

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DAWSON ALEXANDER
MORGAN and DILLIAN ELI JOSEPH
MORGAN, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JENNIFER LYNN CARRASCO MORGAN

Respondent-Appellant,

and

KENNETH JEFFERY MORGAN,

Respondent.

In the Matter of DAWSON ALEXANDER
MORGAN and DILLIAN ELI JOSEPH
MORGAN, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KENNETH JEFFREY MORGAN,

Respondent-Appellant,

and

JENNIFER LYNN CARRASCO MORGAN,

UNPUBLISHED

January 17, 2008

No. 277131

Genesee Circuit Court

Family Division

LC No. 04-118835-NA

No. 277132

Genesee Circuit Court

Family Division

LC No. 04-118835-NA

Respondent.

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

PER CURIAM.

In these consolidated appeals, respondents Jennifer Morgan and Kenneth Morgan each appeal as of right from the trial court's order terminating their parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We reverse and remand.

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 proven by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). This Court reviews the trial court's findings of fact under the clearly erroneous standard. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). To be clearly erroneous, a decision must strike the reviewing court "as more than just maybe or probably wrong." *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). "A circuit court's decision to terminate parental rights is clearly erroneous if, although there was evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Once a statutory ground for termination is established, the trial 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. *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000); MCL 712A.19b(5). The trial court's best interests decision is also reviewed for clear error.

Respondents are Kentucky residents. The trial court obtained jurisdiction over the children after the youngest child was born in Michigan while respondents were visiting relatives, and marijuana was detected in the child's system after his birth. The children thereafter remained in foster care in Michigan for 2-1/2 years. During most of this period, respondents continued to live in Kentucky where they cared for a third child who was born during the pendency of this case, and respondents regularly drove to Michigan to visit their children.

With regard to the trial court's decision to terminate respondents' parental rights under § 19b(3)(c)(i), the conditions that led to the adjudication were that the youngest child, Dillian, tested positive for marijuana at birth, and respondent-mother likewise tested positive for marijuana, opiates, and benzodiazepines. The trial court determined that both respondents had a substance abuse problem that had not been resolved by the time of the termination hearing.

The evidence indicated that respondent-mother's older child, Dawson, also tested positive for marijuana at the time of his birth in Kentucky. Respondent-mother explained that she experienced severe nausea during her pregnancies and was advised by a "retired nurse" to smoke marijuana to ease her nausea during pregnancy. Except for the births of the two children, there was no evidence that respondents ever had another drug screen that was positive for marijuana. Further, after Dawson was born, Kentucky authorities investigated respondents' home and ultimately returned the child to respondents. The trial court appears to have concluded that respondents had unresolved "drug issues" because they both were still using methadone and anxiety medications. However, the evidence showed that both respondents had legal

prescriptions for those medications. Further, the trial court clearly erred in finding that the prescribing physician believed that respondents were abusing their medications. Although the physician agreed that the medications were addictive and could be abused, there was no evidence that he believed that respondents were actually abusing the drugs. Furthermore, the evidence showed that respondents' methadone use was being monitored in Kentucky and that authorities there considered their use acceptable. Considering the evidence on the entire record, we are left with a definite and firm conviction that the trial court clearly erred in finding that termination was warranted under § 19b(3)(c)(i).

With regard to § 19b(3)(c)(ii), the trial court appears to have relied on respondents' failure to return medical releases and on evidence of domestic violence as establishing that "other conditions" existed that were not reasonably likely to be resolved. Although it is undisputed that respondents did not return some medical releases that were sent to them in Kentucky, the evidence indicates that this was attributable more to oversight than an unwillingness to sign the releases. Significantly, respondents willingly signed releases that were provided to them at court or at treatment facilities. The evidence does not support a finding that this problem was not reasonably likely to be resolved within a reasonable time. The trial court also concluded that there remained unaddressed questions about domestic violence. Although there was evidence of domestic violence involving respondents, those episodes arose after the children were removed. There was no evidence of domestic violence in the presence of the children. The parents acknowledged that their marriage had suffered from the stress of trying to maintain their home in Kentucky and raise a third child there, while at the same time being required to travel hundreds of miles each week to visit their children in Michigan. Respondents successfully participated in marriage counseling to address this issue. Once again, we are left with a definite and firm conviction that the trial court clearly erred in finding that termination was warranted under § 19b(3)(c)(ii).

The trial court's reliance on §§ 19b(3)(g) and (j) was based on much of the same evidence previously discussed, and the foregoing discussion applies equally to these two statutory grounds. Additionally, we note that the evidence showed that respondents had stable housing in Kentucky, where respondent-father was employed, and that by all accounts respondents were appropriately raising their third child there. The evidence also indicated that respondents were bonded with all of their children. For these reasons and the reasons previously discussed, we are left with a definite and firm conviction that the trial court clearly erred in finding that termination was warranted under §§ 19b(3)(g) and (j).

In sum, we conclude that none of the statutory grounds for termination were supported by clear and convincing evidence and, therefore, reverse the order terminating respondents' parental rights.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

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