

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of HONESTY MILES-PLAIR,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

PHILLIPPA MILES,

Respondent-Appellant,

and

LUKE WEAVER and GREGORY COOPER,

Respondents.

UNPUBLISHED

November 29, 2007

No. 278612

Berrien Circuit Court

Family Division

LC No. 2006-000125-NA

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

PER CURIAM.

Respondent-appellant, the mother of Honesty Miles-Plair, appeals as of right a circuit court order terminating her parental rights pursuant to MCL 712A.19b(3)(g) [irrespective of intent, the parent fails to provide proper care and custody and no reasonable likelihood exists that she might do so within a reasonable time given the child's age], and (j) [based on the parent's conduct or capacity, a reasonable likelihood exists that the child will be harmed if returned to the parent's home]. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Facts and Proceedings

In July 2006, respondent was arrested and charged with second-degree child abuse. Petitioner thereafter obtained a circuit court order removing respondent's three children from her custody. At the time of her arrest, respondent was pregnant with Honesty, the involved minor in this case. In September 2006, respondent pleaded no contest to the child abuse charges and the

court permitted her to await Honesty's birth while confined to her home, on a tether. The court ordered that during her "home arrest," respondent have no contact with children under the age of 18. Two of respondent's children remained in foster care, and the third could not be found.¹

Respondent gave birth to Honesty on November 22, 2006. On November 24, 2006, Child Protective Services (CPS) filed a petition seeking custody of Honesty. Respondent pleaded no contest to the allegations in the petition, and petitioner placed Honesty into foster care. On December 4, 2006, respondent was sentenced to 20 to 48 months' imprisonment for her second-degree child abuse convictions.

On March 16, 2007, petitioner filed a petition seeking termination of respondent's parental rights to Honesty. At a hearing conducted on May 31, 2007, a caseworker testified that respondent's earliest potential prison release date was in May, 2008. The case worker opined that if respondent were released from prison at that time, she would require a considerable period of counseling and intensive supervision before reunification with Honesty. The caseworker explained that respondent had no bond with Honesty, lacked suitable housing, and was financially unstable. She recommended termination of respondent's parental rights, stating ". . . there's no time in the reasonable future that the mother will be able to establish any substantive relationship with the child." Respondent testified that on her release from prison, she planned to share a home with a cousin, aged 21, and the cousin's three children. Respondent admitted that she did not know how many bedrooms the cousin's home contained, or whether the home was adequate for Honesty. She stated that she planned to utilize her Social Security Disability benefits for Honesty's financial support.

At the conclusion of the hearing, a referee recommended termination of respondent's parental rights pursuant to MCL 712A.19b(3)(g) and (j), finding that respondent's incarceration prevented reunification within a reasonable time, and that respondent's child abuse conviction supported a reasonable likelihood that Honesty would suffer harm if returned to respondent's care. On June 7, 2007, the circuit court entered an order terminating respondent's parental rights.²

Respondent now appeals as of right.

II. Issues Presented and Analysis

Respondent contends that insufficient evidence supported the circuit court's reliance on subsection 3(g) as a basis for terminating her 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). "A trial court's decision to terminate parental rights is clearly erroneous if,

¹ A caseworker later testified that respondent's family was hiding the missing child.

² The circuit court simultaneously terminated the parental rights of two putative fathers, Luke Weaver and Gregory Cooper. Neither has filed a claim of appeal.

although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake had been made.” *In re Gazella*, 264 Mich App 668, 672; 692 NW2d 708 (2005).

Respondent contends that the circuit court should have delayed terminating her rights pending her release from prison, so that she would have “a reasonable opportunity to take advantage of services.” Testimony at the hearing indicated that respondent will remain incarcerated at least until May 2008, and possibly until 2010. Additionally, our review of the record reflects that respondent thereafter will require a lengthy period of assessment, counseling and supervision before reunification with her child may be considered. On the basis of this clear and convincing evidence, no reasonable expectation exists that respondent will be able to provide proper care or custody for her child before Honesty’s second birthday. We conclude that this is too long to wait for the mere possibility of a radical change in respondent’s life, and that the circuit court appropriately invoked MCL 712A.19b(3)(g) as a ground for terminating her rights.

We further observe that the circuit court properly relied on MCL 712A.19b(3)(j), which authorizes termination if “[t]here is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.” At the time of the termination hearing, respondent denied knowing whether her post incarceration housing would be suitable for Honesty’s residence. She admitted that she was enrolled in a lengthy “anger management” counseling program because of her second-degree child abuse convictions. The caseworker expressed concern regarding respondent’s potential danger to her child given the circumstances leading to the child abuse conviction.³ The referee invoked those circumstances when he found a reasonable likelihood that Honesty would be harmed if placed in respondent’s custody. We conclude that clear and convincing evidence supports this finding.

Respondent lastly contends that the termination of her rights conflicted with Honesty’s best interests. Respondent had contact with Honesty for two days of Honesty’s life, and no bond could have been created during that short time. Honesty has spent virtually her entire life in foster care. We agree with the referee’s determination that Honesty is entitled to stability, security and permanency, and that respondent lacks the capacity to fulfill these needs. On the basis of this record, we conclude that termination of respondent’s parental rights is consistent with Honesty’s best interests.

Affirmed.

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

³ The caseworker testified that the abused child was respondent’s nephew, aged fourteen, and that respondent was one of several people who bound the boy with ropes and inflicted other serious injuries.