STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of AYDEN SPITZ, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

AMANDA SPITZ,

Respondent-Appellant.

UNPUBLISHED
June 5, 2008

No. 280935
Marquette Circuit Court
Family Division
LC No. 05-008221-NA

Before: Jansen, P.J., and Zahra and Gleicher, JJ.

PER CURIAM.

Respondent appeals as of right from a circuit court order terminating her parental rights pursuant to MCL 712A.19b(3)(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]. We affirm.

I. Facts and Proceedings

Respondent gave birth to the involved minor child on May 3, 2005. At approximately 10:00 p.m. on May 28, 2005, respondent left the child at a friend's house. Early the next morning, the friend called respondent's sister and reported that the child would not stop crying. The sister retrieved the child and took him to respondent's mother's home. That afternoon, after receiving encouragement from her mother, respondent transported the child to the Marquette General Hospital (MGH) emergency room.

Physicians at MGH determined that the child was hypothermic, dehydrated, and in need of intensive care. A helicopter transported the child to the University of Michigan Medical Center (UMMC) for additional treatment. Also on May 28, 2005, while the child remained hospitalized at the UMMC, personnel at MGH filed a report of suspected child abuse or neglect. The UMMC returned the child to MGH on June 2, 2005, and the hospital discharged him to respondent on June 5, 2005.

On June 7, 2005, Doug York, a Department of Human Services (DHS) worker, contacted respondent and inquired about the child's well being. Respondent replied that the child had a possible foot infection, and she "would consider taking him to the ER later." On June 8, 2005,

officers in the Upper Peninsula Substance Enforcement Team (UPSET) visited respondent's residence after receiving a tip that she possessed a large quantity of marijuana. An officer knocked on the door and requested to speak with the apartment's occupants, but the occupants refused the officer entry. The officers left briefly, before returning to the residence and announcing their possession of a search warrant. According to a police report, when the officers informed the occupants that they had a warrant and requested entry, one occupant yelled that "she put the baby in front of the door," and stated that "her baby was going to get hurt if the door was forced open." The officers forced open the door and discovered the child "just to the left, behind the door." During the search of respondent's residence the officers confiscated 11 baggies of marijuana, about which respondent denied any knowledge.

On June 10, 2005, petitioner filed a petition seeking removal of the child from respondent's care. The petition summarized that respondent had maintained an unfit home due to "neglect, cruelty, drunkenness, criminality, or depravity," and specifically detailed the events surrounding the child's admission to MGH and the search of respondent's residence. The circuit court authorized the petition, placed the child in foster care, and granted respondent supervised parenting time. As respondent left the courthouse after the June 10, 2005 hearing, respondent threatened to "shoot" York and "blow up his house," and was later charged with a misdemeanor for making these threats toward a foster care worker. Respondent eventually pleaded no contest to the charge and received a sentence of probation.

At a pretrial conference conducted on June 23, 2005, the circuit court referred the case to mediation. On November 2, 2005, respondent signed an agreement requiring her to secure stable employment and appropriate housing by December 31, 2005, complete all court-ordered evaluations, participate in court-ordered services including family health education counseling, continue working toward her GED, and cooperate with random drug screening. The agreement contemplated a gradual increase in respondent's visitation and parenting time, contingent on her active participation in services. On November 22, 2005, the circuit court approved the agreement in lieu of an adjudication, entered an order requiring compliance with the agreement, and adjourned a scheduled adjudication trial.

On February 15, 2006, petitioner filed an amended petition alleging that respondent failed to adequately participate in services and missed multiple visits with the child. Before she could respond to the amended petition, respondent had to serve a jail sentence imposed for multiple probation violations.

On June 7, 2006, the circuit court assumed jurisdiction on the basis of respondent's admission that she had missed visits with the child and had not participated sufficiently in services intended to improve her parenting skills. On June 19, 2006, the circuit court entered an order of disposition requiring respondent to "participate in a psychological evaluation," Wraparound services, a substance abuse program, and "the Family Health Education program."

After a review hearing in December 2006, the circuit court expanded respondent's parenting time. In January 2007, however, DHS worker Tracy Compton reported that respondent missed a six-hour visit and failed to take the child to scheduled medical appointments. Compton noted that respondent had attended only six parenting classes and failed to provide documentation of her participation in counseling. On April 2, 2007, petitioner filed a

permanent custody petition seeking termination of respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i).

The termination hearing commenced on June 4, 2007. Heather Gray, respondent's initial case worker, testified that respondent frequently fell asleep during visits with the child, and expressed difficulty in arriving at the visits on time because she could not wake up to her alarm clock. According to Gray, respondent neglected to take the child to two medical appointments because she forgot about them, and she also resisted Gray's suggestions regarding parenting skills. Gray maintained that respondent refused to sign several proposed service plans, often neglected to return calls, and accused Gray of being "spiteful" and "vindictive." Gray voluntarily removed herself from respondent's case in October 2006.

Compton, who assumed Gray's role and remained respondent's caseworker at the time of the hearing, testified that since May 2006 respondent missed 19 scheduled parenting times and appeared late for 20 additional visits. Compton added that respondent failed to attend two important planning meetings in March 2007 and April 2007 intended to address her son's physical and developmental difficulties, and did not begin a parenting class until December 2006. Compton described the efforts to assist respondent made by a Wraparound team consisting of the Wraparound coordinator, the child's guardian ad litem, and respondent's attorney. According to Compton, respondent's expressed and repeated resistance to services prevented the development of a team consensus regarding an effective plan.

Respondent explained that she had an extremely busy schedule that included driving at least two other people to and from their jobs, completing her own school homework, and working full-time at a restaurant. She described using several different calendars and planning techniques to improve her timeliness and to avoid schedule-related mishaps, and expressed her belief that she benefited from parenting classes. Respondent denied that she received a "clear signal" regarding the services expected of her, but admitted that she did not complete recommended counseling sessions because she "focused on other things."

Nancy Nora, a parent educator employed by MGH, also testified on respondent's behalf. Nora described respondent's good record of timely attendance at parenting classes, favorable response to the information imparted, and eagerness to learn. Nora observed a strong mother-child bond.

Dianne Goodman, another parent child specialist, testified regarding services provided to respondent between January 2007 and June 2007. Goodman opined that although respondent generally provided the child with good care during their visits, respondent and the child did not share a strong bond. Goodman believed "that this will be a difficult situation for [the child] if he is taken out of his foster home," and noted that the child had been in care for all but three weeks of his life.

The circuit court terminated respondent's parental rights, observing in a lengthy and detailed written opinion that "[respondent] believes she is an adequate parent and services are unnecessary. She refuses to participate in a meaningful way, attends sporadically or fails to complete what she is asked to do." The circuit court opined, "This case is a monument to the delays in achieving a permanent placement that can occur when efforts to reunify a family are

too persistent." The court found that despite respondent's intelligence and professed interest in her child, she

> could not consistently demonstrate that she could do what service providers believed needed to be done to give her child a safe, stable, and healthy life. It is too late, and too risky to her child, to find out now if she could succeed in spite of her attitude. Whatever [respondent] has learned by participating in court-ordered services has been instantly and repeatedly sacrificed when she was angry or had other things on her own agenda. The message, which probably should have been obvious from the beginning, is that [the child] does not come first, and although [respondent] says she loves him and wants to be with him, she is unwilling or unable to do things that most parents do on a consistent basis.

The court concluded that clear and convincing evidence supported termination of respondent's parental rights pursuant to subsection (c)(i), and that this termination would serve the child's best interests.

Respondent now appeals as of right.

II. Analysis

Respondent challenges the circuit court's finding that clear and convincing evidence of subsection (c)(i) warranted termination of her parental rights, and insists that substantial evidence established her rectification of the conditions leading to the adjudication. 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).

The conditions that led to the child's June 2006 adjudication as a temporary court ward involved respondent's multiple missed parenting time visits and her failure to adequately participate in court-ordered services. Respondent admitted these deficiencies as the basis for the circuit court's entry of its adjudication order. The evidence at the termination hearing established that after the adjudication, respondent failed to attend a substantial number of visits and arrived late for just as many others. Respondent did not complete anger management classes or the court-ordered family health education program. Further, respondent neglected to attend her son's educational planning meetings and forgot about several of his medical appointments. Respondent acknowledged, however, her ability to timely transport her mother to work each day, and attributed this accomplishment to early morning telephone calls "to make sure that I'm awake and make sure that I leave on time . . . ."

The circuit court correctly noted that respondent's service providers offered her second and third opportunities to succeed, but in response received arguments, denials, and resistance from respondent. These facts clearly and convincingly establish that the conditions leading to the adjudication continued to exist without reasonable likelihood of rectification within a

reasonable time. Although respondent made a belated effort to comply with the circuit court's order by attending parenting classes, she did not complete the parent-child education services ordered by the court, and Compton described the parenting program respondent did complete as "not a really intense program."

Respondent also contends that the termination of her parental rights conflicted with the child's best interests. 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 respondent's parental rights served the child's best interests. He resided in foster care for almost his entire life, and shared a bond with his foster parents. According to Goodman, respondent's relationship to the child was akin to that of "a child and a babysitter or a daycare provider." Consequently, we find no clear error in the circuit court's determination that the termination of respondent's parental rights served the child's best interests.

Affirmed.

/s/ Kathleen Jansen
/s/ Brian K. Zahra
/s/ Elizabeth L. Gleicher