

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JOSHUA MAC SAVAGE, JR.,
AUSTIN MICHAEL SAVAGE, CONNOR LEE
SAVAGE, and KOBE KEATON SAVAGE,
Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MELISSA MORGAN,

Respondent-Appellant,

and

JOSHUA SAVAGE,

Respondent.

UNPUBLISHED

August 26, 2008

No. 282908

Genesee Circuit Court

Family Division

LC No. 06-121793-NA

Before: Schuette, P.J., and Zahra and Owens, JJ.

PER CURIAM.

Respondent Melissa Morgan appeals as of right from the trial court order terminating her parental rights to the children under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We affirm.

In October 2005, Flint police raided the home of respondent and Joshua Savage, respondent's live-in boyfriend and the children's father, following an undercover purchase of crack cocaine from the home. Three of the four minor children were in the home at the time of the raid. Police found drug paraphernalia in the home. Savage admitted to the investigating officer that he was a cocaine user. Both respondent and Savage admitted that they had allowed Antonio Whitley, who was subsequently convicted of possession with intent to sell crack cocaine, to sell crack out of their home. The officer observed that the home was in an unsuitable condition, dirty with no running water or refrigerator and insufficient food. He described the children as dirty, noting that one of the children had missing patches of hair on his head. The officer contacted protective services.

On October 24, 2006, petitioner filed a temporary custody petition. Respondent was required, under a parent-agency treatment plan, to submit random drug screens, complete parenting classes, and maintain stable housing. On August 9, 2007, petitioner filed a supplemental petition seeking termination of respondent's parental rights under §§ 19b(3)(c), (g), and (j). The petition included allegations from the October 24, 2006, petition that respondent prostituted herself in exchange for crack cocaine, smoked crack as often as she could get it, left Joshua with her sister and failed to provide support, allowed her home to be used for drug sales, and used crack and marijuana on a regular basis. The petition also alleged that respondent failed to comply with her parent-agency agreement after the children were made court wards by failing to remain drug free, find suitable housing, maintain employment, or maintain contact with the children or petitioner between May 25, 2007, and July 24, 2007.

At trial, the caseworker, who had only been assigned respondent's case a month before trial and was relying on the reports from the previous caseworker, testified that respondent's compliance with her parent-agency agreement since November 2006 had been poor. The caseworker noted that drug tests showed that respondent continued to use cocaine. The person who administered the drug screens testified that respondent had provided six urine samples for testing and five samples were negative. One sample, taken just four days before the November 7, 2007, termination trial was positive for cocaine. A subsequent hair follicle test showed that respondent was a low level user of cocaine, using a few times over the 90 days preceding the test. There were also continued concerns regarding respondent's housing situation, with the caseworker noting that respondent failed to maintain contact with petitioner from May 25, 2007, to July 27, 2007. The evidence showed that, as of the termination trial, respondent was living with family and lacked independent housing.

On appeal, respondent argues that the evidence does not support termination of her parental rights. We review the trial court's findings for clear error. MCR 3.977(J). Respondent first contends that, because the August 9, 2007, supplemental petition seeking termination contained new allegations different from those in the original petition for jurisdiction, legally admissible evidence was required to establish these allegations. Under MCR 3.977(F), where the supplemental petition seeking termination alleges one or more "new or different" circumstances than those that led the court to take jurisdiction over the children, the new circumstances must be proven by clear and convincing legally admissible evidence.

However, the allegations in the supplemental petition that respondent characterizes as new pertain to respondent's lack of compliance with her parent-agency agreement, which was prepared to address the concerns resulting in the children's placement in the court's temporary custody in October 2006. Consequently, these allegations relate to the court's initial assumption of jurisdiction. These are not "new or different" circumstances than those that led the court to take the children into its jurisdiction; therefore, MCR 3.977(F) is not applicable. Rather, the applicable court rule is MCR 3.977(G), which requires that, if the parental rights of a respondent are not terminated at the initial dispositional hearing or at a hearing on a supplemental petition on the basis of different circumstances, the court must "take action on a supplemental petition that seeks to terminate the parental rights of a respondent over the child on the basis of one or more grounds listed in MCL 712A.19b(3)." The court in the instant case proceeded under MCR 3.977(G). Therefore, it was permitted to receive and rely upon, to the extent of its probative value, all relevant and material evidence, including oral and written reports. MCR 3.977(G)(2).

Respondent also argues that the evidence did not support the allegations in the supplemental petition and the statutory grounds cited in support of termination. While the evidence did not establish each of the allegations raised in the August 9, 2007, supplemental petition, MCR 3.977(G)(3) provides, in relevant part, that the court must order termination of parental rights if it “finds on the basis of clear and convincing evidence admitted pursuant to subrule (G)(2) that *one or more facts alleged in the petition* (a) are true, and (b) come within MCL 712A.19b(3).” (Emphasis added). In the instant case, the evidence supported those allegations that established termination under §§ 19b(3)(c)(i), (g), and (j). Thus, the trial court did not clearly err when it relied on those grounds in support of termination. To the extent that the trial court relied upon § 19b(3)(c)(ii) to terminate respondent’s parental rights, any such reliance was harmless considering the evidence supporting termination under §§ 19b(3)(c)(i), (g), and (j). See *In re Trejo Minors*, 462 Mich 341, 360; 612 NW2d 407 (2000).

Respondent also contends that she was entitled to a separate hearing concerning the children’s best interests. By failing to raise this issue below and arguing at the termination hearing that termination was contrary to the children’s best interests, respondent has waived this issue on appeal. Moreover, respondent’s argument is without merit. Respondent relies on *In re AMAC*, 269 Mich App 533, 538; 711 NW2d 426 (2006), in support of her argument that a separate hearing was required. However, AMAC involved a petition seeking termination at the initial disposition, where the respondent was never afforded the opportunity to present best interests evidence. Here, in contrast, respondent had the opportunity to present best interests evidence at the termination hearing.

Affirmed.

/s/ Bill Schuette
/s/ Brian K. Zahra
/s/ Donald S. Owens