

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TREVOR CLOCK, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DAVID CLOCK and CINDY JOHNSON,

Respondents-Appellants.

UNPUBLISHED

December 18, 2007

No. 278342

Kalamazoo Circuit Court

Family Division

LC No. 06-000040-NA

Before: Davis, P.J., and Murphy and Servitto, JJ.

PER CURIAM.

Respondents appeal from the trial court's order terminating their parental rights to the minor child under MCL 712A.19b(3)(c)(i) and (ii), (g), and (j). Because statutory grounds for termination were proven by clear and convincing evidence and termination of respondents' parental rights was not contrary to the children's best interests, we affirm.

The minor child came under the jurisdiction of the trial court based upon allegations of respondents' failure to provide proper care or custody for Trevor, including respondent-mother's alcohol abuse, their lack of appropriate housing, their failure to provide any financial support for Trevor's care since August 2005, and their refusal to participate with services and unwillingness to address their alcoholism and mental health issues. After conducting a termination trial (nearly two years later) the court found that clear and convincing evidence supported termination of respondents' parental rights.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). We review the trial court's determination for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A finding is clearly erroneous if, although there is evidence to support it, we are 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).

Respondents first claim on appeal that the evidence failed to clearly and convincingly establish the statutory grounds for termination. We disagree.

The primary conditions that caused the child at issue to come within the court's jurisdiction were respondents' homelessness, respondent-mother's substance abuse, and respondent-father's mental health issues, which clearly impacted their ability to effectively parent the child. Respondents were able to successfully address their housing issue during the proceedings. However, the evidence showed that they clearly failed to rectify their substance abuse and mental health issues, despite having almost one year since the court entered its dispositional order and approximately 20 months since services began, to comply.

In fact, respondent-mother failed to even minimally comply with any of the substance abuse services provided to her. She failed to regularly attend substance abuse treatment and/or AA meetings, did not comply with random alcohol/drug screens, and continued to use alcohol during the proceedings.¹ Likewise, although respondent-father attended individual counseling and parenting classes as recommended, the evidence showed that he did not fully benefit from or make substantial progress in those services. Most notable, however, was his refusal throughout the proceedings to consider taking medication to improve his mental health contrary to the strong recommendations by the experts to do so.

In light of their past failure and their apparent lack of motivation to address their issues, despite services, we find no reasonable likelihood that respondents would be able to rectify their issues within a reasonable time to enable them to provide proper care and custody and a safe environment for the child. MCL 712A.19b(3)(c)(i) and (g). This is especially so, considering the child's young age and the lengthy period of time (almost two years) he had already been outside of respondents' care. Respondents' recent motivation to take advantage of services and treatment options to address their issues, although commendable, came too late in the proceedings considering the child's serious need for permanency and stability. Accordingly, despite respondents' noteworthy efforts towards compliance with their housing issue during the proceedings, we find no clear error in the trial court's decision to terminate their parental rights. *Trejo, supra* at 356-357. Termination is proper even if a respondent partially complies with the parent/agency agreement where that compliance remains insufficient to rectify the conditions that caused the child to come within the court's jurisdiction. *Jackson, supra* at 27. Here, the evidence clearly and convincingly established that respondents' failure to successfully address their substance abuse and/or mental health issues, placed the child at a continued risk of emotional and physical harm if he were returned to their home. MCL 712A.19b(3)(j).

Next, respondent-father argues that the trial court clearly erred in terminating his parental rights because petitioner failed to provide adequate services and assistance in light of his mental

¹ Respondent-mother attributed her failure to comply with substance abuse services to her transportation problems. Although it was apparent that transportation was an issue during the proceedings, testimony indicated that it did not prevent her from complying with services. To the contrary, testimony revealed that the caseworker offered transportation assistance to her in the form of bus passes and services, yet she failed to take advantage of them. Had she taken advantage of the transportation services offered to her, she likely would have been able to attend substance abuse services and perhaps made progress towards addressing her problem. Instead, she failed to do so, which suggests a lack of motivation on her part.

limitations. We disagree. We review a trial court's factual findings for clear error. MCR 3.977(J); *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000).

It is apparent from our review of the record that petitioner attempted to accommodate respondent-father's needs by referring him to psychological and psychiatric evaluations and the specific services and treatment recommended by his evaluators. It is also apparent that respondent-father's own actions in resisting the strong recommendation to take medication to improve his mental health hindered petitioner's ability to assist him towards reunification. Respondent-father's inability to rectify his mental health issues, therefore, could not be attributed to a lack of reasonable efforts to assist him. Instead, he failed to take full advantage of the available services and recommended treatment options. On this record, we find no clear error in the trial court's finding that petitioner made reasonable efforts towards reunification. *Terry, supra* at 22. Although petitioner had a duty to make reasonable efforts to rectify the conditions that caused the child's removal, MCL 712A.18f(1), (2), and (4), it could only do so if respondent-father took advantage of the services.

Lastly, respondents challenge the trial court's determination regarding the best interest inquiry. Under MCL 712A.19b(5), "[o]nce a ground for termination is established, the court must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests." *Trejo, supra* at 354; MCL 712A.19b(5). We review the trial court's determination for clear error. *Trejo, supra* at 356-357.

Although undisputed evidence showed that the child and respondents were clearly bonded and respondents loved and missed him and desired him to return to their care, that evidence did not "clearly overwhelm," *Trejo, supra*, 462 Mich 364, their failure over the almost two years that the child was outside of their care to address or fulfill the necessary requirements so that they could provide him with the stability and permanency he urgently needed. We find noteworthy the report by the child's therapist indicating that she supported a "prompt" termination decision and reunification with respondents only if they had addressed their issues, which, unfortunately, they were unable to accomplish. On this record, we find no clear error in the trial court's determination that the evidence failed to show that termination was clearly not in the children's best interests. *Trejo, supra* at 356-357.

Affirmed.

/s/ Alton T. Davis
/s/ William B. Murphy
/s/ Deborah A. Servitto