STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of SIERRA EVERS, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

EDEN A. GRAVER,

Respondent-Appellant.

UNPUBLISHED
May 27, 2008

No. 281361
Calhoun Circuit Court
Family Division
LC No. 2006-004548-NA

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

PER CURIAM.

Respondent appeals as of right from a circuit court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(g) [irrespective of intent, the parent fails to provide proper care and custody and no reasonable likelihood exists that 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]. We affirm.

I. Underlying Facts & Proceedings

Respondent gave birth to the involved minor child on December 8, 2006. The child came to petitioner's attention shortly thereafter because both she and respondent tested positive for cocaine at the time of the birth.[1] The initial, December 2006 petition for temporary custody of the child asserted that respondent had admitted to a child protective services (CPS) worker "that she started using cocaine when she was 18 years old and crack cocaine when she was 34 years old," "that she smoked crack cocaine several times while pregnant with Sierra," and that she continued smoking crack after the child's birth. Respondent also reported that "she has been

[1] Immediately before the child's birth, the Calhoun County Jail discharged respondent to a hospital. The petition recounted that respondent was "arrested on 12-5-06 on a Calhoun County Contempt of Court warrant and an FOC warrant out of Barry County." Respondent had two older children, who lived with their respective fathers. Respondent never identified a potential father of Sierra, and none appeared during the proceedings.

arrested and convicted on the charges of solicitation and possession of crack cocaine," and that she currently lacked any "source of income to support herself and her baby and that she prostitutes to support her crack cocaine addiction." According to the petition, respondent additionally expressed the recognition that her residence "is disgusting and not fit for her baby to live at," and that she "had not obtained any baby supplies to prepare for the care of her baby."

A circuit court referee held a preliminary hearing on December 28, 2006, which respondent failed to attend. On the basis of testimony by a CPS worker summarizing the petition's allegations, the referee authorized the petition and the child's placement in petitioner's temporary custody.[2]

Respondent appeared and requested counsel on the scheduled adjudication date of March 13, 2007, but subsequently failed to attend the April 12, 2007 adjudication bench trial. After the same CPS worker offered similar testimony to that supplied at the preliminary hearing, the referee found that the child came within its jurisdiction. Foster care worker Alicia Knotts testified at a dispositional hearing held that same day that she had supplied respondent with a parent-agency agreement. Knotts averred, however, that respondent had not participated in any recommended services before her recent incarceration, between three and four weeks before the dispositional hearing date. Knotts recounted that of two scheduled parenting times before respondent's incarceration, she had attended one, on January 18, 2007. Otherwise, Knotts had heard nothing from respondent, although she believed respondent had earned her release from jail by the April 2007 hearing date. At the close of the dispositional hearing, the referee expressed the following view, "In terms of our next hearing, even in light of all her difficulties Ms. Graver's apathy toward these proceedings is stunning and so I believe that setting the next hearing for a permanency planning hearing in three months is perfectly appropriate."

At the July 12, 2007 permanency planning hearing, which respondent once again failed to attend, Knotts provided updated testimony, including that respondent had been released from jail on March 27, 2007, and had returned to live in her unsuitable residence. When Knotts last spoke with respondent outside her apartment on May 7, 2007, she admitted she still used crack and expressed a desire to participate in inpatient substance abuse treatment, but thereafter failed to contact Knotts. Knotts noted that respondent had neglected to attend scheduled psychological evaluations, "had not done any of the random drug screens that I asked her to," and "never once asked . . . how Sierra was doing." Knotts added that in June 2007 she had gone back to respondent's apartment to check on her, after learning that several men with a gun had sexually assaulted her inside her apartment, but that respondent was not present. Because Knotts believe the child remained at risk of substantial risk of harm if returned to respondent, she recommended termination of respondent's parental rights. The referee recognized the brief, three-month period that had elapsed since the initial dispositional hearing, but ordered the filing of a permanent custody petition because of respondent's exhibited disinterest in participating in any services, whether court-ordered or on a voluntary basis, extending back to December 2006.

[2] Petitioner filed a substantially similar amended petition for temporary custody, which the referee authorized on January 5, 2007.

The prosecutor filed a permanent custody petition on September 4, 2007, and a termination hearing occurred on October 11, 2007. James Peterson, respondent's probation officer since March 26, 2007, testified that she remained on a two-year term of probation for possessing less than 25 grams of cocaine. Peterson described that respondent had violated the terms of her probation in early August 2007 when she missed a scheduled meeting with him, that she received a 30-day jail sentence for the violation, and that she was released on September 10, 2007. Between respondent's release from incarceration and the termination hearing date, respondent had twice met with Peterson, and provided a negative drug screen on October 2, 2007. Peterson opined that respondent "denies . . . that she has a drug problem."

Therapist Kurt Korten testified that he performed a substance abuse assessment of respondent on September 18, 2007, and that his interview with her led him to recommend outpatient treatment, which consisted of 12 weeks of group and individual therapy plus 12 weeks of relapse prevention therapy. Since then, respondent had attended three weekly counseling appointments with Korten, and seven biweekly group therapy sessions. In Korten's estimation, respondent had a "fairly positive" treatment prognosis. Korten described respondent as appearing to possess more internal motivation than in the spring of 2005, when he previously had encountered her in a drug court-ordered life skills course, although Korten noted that "[r]elapse is always possible."

Dr. Randy Haugen testified that on October 1, 2007, he conducted a psychological evaluation of respondent, whom he described as well-educated (with a master's degree and training as a limited licensed psychologist), and having "some insight" into her substance abuse problem. Some of Dr. Haugen's diagnostic impressions included that (1) respondent had "demonstrated a longstanding pattern of excessive use of cocaine which has continued despite social, legal and familial consequences," and despite prior "efforts to cut down or control her use," (2) her lengthy substance abuse history matched elements of her personality, such as "deep, chronic feelings of hostility and anger," cynical and suspicious feelings toward others, a sensitivity to rejection, and an inwardly rebellious nature, and (3) the elements of her personality

> will create challenges managing the ever-changing demands children may present. She is quite vulnerable to periods of emotional/behavioral dyscontrol, particularly during times of complexity or emotional arousal. Her poor coping capacities will make her inconsistent in the delivery of care and during times of stress, she is vulnerable to acting out in ways she subsequently regrets.

Dr. Haugen concluded that respondent's "overall prognosis is Poor," given the long-term nature of her substance abuse history and her vulnerability "to relapse when psychosocial stress increases and external supervision is decreased." He did recommend, however, that she commence "intensive cognitive behavioral therapy focusing on relapse prevention," and long-term participation in lifestyle training to help her recognize and cope with stressful situations. Dr. Haugen opined that if respondent fully invested herself in intensive treatment for at least three months, she could then begin supervised parenting time, and that over the course of the next six months of negative drug screens and "habituated responsible behavior," petitioner "could gradually increase the intensity of" respondent's parenting times and child care responsibilities. Dr. Haugen believed that although permanency for respondent's nine-month-old child would be ideal, the child's extremely young age rendered it unlikely that a period of 90 more days in which to monitor respondent's progress would cause the child severe problems.

Dr. Haugen added his belief that the recent sexual assault of respondent "is going to complicate her treatment even more," given that she will face more demands on her time and have more trauma to address.

The testimony of foster care worker Knotts and respondent reflected that shortly before the termination hearing, respondent had begun to participate in the elements of her parent-agency agreement: respondent just completed a psychological evaluation; underwent a substance abuse assessment in September 2007[3]; supplied seven random drug samples since September 12, 2007, six of which tested negative and one of which resulted in a "dilute" sample[4]; attended her first two parenting classes, which began on October 3, 2007; also attended daily Narcotics Anonymous meetings since her September 10, 2007 release from jail; rented an apartment on October 8, 2007[5]; and acquired a part-time show maintenance job at Kellogg Arena earning $7.15 an hour, which she commenced on October 5, 2007.[6] However, respondent had not seen the child since her lone parenting time in January 2007, and according to Knotts, only in September 2007 had begun inquiring about the child.

Notwithstanding respondent's recent participation in treatment, Knotts recommended termination of respondent's parental rights because, in light of her lengthy substance abuse history and the long period during which she had neglected to participate in any treatment in this case, Knotts believe the child would remain at risk of harm in her custody. Knotts noted that the child currently did well in foster case, but required breathing treatments four times a day. When questioned whether respondent's recent compliance with services should earn her an extension of the proceedings, Knotts replied, "I don't believe that . . . giving her 90 more days . . . would make a difference. I think she had from January 18th until she resurfaced in September; no contact with the department regarding her child, no efforts made for reunification."

Respondent testified that she had obtained a master's degree and hoped to again work as a limited licensed psychologist someday, if she completed the terms of her current probation. Respondent did not shirk from or attempt to minimize her very lengthy history of substance abuse and other illegal acts. Respondent maintained, however, that she had hit bottom after her sexual assault at gunpoint in May 2007; respondent averred that she thereafter decided to make permanent changes in her life. With regard to respondent's failure to inquire about Sierra through most of these proceedings, she explained that she did not want the child to see her while

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[3] Respondent had participated in a substance abuse assessment earlier in 2007, but never attempted to receive any recommended follow up treatment.

[4] At a break in the termination hearing, the circuit court instructed respondent to submit to a drug screen immediately, and the result was negative for illegal substances.

[5] Knotts expressed concern that respondent rented her apartment from a man with whom she had lived briefly, whom Knotts described as "a sex offender." Respondent testified that she currently rented the apartment in exchange for her performance of cleaning and yard work for her landlord, and that she remained willing to move, if necessary.

[6] Respondent acknowledged that she currently owed support obligations payable to her two older children in the amounts of $1,500 and $25,000.

she was abusing substances. Respondent added that she intended to remain sober, even if the court terminated her parental rights.

In a bench opinion, the circuit court found termination warranted under MCL 712A.19b(3)(g) and (j), observing in relevant part as follows:

> The only witness—witnesses who could be interpreted as affirming the Respondent's ability to comply and provide the appropriate parent role within a reasonable time were the Respondent herself, and, to some extent, although I think it was a very lukewarm and very cautious evaluation, the testimony of Mr. Korten. The rest of the testimony . . . stands I think emphatically for the proposition that while . . . there may be an outside chance that can never be disregarded and ought never to be disregarded in . . . human experience, that it was unlikely that it would rise to the level of being a reasonable probability. Doctor Haugen said that 30 percent of the people in this Respondent's position fail [sic], and that her prognosis is poor. And while we can debate statistics and evaluations and all of that, the Respondent has proven that in her own history numerous times, several times.
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> I am obligated to provide permanence for this child at the earliest possible time. I recognize the argument that as termination cases go, this is on somewhat of an accelerated time schedule, and I recognize Doctor Haugen's observations that with respect to an infant this young, there is a . . . larger envelope of time in which a parent can be absent before the child . . . is harmed, but the premise this Court must confront is, is it likely; . . . is there a reasonable expectation that the Respondent is going to be able to assume the role of a parent within a reasonable time. If there was even a glimmer of that frankly, I would honor the possibility as pointed out by Doctor Haugen, but I'm not satisfied there is such based on the evidence in this case.
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> . . . In view of the probability frankly, of . . . a relapse, to think that this child would be back in the Respondent's custody during a time that she relapsed and [was] unable to administer four times a day, medication, would clearly result in harm to this child.
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> An order of termination will enter, particularly in the absence of any evidence before this Court that it is not in the child's best interest to terminate parental rights There is no such evidence. . . .

II. Analysis of Questions Presented

Respondent challenges on appeal the circuit court's findings that clear and convincing evidence of both subsections (g) and (j) warranted termination of her parental rights. "In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been established by clear and convincing evidence." *In re Archer*, 277 Mich App 71, 73; 744 NW2d 1 (2007). Termination then must occur "unless the court finds that termination of parental rights . . . is clearly not in the child's best interests." MCL 712A.19b(5). This Court reviews "for clear error both the court's decision that a ground or termination has

been proven by clear and convincing evidence and . . . the court's decision regarding the child's best interest." *In re Archer*, *supra* at 73 (internal quotation omitted).

With respect to subsection (g), our review of the record clearly and convincingly establishes that respondent failed to provide the child proper care and custody. Respondent acknowledged using cocaine during her pregnancy, and both she and the child tested positive for cocaine at the time of the child's delivery. Immediately before the child's birth, respondent was incarcerated, and she had neither a suitable home for the child or any legal income source.

The record also clearly and convincingly substantiates the unlikelihood that respondent could provide the child "proper care and custody within a reasonable time considering the child's age." From December 2006 until mid-September 2007, respondent availed herself of virtually no services, attending only a substance abuse assessment, one parenting time with the child, and one of the circuit court proceedings. When not incarcerated during this period, respondent continued using cocaine. By the time of the termination hearing, respondent commendably had begun participating in court-ordered services. But, in part because of respondent's 20+ years of illegal drug use, her psychiatric evaluation characterized as "poor" her "overall prognosis." And, as the circuit court noted, Dr. Haugen visualized that even assuming respondent continued her recent engagement in services, including behavioral therapy, at an intensive level, she could just begin supervised parenting time with the child during the next three months, and could potentially have more expanded parenting time only over the course of the following six months.

In summary, the circuit court did not clearly err when it found the entirety of subsection (g) established by clear and convincing evidence.[7] We also detect no clear error in the circuit court's determination that the record lacked any evidence that termination would contravene the child's best interests. In addition to respondent's substance abuse addictions, which stretched back decades, and during which she failed to care for two older children, no evidence here substantiates that respondent and the child shared any bond.

Affirmed.

/s/ Peter D. O'Connell
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher

[7] Although only one statutory ground need exist, the evidence discussed regarding subsection (g), together with the evidence that the child currently requires regular, four times daily breathing treatments, likewise clearly and convincingly establishes the grounds for termination in subsection (j).