare and other day-to-day issues on an indefinite basis.

From 2001 to 2002, the trial court held another series of hearings in an effort to finalize the family's status. No incidents had been reported, and respondent mother was said to be making "minimal progress." The trial court ordered that the boys could return home to respondent mother – with in-home services – when the school semester ended and that Kathileen could return home when respondent mother obtained daycare for her. But visits were again suspended when Kathileen sustained an as-of-yet unexplained cut to her vaginal area. After no abuse charges followed, visitation resumed, and the trial court reinstated its previous order for the children to return home under the conditions noted.

Kathileen then returned home while the two boys spent every weekend with respondent mother. On one of the weekend visits, the guardian ad litem visited the home and found the condition of the home to be "nasty," "unkept," and cluttered. Shortly thereafter, Dionte sustained an injury – yet another unexplained to date – where he was severely burned on his forearm. Although several stories emerged regarding how the burn happened, the consistent element was that respondent mother did not seek medical attention for the child. Instead, she returned Dionte to his foster mother, who then took the child to the hospital.

After another Clinic for Child Study was completed in August 2002, psychologist Gail Mills concluded that respondent mother, when left to her own resources, did not have the capability to adequately care for the children. A conflicting study from Evergreen during the same time period found that respondent mother should be reunited with the children with intensive in-home services. The trial court held yet another hearing, after which Evergreen recommended that a petition for termination of parental rights be filed.

Respondent mother was again psychologically evaluated. That report, conducted by neuropsychologist Susan McNeill, concluded that although respondent mother was genuinely loving toward the children, the balance of the testing showed that respondent mother's limitations "call[ed] into question" her ability to adequately parent several children, particularly those with special needs.

At the multiple-day termination hearing that took place over the months of May to September 2003, Susan McNeill testified that respondent mother did not fully comprehend why her children were in foster care or verbalize a clear understanding of their needs and long-term requirements. Dr. McNeill testified that respondent mother's primary area of difficulty was her inability to integrate information in a problem-solving situation and that she had difficulty identifying problems and altering a course of action. In Dr. McNeill's opinion, reunification would not be safe for the children, given respondent's limitations, unless respondent was constantly monitored on a permanent basis.

Evergreen's foster care supervisor, Carolyn Rayford, testified that respondent mother's skills had improved, she had successfully completed her therapy classes, she had consistently complied with the visitation schedules, and she had maintained suitable housing and employment for several years. She noted, however, that respondent mother's family therapy with Henry Adams had not been beneficial. Rayford also testified that respondent mother needed assistance and redirection from the supervisor in monitoring the three children, as she had consistently throughout these proceedings. Therefore, Rayford opined that respondent mother had not benefited long-term from the parenting classes she completed. Moreover, she stated that the agency had been unable to locate services that would provide intense monitoring of the family on

a permanent basis. Rayford admitted, though, that respondent mother had had only one month of Kathileen's custody with in-home services, so she had not been given a chance to either fully fail or succeed in parenting Kathileen.

Rayford also testified regarding the children's emotional, behavioral, and medical needs. Dionte and Deandra were both in special education. Deandra had a learning disability, was very aggressive, and received therapy. He was also anemic and asthmatic. Dionte had a cognitive impairment and a learning disability and was also very aggressive. They constantly injured themselves, even in foster care. They were both prescribed medication for ADHD, and they required an above average level of structure and parenting.

Evergreen foster care supervisor Laura Dale, the family's caseworker for the preceding four months, testified that she observed the family at five family visits from February to March 2003. She stated that although respondent mother brought board games and interacted with the children appropriately, there was little communication between Kathileen and respondent mother. She observed that Dionte's primary interest was in what respondent mother might have brought him and that if she had not brought him something, he acted out to the point of needing physical restraint and Dale's intervention. Dale did not observe a strong parent-child bond or much affection, and she testified that respondent mother did not react much to the need for child redirection. For instance, if Dionte would swear, respondent mother laughed and shrugged it off rather than confronting the child.

At the hearing's conclusion, the trial court found that although respondent mother clearly loved the children and had complied with numerous services, a significant number of experts and foster care workers concluded that respondent mother could not parent her children because of her cognitive and emotional impairment issues. Thus, the trial court concluded that there was no doubt respondent mother would ever be able to adequately parent the children, and there was no further service that would remedy that shortcoming. The court also found that respondent Robert Threat's status as a parolee and his temporary housing arrangement in a shelter, along with having no bond with Kathileen, demonstrated that he could not parent the child full time. Thus, the trial court terminated both respondents' rights to the children.

II. Termination of Respondent Mother's Rights to the Three Minor Children

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993). This Court reviews the trial court's findings of fact under the clearly erroneous standard. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been made. *Id.* Regard is given to the special ability of the trial court to judge the credibility of the witnesses who appeared before it. *Id.*

The relative statutory provisions, MCL 712A.19b(3)(c)(i), (3)(g), and (3)(j), state:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial

dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent. [*Id.*]

We first examine whether the trial court clearly erred in determining that the statutory grounds for termination of respondent mother's parental rights to Dionte, Deandra, and Kathileen were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

In its reasoning, the trial court painstakingly pointed out that respondent mother clearly loved her children and had clearly complied with everything she had been asked to do. We agree with the trial court. Unfortunately, we also must agree with the trial court that the mother's desire to parent and her compliance is not sufficient protection for these young children. The evidence clearly showed that respondent mother has a central nervous disorder causing permanent cognitive and intellectual difficulties that prevent her from developing the necessary living and parenting skills to safely and adequately care for these children. Over a seven-year period of time, respondent mother has undergone extensive testing and observation and has received a substantial variety of help from many different agencies. But despite this intensive intervention, respondent mother has made minimal improvements. Moreover, the evidence demonstrates that she is largely unaware of the problems that either she or her children face, thus also demonstrating that there is little hope the situation can improve. We note that respondent mother has little to no support outside of agency assistance. We also note that where recommendations were made that the children return permanently to the mother's custody, the recommendations were also premised on the condition that respondent mother continue to receive an extent of intensive in-home services that plainly does not exist. In any event, we are not free to judge the seemingly conflicting conclusions anew but must defer to the trial court's ability to assess the facts presented to it.

Thus, with respect to the two boys, the trial court did not clearly err in finding that the conditions that led to the adjudication continued to exist and that there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the children's age. MCL 712A.19b(3)(c)(i). Moreover, the evidence also clearly supported the trial

court's conclusion that respondent mother, without regard to intent, failed to provide proper care or custody for the children and that there was no reasonable expectation that she would be able to provide proper care and custody within a reasonable time. MCL 712A.19b(3)(g). The trial court's conclusion that there was a reasonable likelihood based on the conduct or capacity of respondent mother that the children would be harmed if they were returned home. MCL 712A.19b(3)(j).

With respect to Kathileen, we recognize that respondent mother did not necessarily have the opportunity to parent the child long enough to prove her abilities. Nonetheless, we find that was unnecessary given the particular circumstance of this case. Despite the fact Kathileen did not exhibit the same level of special needs as her brothers, the trial court did not clearly err in finding insufficient evidence to support the notion that respondent mother was adequately equipped to care for Kathileen even though she was not adequately equipped to care for her brothers. The evidence supported the trial court's finding that there was a reasonable likelihood, based on respondent mother's conduct or capacity, that the child would be harmed if she was returned to respondent mother's home. MCL 712A.19b(3)(j). See also *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001) (recognizing that "[t]he doctrine of anticipatory neglect recognizes that 'how a parent treats one child is certainly probative of how that parent may treat other children'"), quoting *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973).

Further, the evidence did not show that termination of respondent mother's parental rights to the children was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Because the evidence showed that respondent mother could never effectively or safely parent the children, the trial court correctly concluded that it was not in the children's best interest to be returned to their mother.

Thus, the trial court did not err in terminating respondent mother's parental rights to Dionte, Deandra, and Kathileen.

III. Termination of Respondent Father's Rights to Kathileen

The trial court did not clearly err by terminating respondent Threat's rights to Kathileen. Respondent Threat failed to demonstrate either a bond with the child or an ability to care for her physically or financially. The evidence showed that during the four years of Kathileen's life he had been incarcerated as much time as he had been free. When it appeared that respondent Brooks may be reunited with the children, respondent Threat did not comply with services. At the time of the hearing, Threat was residing in a shelter and still on parole. The trial court did not incorrectly conclude that there was only a slim possibility that he could become a stable parent for Kathileen, but not a reasonable likelihood that he would become one within a reasonable time.

Additionally, the evidence did not show that termination of respondent Threat's parental rights to Kathileen was clearly not in her best interests. MCL 712A.19b(5); *In re Trejo*, *supra*. The evidence was clear that there was no bond between Kathileen and respondent Threat and that he was not reasonably likely to offer her stability.

Affirmed.

/s/ Henry William Saad

/s/ Michael J. Talbot

/s/ Stephen L. Borrello