

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JODIE LYNN BELL and JAMIE
ELAINE BELL, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JENNIFER SUNDRLA, a/k/a JENNIFER BELL,

Respondent,

and

MATTHEW BELL,

Respondent-Appellant.

In the Matter of JODIE LYNN BELL and JAMIE
ELAINE BELL, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JENNIFER SUNDRLA, a/k/a JENNIFER BELL,

Respondent-Appellant,

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MATTHEW BELL,

Respondent.

UNPUBLISHED
November 29, 2007

No. 277596
Macomb Circuit Court
Family Division
LC Nos. 2005-059198-NA
2005-059199-NA

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Before: Schuette, P.J., and Borrello and Gleicher, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right a circuit court order terminating their parental rights pursuant to MCL 712A.19b(3)(c)(i) [the conditions leading to the adjudication continue to exist with no reasonable likelihood of rectification within a reasonable time given the children's ages], (g) [irrespective of intent, the parent fails to provide proper care and custody and no reasonable likelihood exists that he or she might do so within a reasonable time given the children's ages], and (j) [a reasonable likelihood exists, based on the parent's conduct or capacity, that the children will suffer harm if returned to the parent's home]. We affirm as to both parents. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Facts and Proceedings

Respondents are the parents of Jodie Bell (dob: March 6, 1997), and Jamie Bell (dob: October 5, 2001). In March 2005, respondent mother was incarcerated in Kentucky after violating her probation for convictions of domestic violence, assault, and possession of drug paraphernalia. In June 2005, respondent father brought the children to Michigan and left them at his brother's home. He then returned to Kentucky, where he was incarcerated for driving while intoxicated and reckless driving. The relatives caring for the children in Michigan contacted Child Protective Services (CPS) because they lacked basic necessities, including clothing and food. On July 18, 2005, CPS filed a petition seeking temporary custody of the children.

At a pretrial hearing conducted on August 23, 2005, the circuit court exercised jurisdiction over the children on the basis of the father's no contest plea to an amended petition. The mother remained incarcerated until September 11, 2005, and pleaded no contest to an amended petition on September 28, 2005. Both respondents entered into parent-agency agreements requiring that they abstain from alcohol and drugs, and obtain counseling, employment, and appropriate housing. The children remained in foster care.

At a review hearing conducted on December 20, 2005, a caseworker testified that respondents had married, and ". . . a lot of positive things [are] going on in the case." Respondents visited the children frequently and interacted well. However, both parents lived in a motel room that was unsuitable for the children's residence, and neither had a job. Two months later, testimony revealed that respondents continued to reside in a motel, and remained unemployed. But because respondents continued visiting the children and made some progress toward other treatment plan goals, the referee authorized unsupervised visitation.

At a hearing held on May 11, 2006, a caseworker reported that the mother's recent urine drug screens were bloody or dilute, rendering them unusable. She requested that the referee order the mother to provide a hair sample for analysis. The father's drug screens were reportedly

negative. The referee ordered that the mother supply a hair sample, and continued unsupervised visitation.¹ The next day, respondents submitted urine screens that tested positive for cocaine. The father failed to submit a urine sample on May 19, 2006. At a hearing conducted on May 31, 2006, the referee noted that the children had spent almost a year in care, and that respondents' substance abuse led to the filing of the initial petition. The referee ordered supervised visitation and informed respondents that they needed to demonstrate "substantial progress."

Respondents submitted negative drug screens in June 2006, but remained unemployed and continued to live in a motel. At a permanency planning hearing on June 29, 2006, the referee stated an intent to proceed toward termination of respondents' parental rights. Neither respondent attended the termination pretrial conference held on August 22, 2006, as both were incarcerated.

Petitioner filed a supplemental permanent custody petition on October 25, 2006. At a hearing that day, a caseworker reported that respondents lived in the basement of the home of the mother's father and stepmother. Respondents admitted to being arrested on August 2, 2006, after a domestic altercation arising from respondent mother's intoxication. Neither respondent had found employment, and neither had fulfilled even half of the additional parent-agency agreement goals. The mother testified that an argument with her father led to her arrest in August, and that she continued to work on "anger issues." Respondent father admitted to being a cocaine addict. He conceded that the basement housing provided by the mother's relatives was contingent on respondents' continued counseling and sobriety, and that they remained subject to eviction at any time.

The referee recommended termination of respondents' parental rights pursuant to MCL 712A.19b(3)(c)(i), (g) and (j). In her bench opinion announced on January 26, 2007, the referee discussed respondents' "consistent unemployment, unstable housing and recurrent legal issues," and opined that "there is no indication that this pattern of instability will ever be broken." In support of her ruling, the referee cited the mother's arrest in August 2006 after a turbulent, alcohol-fueled argument with her father, and both parents' profound financial insecurity. The circuit court entered an order terminating respondents' parental rights on March 9, 2007.

Respondents now appeal as of right.

II. Issues Presented and Analysis

Respondents contend that insufficient evidence supported the circuit court's reliance on subsections (i), (g), and (j) as grounds for terminating their parental rights. This Court reviews for clear error a circuit court's finding that a ground for termination has been established by clear and convincing evidence "and, where appropriate, the court's decision regarding the child's best interest." *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005) (internal quotation omitted); see also MCR 3.977(J). Clear error exists when some evidence supports a finding, but

¹ The hair sample analysis ultimately yielded an inconclusive result.

a review of the entire record leaves the reviewing court with the definite and firm conviction that the lower court made a mistake. *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996).

The record clearly and convincingly establishes that with respect to both respondents, the conditions leading to the children's adjudication as temporary court wards continued to exist at the time of the termination hearing. Respondents' no contest pleas to the adjudications in August and September 2005 acknowledged a history of substance abuse, incarceration, and domestic violence. At the time the children entered care, respondents were unemployed, had recently been released from jail, and lived in a motel. Between the adjudication and the December 2006 termination hearing, respondents accrued additional jail time and positive cocaine screens, and remained jobless. Although they relocated from a motel into a basement, respondents admitted that their housing situation qualified as inherently unstable. The totality of the evidence supports the circuit court's conclusion that respondents made no progress during the fourteen months that preceded the termination of their parental rights. We find that the record clearly and convincingly establishes that the conditions leading to the adjudication continued to exist more than 182 days after entry of the initial dispositional order. Furthermore, we detect no reasonable likelihood that respondents' ongoing financial, housing and substance abuse difficulties "will be rectified within a reasonable time considering the child[ren]'s age[s]." MCL 712A.19b3(c)(i).

We also find that the circuit court did not err in terminating respondents' parental rights pursuant to MCL 712A.19b(3)(j). The record clearly and convincingly demonstrates that respondents' continued use of alcohol and cocaine, combined with their frequent incarcerations, would seriously jeopardize the safety and security of their young daughters. Additionally, their tenuous living situation provides significant support for the circuit court's conclusion that the children faced a substantial risk of harm if returned to respondents.

In light of our finding of clear and convincing evidence supporting the termination of respondents' parental rights on two grounds, we need not address whether the circuit court erred in finding an additional ground for termination. *In re Trejo*, 462 Mich 341, 360; 612 NW2d 407 (2000).

Respondents also challenge the circuit court's best interests finding pursuant to MCL 712A.19b(5). If the trial court finds a ground for termination of parental rights has been established, termination is required unless the court finds that termination is clearly not in the best interests of the child. MCL 712A.19b(5); *In re Trejo*, *supra* at 354. Ample evidence supports the court's finding that termination of respondents' parental rights does not contravene the children's best interests. The caseworker for the children testified that they felt "desperate" for permanency, and had asked about adoption. When the termination hearing commenced, the girls had resided in foster care for more than a year, and had little contact with their parents during the preceding five months. The caseworker eloquently described respondents' ongoing "cycle" of substance abuse, jail, and emotional instability, and the impact of that cycle on their daughters. We find no clear error in the circuit court's affirmation that termination of respondents' parental rights was consistent with the best interests of their children.

Affirmed.

/s/ Bill Schuette
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher