STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of LIBERTY LYNN LILLY and ROBERT LEROY LILLY II, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

REBECCA EINEDER,

Respondent-Appellant,

and

ROBERT LILLY, SR.,

Respondent.

UNPUBLISHED
March 1, 2007

No. 271909
Isabella Circuit Court
Family Division
LC No. 05-000009-NA

In the Matter of LIBERTY LYNN LILLY and ROBERT LEROY LILLY II, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ROBERT LEROY LILLY, SR.,

Respondent-Appellant,

and

REBECCA EINEDER,

Respondent.

No. 271911
Isabella Circuit Court
Family Division
LC No. 05-000009-NA

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

PER CURIAM.

In these consolidated appeals, respondents appeal as of right the trial court orders terminating their parental rights under MCL 712A.19b(3)(c)(i) and (g). We affirm.

This Court reviews the trial court's findings that one or more grounds for termination have been established and regarding the child's best interest under the clearly erroneous standard. MCR 3.977(J); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

In January 2005, petitioners sought temporary custody of the minor children on grounds of neglect, unstable and unsafe housing, criminality, and the mental instability of respondent mother. Respondents had received services from a public health nurse, maternal support, prevention services, and community mental health. Respondent mother also had an adult services worker helping with housekeeping, laundry, and transportation. Still, respondents' housing was in deplorable condition, with clutter, piles of belongings with paths between the piles, bugs flying about, numerous dirty pots and dishes, and medicines within the children's reach. Respondents said that they would be moving, but the new lodgings also had serious deficiencies. Respondent mother had a lengthy substance abuse history and numerous psychiatric admissions. She had convictions for retail fraud, assault and battery, and domestic violence. Respondent father had several convictions for drunk driving. On the positive side, respondents' home had food and, while respondents' son was diagnosed with failure to thrive, their daughter's development was normal or advanced. Respondents participated in services before the removal except for missing some Alcoholics Anonymous meetings and maternal support appointments.

An order of disposition was entered on June 30, 2005. Respondents' court-ordered parent agency agreement required improvement in home conditions, paying bills on time, attending counseling and life skills group, participating in and benefiting from parenting instruction, abstaining from drugs and alcohol, and attending visitations and exhibiting appropriate parenting skills. While respondents did make some progress and were loving, caring, and committed parents, nearly all professional testimony indicated that they would require 24-hour help to provide a safe environment for the children. Respondents' son exhibited developmental delays, asthma, and an immune deficiency that would necessitate special care including nebulizer treatments and frequent doctor visits. Respondents' daughter was developmentally normal, but severe problems surfaced with her attachment to respondent mother. It appeared that respondents' son was likewise developing difficulties with his attachment to respondent mother. Repeated attempts by professionals to correct this situation were not successful.

After reviewing the entire record, we are not left with a definite and firm conviction that a mistake has been made in terminating respondents' parental rights to the minor children under MCL 712A.19b(3)(c)(i) or (g). MCR 3.977(J); *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407

(2000). Psychologists Gabriella Eyal and Janet Wells, infant mental health specialist Patrick Cousineau, and caseworker Sarah Preston all opined that respondents could not properly care for the children without full-time assistance and would be unable to do so for the foreseeable future. We have considered whether the children's paternal aunt Martha Lilly could provide such assistance, but her health problems and lack of assertiveness to correct the parents were seen as major barriers. And, while Melissa Harris testified that the parenting triad of father, mother, and aunt Martha could provide adequate care for the minor children, we must be mindful of the trial judge's opportunity to see and hear the witnesses firsthand and judge their credibility. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Termination of respondents' parental rights was also not clearly contrary to the children's best interests. MCL 712A.19b(5); MCR 3.977(J); *Trejo*, *supra* at 364-365. While respondent father was attached and bonded to the children, his manner was often gruff and he failed to learn crucial parenting skills. His cognitive limitations were not amenable to change or teaching through parenting instruction. He also distrusted DHS and would have difficulty working in any arrangement structured or supervised by DHS. Respondent mother's mental instability, including psychiatric hospitalizations and suicide attempts, plus her inability to pick up on social cues and insecure attachment to her daughter, would pose serious problems and require years of counseling. However, respondent mother failed to comply with court-ordered counseling and abused substances while caring for her daughter. Again, we have considered whether the family could function with a three-parent arrangement, but the evidence showed that respondents' limitations would prove too daunting and the children would be in serious danger of not receiving adequate care. Termination of both respondents' parental rights to the minor children was not clearly contrary to the children's best interests.

Finally, we reject respondent father's argument that respondents' "differences" caused service workers to be biased or prejudiced against them. The differences claimed were in dress and appearance; respondents are Caucasian and were not discriminated against for their beliefs or other protected reasons. Respondents did not request accommodation under the Americans with Disabilities Act, 42 USC 12132 *et seq.*, or the parallel provision in the Michigan Persons with Disabilities Civil Rights Act, MCL 37.1302 *et seq*. Clearly, respondents were given extra support and assistance in attempts to help them to be able to provide proper care and custody for the children. Photographs of respondents are in the record and do not disclose any idiosyncrasies in dress or appearance. The record establishes that the trial court's decision to terminate respondents' parental rights was premised on a finding that respondents would be unable to properly care for the children without full-time assistance. Therefore, we find no reversible error in connection with respondent father's claims.

We affirm.

/s/ William C. Whitbeck
/s/ Richard A. Bandstra
/s/ Bill Schuette