STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of TANESE RENEE SMITH-WOMACK, LATESE RAVON SMITH-WOMACK, BRITTNEY MARIE SMITH, and DERRICK KWAME HICKS, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LULA LEJUNE SMITH,

Respondent-Appellant.

UNPUBLISHED
January 17, 2008

No. 276962
Oakland Circuit Court
Family Division
LC No. 04-698788-NA

Before: Talbot, P.J., and Zahra and Meter, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's orders terminating her parental rights to four of her minor children pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (g), and (j). We affirm.

Respondent argues that the trial court erred in finding that the statutory grounds for termination were proven by clear and convincing evidence.

Initially, we note that, although child protection proceedings are considered continuous proceedings, so that evidence received at one hearing can generally be considered at all subsequent hearings, *In re Nunn*, 168 Mich App 203, 207; 423 NW2d 619 (1988); *In re LaFlure*, 48 Mich App 377, 391; 210 NW2d 482 (1973), we reject respondent's suggestion that it is appropriate to consider evidence introduced at the subsequent best-interests hearing in evaluating the trial court's earlier decision in October 2006 regarding the statutory grounds for termination. Respondent does not challenge the trial court's decision to bifurcate the proceedings, nor does respondent claim that the court erred in limiting evidence at the October 2006 termination hearing to events occurring before the April 6, 2006, supplemental petition. Thus, we conclude that respondent has abandoned any claim that evidence introduced post-hearing can be used to analyze the trial court's earlier decision regarding the statutory grounds for termination.

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). The evidence that respondent had no authorized contact with

the children for more than 91 days, during which period respondent also failed to maintain contact with the caseworker, supports the trial court's finding that desertion was proven under MCL 712A.19b(3)(a)(ii). Furthermore, even if there had been viable evidence that some unofficial contact occurred at Christmas in 2005[1], as respondent contends on appeal, so as to preclude termination under § 19b(3)(a)(ii), we would not reverse because the trial court did not clearly err in finding that the other three statutory grounds for termination were established.

The condition that led to the adjudication continued to exist because respondent was still unable to care for the children. The trial court could reasonably conclude that respondent's resumption of contact with the caseworker and undertaking to obtain another residence, without any documented legal source of income, was too little to demonstrate a reasonable likelihood that the condition that led to the adjudication would be rectified within a reasonable time considering the ages of the four children, thereby justifying termination under § 19b(3)(c)(i). Further, considering respondent's minimal effort to comply with the parent-agency agreement, the trial court did not clearly err in finding that § 19b(3)(g) was also established. *In re JK*, *supra* at 214. The evidence that respondent did not maintain contact with the caseworker, failed to follow through with a referral for therapy with Alpha Family Counseling, failed to document a legal source of income, and failed to demonstrate an ability to obtain and maintain stable housing supports the trial court's finding under this statutory section. Finally, respondent's history provided ample evidence for the trial court to conclude that § 19b(3)(j) was also established. Because respondent did not sufficiently benefit from the services offered to her, a reasonable likelihood existed that the children would be harmed, at least emotionally, if returned to respondent's home. *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005).

Regarding respondent's challenge to the trial court's best interests decision, we note that a transcript of the December 13, 2006, session[2] is not available and that respondent failed to invoke the procedure for obtaining a settled statement of facts. See MCR 7.210(B)(2). "This Court limits its review to the record provided on appeal and will not consider any alleged evidence or testimony that is not supported by the record presented to the Court for review." *Admiral Ins Co v Columbia Cas Ins Co*, 194 Mich App 300, 305; 486 NW2d 351 (1992). However, because the trial court summarized the evidence from the December 13, 2006, session in its decision, we shall consider respondent's argument against that backdrop.

The trial court reasonably concluded that respondent was still unable to raise the four children involved in the instant case. There was evidence that respondent's three other children were made temporary court wards as a result of a separate proceeding in Wayne County, after respondent was hit in the face during a domestic violence incident. Respondent, who was residing with a sister, had difficulty taking care of her own needs. Further, the trial court did not clearly err in its assessment of the four children's needs for permanency. The two older children

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[1] Defendant's testimony does not clearly support this event because she failed to specify the year in which she saw the children at Christmas. Moreover, the testimony about the Christmas visit occurred during the later best-interests hearing.

[2] The best-interests hearing spanned several days; only the transcript from December 13, 2006, is missing.

both had emotional problems, and the twins had spent most of their lives outside of respondent's care. Examining the evidence as a whole, the trial court did not clearly err in its assessment of the children's best interests. *In re JK*, *supra* at 209; *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Because the evidence did not clearly show that termination of respondent's parental rights was not in the children's best interests, the trial court did not err in terminating respondent's parental rights to the children. MCL 712A.19b(5).

Affirmed.

/s/ Michael J. Talbot
/s/ Brian K. Zahra
/s/ Patrick M. Meter