

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of BRITTANY K. THOMPSON,  
Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

BEVERLY A. THOMPSON,

Respondent-Appellant,

and

NIGEL L. WHITAKER

Respondent.

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UNPUBLISHED

October 28, 2004

No. 253606

Wayne Circuit Court

Family Division

LC No. 99-384399

Before: Whitbeck, C.J., and Jansen and Bandstra, JJ.

PER CURIAM.

Respondent Beverly A. Thompson appeals as of right from the order terminating her parental rights to her minor child, Brittany K. Thompson (d/o/b 3-25-98), under MCL 712A.19b(3)(a)(ii) (desertion), (c)(i) (conditions of adjudication continue to exist), (g) (failure to provide proper care or custody), (j) (likelihood of harm if child returned to parent), and (k)(i) (neglect by abandonment).<sup>1</sup> We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

Thompson was fourteen years old when she gave birth to Brittany on March 25, 1998. Thompson had very limited mental function, and tested in the mild mentally retarded range. When Thompson's mother, Jane Wade, realized she was unable to parent Thompson, Thompson

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<sup>1</sup> The trial court also terminated the parental rights of Nigel L. Whitaker, but he has not appealed that decision.

went to live with an adult brother, and Wade became Brittany's guardian. However, Thompson was removed from her brother's care the following year due to abuse and neglect, became a temporary court ward, and was placed in a shelter. Thereafter, Wayne County Protective Services filed a petition alleging that Wade's home was unsuitable for habitation, that Wade had stopped taking medication for her mental health problems, and that Wade had medically neglected Brittany. Brittany and Wade's two minor children were placed in foster care.

On July 23, 2002, the FIA filed an amended original petition requesting Brittany's temporary wardship, noting that Brittany had been in foster care for 2½ years. Wade's guardianship of Brittany was terminated when it became clear that Wade neither wanted nor was able to care for Brittany. At the adjudication, Brittany's caseworker testified that Thompson visited Brittany only three times from April 2002 to September 2002. Thompson said she missed visits because it was raining or because she did not have bus tickets, although the agency had sent her bus tickets.

The trial court found that Thompson was not able to provide for Brittany, had not made efforts to provide a home for Brittany, and had not requested that Brittany be placed with her. It adjudicated Brittany a temporary court ward and proceeded directly to the initial disposition. The trial court ordered Thompson to (1) attend a Clinic for Child Study, a psychological evaluation, parenting classes, and individual and family therapy, (2) visit Brittany weekly, (3) maintain suitable housing and a legal source of income, (4) fully cooperate with the agency, and (5) attend all hearings.

Thompson did not appear at the next dispositional review hearing, and although Thompson attended seven out of eleven visits with Brittany, she interacted with her only minimally. Thompson had moved back into Wade's home after being evicted for nonpayment of rent from the home she shared with her boyfriend. Thompson was not employed and did not attend the job training to which she had been referred, but began receiving Social Security Disability benefits. She did not attend therapy regularly. The agency received a psychiatric recommendation stating that Thompson did not have the ability to raise Brittany and that her parental rights should be terminated.

The permanency planning hearing was adjourned from April 9, 2003 to May 30, 2003 to allow Thompson time to complete a new Clinic for Child Study because she had mistakenly left the previous Clinic before it was complete. At this time, Thompson had attended six out of twelve visits with Brittany in the past quarter, still resided with Wade, had not attended job training or pursued her GED, and did not attend or complete therapy. The trial court continued prior orders and ordered that the Clinic for Child Study also consider whether Thompson might be clinically depressed.

At the May 30, 2003 permanency planning hearing, the trial court admitted the results of the Clinics for Child Study, at which Thompson had told her psychologist that she had completed parenting classes, but could not recall what she had learned, and said she did not participate in therapy because she did not need it. Thompson admitted that her residence with Wade would not be suitable for Brittany because it was in an unsafe neighborhood, and also admitted that she was not able to adequately care for Brittany. Thompson reported earning \$50 a week working at a car wash, and receiving \$496.80 a month in disability benefits.

Thompson's psychologist diagnosed her with mild mental retardation and unspecified depressive disorder, noting that Thompson's insight and operational judgment were poor. The psychologist also observed that Thompson did not appear motivated to plan for Brittany and exhibited little insight into the detrimental effects her lack of effort had on Brittany. She concluded that Thompson lacked the maturity to parent Brittany, and recommended that termination proceedings continue.

The trial court ordered the agency to file a termination petition, but said that it would consider dismissing the petition if Thompson complied with therapy and continued visiting Brittany. However, evidence at the August 18, 2003 dispositional review hearing indicated that although Thompson had complied with therapy by attending two appointments, she attended only five out of ten visits during the quarter, and had not complied with any other aspects of her parent agency agreement. The agency filed a termination petition on August 19, 2003.

At the November 26, 2003, termination hearing, the caseworker testified that Thompson had not followed up on referrals for job training and completion of her GED, and although Thompson had attended parenting classes at age fifteen, she did not attend the classes to which she was later referred and did not seem to internalize what parenting information she had received. Thompson did not attend therapy regularly because she believed she did not need it, and only shrugged her shoulders when reminded that it was required for reunification with Brittany.

Weekly supervised visits were offered, but out of thirty visits in 2003, Thompson only attended sixteen. Visits were suspended when the petition was filed on August 19, 2003, but allowed if supervised by the therapist. Thompson attended three out of four of those visits. The caseworker observed that Brittany would make consistent efforts to engage Thompson in communication or play, but Thompson was always very tired and did not engage.

The caseworker reported that in June 2003, Brittany was moved to a new foster home where she was very warmly received and in which she was very happy. On the following visit, Brittany confronted Thompson about why she did not visit regularly, and Thompson cried and asked Brittany why she was hurting her feelings. When asked whether she wanted to deal with the situation or end the visit, Thompson chose to end the visit. After this time, Brittany did not want to visit with Thompson. The caseworker recommended termination of Thompson's parental rights.

Thompson and Brittany's therapist testified that therapy was difficult for Brittany because it took place after visits with Thompson, and in the same building. Brittany had a very difficult time coping with the stress of visits and associated the therapy building with that stress. Further, Brittany would become upset and anxious about whether Thompson would be at the building for a visit.

The therapist testified that the relationship between Thompson and Brittany was more that of siblings than of mother and daughter. At the first court-ordered visit after the termination petition was filed, Brittany pulled up her hood and told Thompson not to touch her. At subsequent visits, Brittany became more comfortable and played with Thompson, but at nearly every visit Brittany asked to go back home. The therapist supported termination of Thompson's parental rights because Brittany was suffering and needed to "get on with her life."

The trial court terminated Thompson's parental rights under MCL 712A.19b(a)(ii), (c)(i), (g), (j), and (k)(i). Noting that Brittany had been in foster care most of her life, the trial court determined that termination of parental rights was in her best interests.

## II. Clear And Convincing Evidence

### A. Standard Of Review

We review the trial court's findings of fact, and its determination regarding the child's best interests, for clear error.<sup>2</sup> 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.<sup>3</sup> Regard is given to the special ability of the trial court to judge the credibility of the witnesses who appeared before it.<sup>4</sup>

### B. Legal Standards

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.<sup>5</sup> If the petitioner establishes a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights, unless the court finds from evidence on the whole record that termination is clearly not in the child's best interests.<sup>6</sup> The trial court's decision regarding the child's best interests is reviewed for clear error.<sup>7</sup>

### C. The Evidence

We conclude that the trial court did not clearly err in determining that at least one statutory ground for termination of parental rights was established by clear and convincing evidence.<sup>8</sup> Thompson gave birth to Brittany at age fourteen, was herself made a court ward in another county, and never provided care for Brittany. Thompson attained the age of majority, moved back to Wayne County, and visited Brittany sporadically. She was offered services appropriate to her intellectual limitations but did not attend therapy and new parenting classes or obtain suitable housing during the two-year course of this proceeding. She completed a Clinic for Child Study during which she acknowledged that she was unable to parent Brittany. She obtained a legal source of income through disability benefits.

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<sup>2</sup> MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993).

<sup>6</sup> MCL 712A.19b(5); *In re Trejo*, *supra* at 353.

<sup>7</sup> *Id.* at 356-357.

<sup>8</sup> MCR 3.977(J); *In re Miller*, *supra* at 337.

Sections 19b(3)(c)(i), (g), and (j) were supported by clear and convincing evidence. Thompson had never provided care for Brittany, had not found a suitable custodial caregiver within a reasonable time, and failed to rectify her lack of desire or ability to care for Brittany. Thompson did not comply with therapy, lacked suitable housing, and acknowledged her inability to parent. Brittany was reasonably likely to suffer harmful neglect if returned to Thompson. Although the evidence did not clearly support termination under §§19b(3)(a)(ii) or (k)(i), the error was harmless given the clear and convincing evidence that supported the other statutory grounds for termination of Thompson's parental rights.

Further, the evidence did not show that termination of Thompson's parental rights was clearly not in Brittany's best interests.<sup>9</sup> Thompson and Brittany shared more of a sibling bond than a parent-child bond. Later in the proceedings, Brittany became anxious and fearful when brought for visits and stated her desire to leave. Brittany had been in foster care for four of her five years, had basic needs met in foster care that Thompson would not be able to meet, and deserved an opportunity for a permanent home.

Affirmed.

/s/ William C. Whitbeck

/s/ Kathleen Jansen

/s/ Richard A. Bandstra

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<sup>9</sup> MCL 712A.19b(5); *In re Trejo*, *supra* at 356-357.