

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SKYLAR MARIE LAVALLEY,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RHONDA K. ADAMS,

Respondent-Appellant.

In the Matter of SKYLAR MARIE LAVALLEY,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DAVID LAVALLEY,

Respondent-Appellant,

and

RHONDA K. ADAMS,

Respondent.

Before: Gleicher, P.J., and O'Connell and Kelly, JJ.

PER CURIAM.

UNPUBLISHED
February 14, 2008

No. 279180
Macomb Circuit Court
Family Division
LC No. 2005-060579-NA

No. 279627
Macomb Circuit Court
Family Division
LC No. 2005-060579-NA

In these consolidated appeals, respondents appeal as of right a circuit court order terminating their parental rights pursuant to MCL 712A.19b(c)(i) [the conditions leading to the adjudication continue to exist with no reasonable likelihood of rectification within a reasonable time given the child's age], (g) [irrespective of intent, the parent fails to provide proper care and custody and no reasonable likelihood exists that he or she might do so within a reasonable time given the child's age], and (j) [a reasonable likelihood exists, based on the parent's conduct or capacity, that the child will suffer harm if returned to the parent's home]. In terminating respondent-mother's rights, the circuit court also relied on subsection (l) [parental rights to another child were previously terminated]. We affirm.

I. Facts and Proceedings

Respondents are the parents of Skylar Marie LaValley (born October 25, 2005). Skylar is respondent-mother's fifth child.¹ When respondent-mother gave birth to Skylar, her four older children were in foster care, with a child protective proceeding underway.

Respondent-mother first came to the attention of Child Protective Services (CPS) in 1998, when a caseworker found her home to be filthy and in complete disarray. The circuit court took temporary custody of respondent-mother's two young daughters on the basis of a July 1998 petition alleging that the children lived in deplorable conditions. Respondent-mother "marginally" cleaned the home, and agreed to participate in a case service plan. At a dispositional review hearing conducted in September 1998, the circuit court dismissed the petition, terminated jurisdiction, and returned the two girls to respondent-mother's care.

Petitioner next sought circuit court jurisdiction in April 1999, alleging that respondent-mother's home was "filthy and a risk to the children's health." The petition detailed that the home contained clutter "on every surface in the living room and kitchen," and further averred that respondent-mother had been arrested for retail fraud in the presence of her children, and that she felt "depressed and overwhelmed." Respondent-mother pleaded no contest to the allegations in an amended petition, and petitioner placed her two daughters with relatives. Respondent-mother received services, and in September 2000 the circuit court again returned the children to her care. The circuit court ordered respondent-mother to "remain in substantial compliance with the parent agency agreement," including the requirement that she cooperate with an in-home service provider. In March 2002, the circuit court "discharged [the girls] as temporary court wards."

Meanwhile, respondent-mother had given birth to a son in November 2000, and bore another son in October 2002. In June 2004, petitioner filed a third petition, seeking temporary custody of all four children. This petition alleged that the police found the two boys and one of the girls wandering unsupervised on the street, and that a car nearly struck the youngest boy. The police returned the children home, where they had to awaken respondent-mother. A CPS investigation revealed respondent-mother's home once again "to be filthy," littered with

¹ Respondent-father is the natural father only of Skylar. The four other children discussed in this opinion were fathered by other men.

clothing, dishes, and open collections of garbage, and without a functioning toilet. When petitioner removed the children, all four had head lice. The circuit court exercised jurisdiction over the children on the basis of respondent-mother's admissions that she had fallen asleep and left the children unsupervised, that the children all had head lice, and that the condition of her home posed an unreasonable risk of harm to the children.

At a dispositional review hearing conducted on October 4, 2004, the circuit court referee observed that similar allegations brought the two older children into care on prior occasions, and remarked, "[O]bviously, these parents need to really take the ball and run with it, to address the issues that brought the children into care." In July 2005, petitioner moved to terminate respondent-mother's parental rights to her four children. While those termination proceedings remained pending, respondent-mother gave birth to Skylar. The circuit court assumed temporary jurisdiction over Skylar pursuant to a fourth petition.

On January 20, 2006, petitioner filed a supplemental petition seeking termination of respondent-mother's parental rights to Skylar. The petition alleged that respondent-mother's four other children were court wards, and that she had failed to complete the terms of her parent-agency agreement in the prior proceedings. The petition also averred that respondent-father lacked housing, refused to provide CPS with accurate contact information, did not follow through with scheduling a home visit, and "failed to cooperate . . . in planning for the child's future." On February 16, 2006, respondent-father entered a no contest plea acknowledging that he lacked appropriate housing and had given petitioner inaccurate contact information. At a dispositional hearing held on March 10, 2006, respondent-father agreed to a parent-agency agreement requiring him to complete a psychological assessment, attend counseling, participate in parenting classes, maintain a suitable home, and provide the case worker with documentation of a legal income source.

At a review hearing conducted on June 7, 2006, caseworker Linsey Green visited respondents' home, where she found outside a pop-up trailer in "a million pieces," including glass and scrap metal, "scattered all over the yard." According to Green, the interior of the home remained cluttered and dirty. Green opined that the condition of the house reflected almost no improvement when compared to her previous visits.

On September 1, 2006, the circuit court terminated respondent-mother's rights to three of her four older children.² In its written opinion, the circuit court described in painstaking detail the circumstances that brought the four older children into care, the lengthy period of time afforded respondent-mother to remediate the filthy and disorganized condition of her home, and the multiplicity of services that had been provided. The court observed that respondent-mother had difficulty taking care of her own medical needs, and did not see her doctor on a regular basis. The court emphasized in conclusion that "[t]he natural mother's inability to take good care of herself leads the Court to believe she is simply incapable of taking care of these children," and

² The father of the fourth of Skylar's half-siblings eventually obtained custody of that child, and respondent-mother's parental rights to that child have not been terminated.

that after many years “what remains strikingly clear is that the natural mother is simply unable to provide an appropriate home for the children.”³

On September 7, 2006, the circuit court referee conducted a permanency planning hearing regarding Skylar. Green reported that she had visited respondents’ home a few weeks earlier and found it to be somewhat cleaner, but still cluttered. According to Green, respondents owed about \$500 on their electric bill and no longer had gas service due to nonpayment of a substantial bill. Green recounted that respondent-father had failed to verify his employment during any time after February 2006, and that respondent-mother’s medical records revealed that she suffered from narcolepsy,⁴ did not take prescribed medication to treat this disorder, and was instructed by her physician to avoid lifting more than 10 or 15 pounds. The referee adopted petitioner’s recommendation that the case proceed toward termination of respondents’ parental rights. In October 2006, the referee authorized the filing of a supplemental permanent custody petition.

At the termination hearing conducted on January 25, 2007, Green testified that respondents had no gas service and owed \$1,500 on their electric bill. Green admitted that she did not visit respondents’ home after August 2006, because she deemed a return visit unnecessary due to their failure to correct the dangerous and unsuitable conditions in their home during the preceding year. Green determined that as of October 2006 respondents had no written lease for their home, and were delinquent in their rent payments. Green also reported that respondent-mother did not regularly take her prescribed narcolepsy medications, did not complete recommended parenting classes, and had no income besides food stamps. Green opined that during the year that elapsed after the termination of her rights to three of her other children, respondent-mother had made no progress toward compliance with her current parent-agency agreement. Regarding respondent-father, Green testified that he failed to attend individual counseling as required by his parent-agency agreement, and that he provided unsatisfactory verification of his employment. Although he began residing in the home with respondent-mother in February 2006, the home remained without heat and in wretched condition.

Respondents testified that they substantially complied with their parent-agency agreements, and had started to “remodel” their home. Respondent-father claimed that he failed to attend counseling because he worked for a towing company “from 6:30 in the morning until like 9:00 at night,” seven days a week. Respondent-mother testified that she had recently made arrangements to pay the gas and electric bill arrearages, and that she was actively seeking employment. She further maintained that she had cleaned and organized the house and that it was now suitable for Skylar.

³ Respondent-mother appealed the 2006 termination order, and this Court affirmed the circuit court. *In re Graham*, unpublished memorandum opinion of the Court of Appeals, issued April 26, 2007 (Docket No. 273299).

⁴ Narcolepsy is “a condition marked by an uncontrollable desire for sleep or by sudden attacks of sleep occurring at intervals” Dorland’s Illustrated Medical Dictionary (25th ed), p 1018.

On February 2, 2007, the circuit court entered a lengthy opinion and order terminating respondents' parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), (j) and (l) (applicable to respondent-mother only).

II. Issues Presented and Analysis

Respondents first contend that insufficient evidence supported the circuit court's reliance on subsections (c)(i), (g) and (j) as grounds for terminating their 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). Clear error exists when some evidence supports a finding, but a review of the entire record leaves the reviewing court with the definite and firm conviction that the lower court made a mistake. *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996). A circuit court's finding of one statutory ground is sufficient to terminate parental rights. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).⁵

The conditions that led to Skylar's adjudication as a temporary court ward involved respondents' failure to provide her with suitable housing, respondent-mother's noncompliance with her parent-agency agreement, and respondent-father's refusal to cooperate with CPS. The record clearly and convincingly establishes that with respect to both respondents, the conditions leading to Skylar's adjudication as a temporary court ward continued to exist at the time of the termination hearing. Neither parent fully complied with the goals set forth in their parent-agency agreements. Petitioner offered respondent-mother counseling services intended to improve her emotional stability, but respondent-mother attended only sporadically, completed just one of the ten parenting classes recommended to her, and remained noncompliant with her narcolepsy medication. Both parents failed to provide any documentation of their financial ability to care for Skylar. Although the circuit court expressed disapproval of Green's failure to revisit respondents' home after August 2006, the court noted that the home had been dirty and cluttered for several years, and that respondent-mother previously failed to remediate the home's condition when faced with possible termination of her rights to her other four children. The totality of the evidence supports the conclusion of the circuit court that respondents made virtually no progress toward remediation of the deplorable conditions that brought Skylar into care, despite their knowledge that their failure to do so would lead to termination of their parental rights. The circuit court properly invoked subsection (c)(i) as a basis for termination.

On the basis of the same clear and convincing evidence discussed above, the circuit court properly terminated respondents' parental rights pursuant to subsection (g), correctly concluding that, without regard to intent, they failed to provide proper care and custody for Skylar, and that

⁵ Respondent-mother does not dispute that clear and convincing evidence established the statutory ground for termination set forth in subsection (l). But because the same statutory grounds in, and much of the same evidence relevant to, subsections (c)(i), (g) and (j) apply to both respondents, we nonetheless address the alternate subsections' applicability to respondent-mother.

no reasonable expectation existed that they could do so within a reasonable time, considering Skylar's young age. Respondents' living situation remained unacceptable during at least eight of the months that preceded the termination hearing. The circuit court found that respondents provided "no credible evidence" at the hearing demonstrating that they had cleaned the home or removed all of the clutter, inside or out. Although respondent-father claimed to have recently secured productive and secure employment, the circuit court characterized his effort as "just too little too late. Skylar can't wait another year for natural father to demonstrate his ability to earn a good income and provide a safe and suitable home for his daughter." The circuit court thus appropriately invoked subsection (g) as a ground for terminating respondents' parental rights.

We also find that the circuit court did not clearly err in terminating respondents' parental rights pursuant to subsection (j). Respondents' well-documented, tenuous living situation provides significant support for the circuit court's conclusion that Skylar faced a substantial risk of harm if returned to their care. The home lacked heat and had been unsanitary for years. Respondent-mother's untreated narcolepsy and her inability to lift more than 10 to 15 pounds also enhance the likelihood that Skylar would suffer harm if placed in her care. This evidence, in combination with the proofs establishing the unlikelihood of timely rectification of the conditions leading to the adjudication, equally demonstrates the reasonable likelihood that Skylar would suffer harm if placed in respondents' care.

Respondents also challenge the circuit court's best interests finding pursuant to MCL 712A.19b(5). If the trial court finds a ground for termination of parental rights has been established, termination is required unless the court finds that termination is clearly not in the best interests of the child. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). Ample evidence supports the circuit court's conclusion that termination of respondents' parental rights served Skylar's best interests. Respondents could not adequately provide for their own material needs, and nothing in the record demonstrates that they would be able to provide Skylar with even the most basic necessities. Skylar had resided in foster care for 13 months, and had spent only the first week of her life with respondents. The circuit court correctly emphasized, "This child needs a roof over her head, food on the table, and a clean and safe home. Skylar is entitled to that. Unfortunately both the natural mother and the natural father have significant difficulty providing for even their own most basic needs." The circuit court did not clearly err in making this best interests finding.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Peter D. O'Connell
/s/ Kirsten Frank Kelly