

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of NATHAN CHRISTOPHER  
SHEMWELL and LUCAS VICTOR  
SHEMWELL, Minors.

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FAMILY INDEPENDENCE AGENCY,  
  
Petitioner-Appellee,

v

CINDY BOSSE,  
  
Respondent-Appellant.

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UNPUBLISHED  
December 16, 2004

No. 253897  
Monroe Circuit Court  
Family Division  
LC No. 01-016199

Before: Kelly, P.J., and Gage and Zahra, JJ.

PER CURIAM.

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

The trial court did not clearly err in determining that petitioner established the statutory grounds by clear and convincing evidence. *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993), citing *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). The primary conditions that led to the adjudication were respondent's continuing substance abuse and her failure to provide suitable or stable housing for the children. Although the evidence showed that, by the time of the termination trial, respondent had maintained stable and suitable housing, the testimony clearly established that respondent failed to rectify her substance abuse despite complying with many aspects of her treatment plan. Most notably Maurice Smith testified that respondent smoked crack cocaine and drank alcohol with Smith in June 2003, shortly after the children were returned to her care. Smith's testimony was corroborated by police testimony that respondent appeared intoxicated, they smelled a "pretty strong" odor of intoxicants on her breath, her movement was "jerky," and she was blinking a lot and making a chewing motion, which led the officers to suspect that respondent was under the influence of cocaine. We find

that the foregoing evidence clearly established that respondent's substance abuse continued to exist almost one year after the court entered the initial dispositional order.<sup>1</sup>

The evidence also established that there was no reasonable likelihood that respondent would rectify her substance abuse within a reasonable time considering the ages of her children. MCL 712A.19b(3)(c)(i). The determination of what is a reasonable time includes both how long it will take for the parent to rectify the conditions and how long the child can wait for the improvement. *In re Dahms*, 187 Mich App 644, 647-648; 468 NW2d 315 (1991). In this case, testimony by the evaluating psychologist and the family therapist indicated that respondent would need to remain sober for at least one year before reunification should be considered. The evidence clearly established that one year was not a reasonable amount of time for the children to wait for respondent to rectify her substance abuse. There was a long history of instability and lack of permanency in this case (the children were removed from respondent on three different occasions from October 2001 through June 2003 after respondent abused drugs or alcohol), which created anxiety and depression in the children and was detrimental to them. Further, given respondent's continual difficulty in maintaining her sobriety, despite her involvement and progress in therapy, her completion of inpatient rehabilitation and her attendance at NA/AA meetings, we find it unlikely that she would be able to remain sober for at least one year even with the benefit of continued services.<sup>2</sup> Accordingly, we find no clear error in the trial court's conclusion that one year was not a reasonable time for the children to wait for respondent to address her substance abuse problem.

Termination of respondent's parental rights was also appropriate under subsections (3)(g) and (3)(j). Respondent had an almost three-year history of substance abuse, which affected her ability to provide proper care and custody to the children as evidenced by her frequent arrests and incarcerations stemming from her drug and alcohol use. Respondent's repeated relapses, most notably her drug use in June 2003 after the children were returned to her care, clearly established that she would not likely be able to control her substance abuse problem within a reasonable time to enable her to provide proper care and custody to her children. Her continual inability to maintain her sobriety was clearly detrimental to the children. Both children suffered from anxiety and depression and testimony by the children's therapist clearly established that the lack of permanency or stability created by respondent's situation was harming the children emotionally. Given respondent's past inability to maintain her sobriety it was unlikely that she

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<sup>1</sup> Although respondent testified that she never used drugs or alcohol with Smith, this Court must give regard to the special opportunity of the trial court to assess the credibility of the witnesses who appear before it. MCR 2.613(C).

<sup>2</sup> Although respondent testified at the termination trial that she was now ready to work on reunification with her children, would do whatever she needed to do to have a healthy home environment, was serious about her sobriety, and was willing to continue attending counseling and AA/NA and providing drug screens, her efforts came too late in the proceedings considering the amount of time the children had already been in and out of foster care, her repeated relapses and the testimony by the caseworker and therapist concerning respondent's lack of commitment to a continuing recovery program.

would be able to improve the stability or permanence of her situation, thereby placing the children at a risk of further emotional harm if returned to her home.

The evidence also did not establish that termination of respondent's parental rights was not in the children's best interests. *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000); MCL 712A.19b(5). Although the testimony was undisputed that the children loved respondent and were bonded to her and Nathan desired to be returned to her, the testimony also indicated that the children had been negatively affected by respondent's repeated failures to maintain her sobriety and that the uncertainty over their own placement status was affecting their emotional well-being, causing anxiety and depression. Further, testimony by the therapists involved in this case showed that returning the children to respondent would likely have a further detrimental effect on the children. In light of the foregoing evidence, we find that termination of respondent's parental rights was appropriate.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ Hilda R. Gage  
/s/ Brian K. Zahra