

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TYLER ROBERT KEFUSS ,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JOANN KEFUSS,

Respondent-Appellant,

and

ROBERT F. DAVIDOFF,

Respondent.

UNPUBLISHED

May 12, 2005

No. 258984

Jackson Circuit Court

Family Division

LC No. 01-005220-NA

Before: Bandstra, P.J., and Fitzgerald and Meter, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g), and (i). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent-appellant does not argue that the trial court clearly erred in determining that the statutory grounds for termination of parental rights were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). She asserts that the trial court erred in finding that termination of her parental rights was in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

Respondent-appellant had a history of mental illness that required her compliance with a medication regimen. She was not consistently compliant with her regimen from July 2000 to July 2003 despite provision of services by the FIA, and consequently her parental rights to a daughter were terminated on November 4, 2002. Respondent-appellant gave birth to Tyler on July 6, 2003, while hospitalized for psychiatric reasons, and was unable to care for him. He was

made a temporary court ward at birth, and petitioner requested termination of respondent-appellant's parental rights to him at the initial disposition.

Two termination hearings were held, one on March 1, 2004, and one on October 25, 2004. Statutory grounds for termination were established by virtue of respondent-appellant's prior termination of parental rights, and the trial court was required to decide only the question of best interests. Evidence was presented at the March 1, 2004, hearing that respondent-appellant had become compliant with her medication regimen for the past several months. In light of that evidence, and the fact that the goal of reunification between Tyler and his father, Mr. Davidoff, provided a less drastic alternative to termination of parental rights under which respondent-appellant could visit Tyler in Mr. Davidoff's custody, the trial court declined to find that termination of respondent-appellant's parental rights was in Tyler's best interests.

Respondent-appellant argues that the evidence was substantially the same at the October 25, 2004, hearing, and therefore the trial court erred in finding at that hearing that termination of respondent-appellant's parental rights was now in Tyler's best interests. However, respondent-appellant became pregnant immediately after meeting a man in the summer of 2004 and discontinued her medication upon the advice of her obstetrician. She became pregnant knowing that compliance with her medication regimen was key to not terminating her parental rights to Tyler and to her own mental well-being. Also, Robert Davidoff voluntarily released his parental rights to Tyler on September 13, 2004, and the less drastic alternative to termination became impossible.

In making its best interests decision at the October 25, 2004, hearing, the trial court found that there was no reasonable expectation that respondent-appellant would maintain her medication regimen over the long term even after if she began taking her medication again following her current pregnancy. This also formed the basis for its finding that MCL 712A.19b(3)(c)(i) and (g) were grounds for termination in addition to respondent-appellant's prior termination of parental rights. The trial court did not clearly err in making that finding, particularly in light of respondent-appellant's poor judgment in becoming pregnant and consequently upsetting her period of compliance and mental stability at a time when her compliance was key to retaining parental rights to Tyler. The trial court was mandated by MCL 712A.19b(5) to terminate respondent-appellant's parental rights unless the evidence showed that termination was clearly contrary to Tyler's best interests.

The trial court noted that Tyler had never been in respondent-appellant's care. The only evidence presented in support of not terminating respondent-appellant's parental rights was that Tyler may benefit from having contact with his natural mother. There was no expectation that reunification would be achieved with respondent-appellant within a reasonable time, and thus the trial court did not err in determining that termination of her parental rights was not clearly contrary to Tyler's best interests, but was actually in his best interests.

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter