

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of GARRICK MITCHELL,
JERROD MITCHELL, and DAYQUAN
MITCHELL, Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

UNPUBLISHED
February 27, 2007

Petitioner-Appellee,

v

DEBRA MITCHELL, a/k/a DEBRA A.
MITCHELL, a/k/a DEBRA ALREINIA
MITCHELL, a/k/a DEBRA ALRENIA
MITCHELL,

No. 270811
Wayne Circuit Court
Family Division
LC No. 86-255089-NA

Respondent-Appellant,

and

GARRICK STANLEY, a/k/a GARRICK J.
STANLEY, a/k/a GARRICK JERROD STANLEY,

Respondent.

Before: Hoekstra, P.J., and Markey and Wilder, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(g) and (j). We affirm.

In order to terminate parental rights, the trial court must find that at least one statutory ground has been established by clear and convincing evidence. *In re Trejo Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000). We review that finding under the clearly erroneous standard. MCR 3.977(J).

Respondent-appellant argues that the trial court made several significant errors in its findings of fact. First, respondent-appellant argues that the trial court clearly erred in finding that Dayquan was born with marijuana in his system. At the pretrial hearing, respondent-

appellant admitted that she tested positive for marijuana on May 3, 2005, the day that Dayquan was born. In addition, Judith Nearhood, the foster care supervisor, testified that Dayquan tested positive for marijuana. Based on Nearhood's testimony, and the fact that respondent-appellant's admission gave rise to a strong inference that the baby was born positive for marijuana, we find that the trial court did not clearly err in finding that Dayquan was born with marijuana in his system.

Respondent-appellant next argues that the trial court erroneously referred to information obtained from nurses and hospital personnel, which indicated that respondent-appellant was not capable of caring for her children. The trial court stated the following: "The Agency in their testimony and in their relation of the opinion of the nurses and the hospital personnel, also have expressed the view that the Mother is not capable of taking care of all these Children." According to respondent-appellant, no such evidence exists in the record.

Although we did not find any specific testimony regarding the opinions of nurses or other hospital personnel, the December 14, 2005, Clinic for Child Study evaluation concluded as follows:

Further complicating this case, is the fact that two of her nine children require special medical attention. The remaining children are believed to have some academic difficulties in addition to behavioral issues. Given that Ms. Mitchell also appears to have some cognitive difficulties, it is likely that caring for all nine of her children adequately will pose a significant challenge. Ms. Mitchell is currently unemployed. Given these factors, the prognosis of the family reunifying at this time appears to be poor.

This evidence supports the finding that respondent-appellant was not capable of taking care of her children because of their medical problems, academic difficulties, and behavior issues.

Respondent-appellant further argues that the trial court clearly erred in finding that she would not be able to provide proper care within a reasonable time because no evidence was presented demonstrating this. However, Nearhood testified that, with intensive assistance, respondent-appellant would be able to properly parent her four older children but not the younger children. Thus, the trial court did not clearly err in finding that respondent-appellant was not able to provide proper care for her children or that she would not be able to provide such care within a reasonable amount of time considering the children's ages. MCL 712A.19b(g).

Respondent-appellant further argues that the trial court erroneously relied on her "cognitive limitations" to support its finding that she would not be able to provide proper care for the children. The Clinic for Child Study evaluation, as well as Nearhood's testimony, indicated that respondent-appellant had some cognitive difficulties. Such evidence supports the trial court's finding that respondent-appellant had "cognitive limitations." In addition, such evidence was pertinent to the issue of whether respondent-appellant was able to provide for her children and their special needs. Thus, respondent-appellant's argument lacks merit.

Respondent-appellant also argues that the trial court erroneously referenced past Children's Protective Services referrals. Jennifer Demars testified that respondent-appellant had a prior termination of her parental rights and that there had been several prior complaints for

physical abuse. Thus, the record supports the trial court's statement. In addition, a respondent-appellant's prior termination is relevant because the way a parent treated one child is probative of how he or she will treat another child. See *In re AH*, 245 Mich App 77, 84-85; 627 NW2d 33 (2001). Therefore, respondent-appellant's argument lacks merit.

Respondent-appellant further argues that the trial court erroneously found that she did not have any income. Respondent-appellant has failed to cite to that portion of the trial court's decision where this finding can be found, and we are unable to locate such statement in the trial court's written opinion. We acknowledge that Nearhood testified that respondent-appellant admitted that she had a learning disability and was receiving Supplemental Security Income benefits for that disability. Therefore, a finding that respondent-appellant did not have any income would have been erroneous. However, even if the trial court made such a statement, it did not rely on such a finding in concluding that respondent-appellant was not able to care for her children.

Respondent-appellant next contends that the trial court clearly erred in terminating her parental rights under MCL 712A.19b(3)(j) because of the above errors. As discussed in much detail above, the trial court did not clearly err in finding that respondent-appellant was not capable of caring for these children with special needs. This evidence supports the trial court's conclusion that this inability posed a risk of harm to the children. Thus, respondent-appellant's argument lacks merit.

Finally, respondent-appellant contends that termination of her parental rights was not in the children's best interests. Although the trial court found that it was in the children's best interests to terminate respondent-appellant's parental rights, it was required only to find that termination was not clearly against their best interests, in accord with MCL 712A.19b(5), which provides:

If the court finds that there are grounds for termination of parental rights, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made, unless the court finds that termination of parental rights to the child is clearly not in the child's best interests.

This is a difficult case because it appears that respondent-appellant loves her children and is genuinely interested in their welfare. However, these three children have special needs that require a substantial amount of time and attention. Respondent-appellant was not able to provide these children with the care they desperately needed. Thus, the evidence did not show that termination was clearly not in the children's best interests.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jane E. Markey
/s/ Kurtis T. Wilder