

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of GABRIEL R. L'HEUREUX,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RIVA L'HEUREUX,

Respondent-Appellant,

and

JUAN VARGAS and JOHN DOE,

Respondents.

UNPUBLISHED
December 6, 2007

No. 277713
Macomb Circuit Court
Family Division
LC No. 2006-000199-NA

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

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g) and (j). For the reasons set forth in this opinion, we affirm. This appeal was decided without oral argument pursuant to MCR 7.214(E).

Termination of parental rights is appropriate when the petitioner establishes by clear and convincing evidence at least one of the statutory grounds for termination. *In re Trejo*, 462 Mich 341, 351, 355; 612 NW2d 407 (2000). After this has occurred, the trial court must terminate parental rights unless it finds that termination is clearly not in the child's best interests. *Id.* at 352-353. We review for clear error the trial court's findings that a statutory ground for termination has been established by clear and convincing evidence and, when appropriate, regarding the best interests of the child. MCR 3.977(J); *In re Trejo, supra* at 356-357. A finding is clearly erroneous when, although there is evidence to support it, the reviewing 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).

The trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g) and (j), which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

(j) There 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.

On appeal, respondent argues that there was not clear and convincing evidence to terminate her parental rights pursuant to MCL 712A.19b(3)(j). The minor child was removed from respondent's care because she failed to provide suitable housing, lacked sufficient income to support his basic needs, had a history of untreated depression and was on probation for a fourth-degree CSC conviction. The caseworker provided respondent with a parent-agency agreement designed to assist respondent in improving her parenting abilities. Respondent only partially complied with the agreement.¹ At the time of the termination hearing, respondent had no permanent housing. Respondent had also lost her part-time job at a Subway restaurant and remained unemployed. While she claimed to be in counseling, respondent never provided verification that she complied with the requirement of the agreement to obtain a psychological or psychiatric assessment and receive follow up treatment. She also was inconsistent in visiting the

¹ We reject respondent's claim that she failed to obtain the necessary services to fully satisfy the parent-agency agreement because she lacked support and cooperation from petitioner. Because of respondent's CSC conviction involving a minor, petitioner would not pay for services to reunite this family. Nevertheless, petitioner provided respondent with information for obtaining services and gave respondent a list that included providers who were free of charge. While it may have been more difficult for respondent to comply with the agreement under these conditions, we find no evidence that petitioner failed to make reasonable efforts to reunify this family.

minor child, violated her probation, failed to maintain consistent contact with the agency. It is also disputed whether she attended appropriate parenting training. This evidence clearly demonstrates an inability on the part of respondent to provide the minor child with stable and adequate care. Moreover, respondent's failure to comply with important aspects of the parent-agency agreement constitutes evidence that the child could face substantial risk of harm if returned to respondent's custody. MCR 3.976(E)(1); *In re Trejo, supra* at 346 n 3. Accordingly, we hold that the trial court did not commit clear error in finding clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(j).²

Further, respondent claims that termination of her parental rights was clearly contrary to the child's best interests. MCL 712A.19b(5) states:

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 is clearly not in the child's best interests.

The child, age five at the time of termination hearing, had been a ward of the state for nearly one year and, before that time, had often been cared for by his uncle and aunt. In considering the best interests of the child, we note that respondent visited the child inconsistently and that her cancellations were traumatic for him. At the time of the termination trial, the child was thriving in his foster home. Given that respondent lacked the ability to provide adequate care for the child, and considering the time that he has been out of her care, the trial court did not clearly err by finding that termination of respondent's parental rights was not clearly contrary to the child's best interests. *In re Trejo, supra* at 353, 355.

Affirmed.

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

² While we must affirm the termination order given our conclusion that the evidence was sufficient under MCL 712A.19b(3)(j), *In re Trejo, supra* at 354, we also hold there is no clear error in the trial court's conclusion that termination was also warranted under subsections (c)(i) and (g). It was established that the initial disposition took place on June 21, 2006, and more than 182 days had elapsed between that time and the April 19, 2007 termination hearing, and the conditions that led to respondent's termination proceedings (failure to provide a suitable home and maintain employment, psychological instability and probation for fourth-degree CSC) continued to exist and there was no reasonable likelihood that the conditions would be rectified within a reasonable time. Further, respondent's failure to substantially comply with the parent-agency agreement—notably her failure to obtain employment and suitable housing—establishes her inability to provide proper care and custody for Gabriel. *In re JK, supra* at 214. Accordingly, the trial court also did not clearly err when it found clear and convincing evidence to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i) and (g).