

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MIGUEL SCHOOLER,
GUILLERMO VILLANEUVA, and MARIAH
ELIZALDE, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

EUNICE SCHOOLER,

Respondent-Appellant,

and

JACOB ELIZALDE and ALEJANDRO
MARTINEZ,

Respondents.

UNPUBLISHED
February 10, 2009

No. 286794
Clinton Circuit Court
Family Division
LC No. 07-019421-NA

Before: Talbot, P.J., and Bandstra and Gleicher, JJ.

PER CURIAM.

Respondent-mother appeals by right a circuit court order terminating her parental rights to the three minor children 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 children's ages], (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 children's ages], and (j) [a reasonable likelihood exists, based on the parent's conduct or capacity, that the children will suffer harm if returned to the parent's home]. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

I. Factual and Procedural History

In January 2007, Child Protective Services (CPS) received a complaint that respondent and her boyfriend, Richard Rodriguez, used cocaine and marijuana. Police searched respondent's home pursuant to a warrant and discovered marijuana in an ashtray. Respondent acknowledged that she used marijuana that day, drove her children to the store while under the

influence of the drug, and failed to secure her infant in a car seat. Respondent further admitted to a CPS worker that she had received an electricity shut-off notice, was not in compliance with Work First requirements, and that her older children had a history of poor school attendance or tardiness. A CPS worker observed little edible food in the home, and that the residence appeared in poor condition.

On January 25, 2007, petitioner filed a petition seeking temporary custody of the children. The petition recited the facts related to the search of respondent's home and her admissions that day, and included allegations pertaining to respondent's criminal history of driving violations and retail fraud. The petition further alleged that Rodriguez, respondent's live-in boyfriend, had an extensive criminal history including various felonies for controlled substances, carrying a concealed weapon, malicious destruction of a building, domestic violence, obstructing justice and fleeing a police officer.

At an emergency preliminary hearing conducted on January 26, 2007, respondent tested positive for both cocaine and marijuana. The circuit court ordered the children immediately placed in foster care. By the time of the next pretrial hearing, respondent's youngest son had been placed with his biological father and the other two children placed with a maternal cousin. The circuit court imposed a no-contact order between the children and Rodriguez, based on CPS worker Angela Wright's request, due to his assaultive and aggressive behavior toward her.

The circuit court conducted an adjudication bench trial on March 28, 2007. Lawrence Horn, the police officer who executed the search warrant, testified to the recovery of stolen property from respondent's home and the arrest of Rodriguez. Horn verified that respondent's home was in disarray and contained insufficient food. Wright also described the condition of the apartment on January 25, 2007, and that Rodriguez had admitted that he sold drugs. Wright noted that respondent tested positive for cocaine following the last three court hearings and had failed to report for random drug screens. The circuit court took jurisdiction of the children and permitted respondent supervised parenting time contingent on compliance with required drug screens.

Respondent failed to attend a dispositional hearing conducted on May 1, 2007. DHS worker Courtney Atkins, discussed the children's progress and reported that respondent's visitation had been suspended due to her inconsistency in submitting to random drug screens. Atkins recommended that visitation remain suspended until respondent demonstrated three consecutive negative random drug screens. During this period, respondent also failed to appear for a scheduled psychological evaluation. Although respondent reported earning cash for providing babysitting and housecleaning services, she did not have either a stable source of income or a residence, and lived with various relatives. The circuit court adopted Atkins's recommendation regarding respondent's parenting time, and continued its previous orders.

At the next dispositional hearing, Atkins reported that respondent had required surgery, which impacted progress on her treatment plan. According to Atkins, respondent met once with a counselor, but had not completed a psychological evaluation. Respondent accomplished a substance abuse evaluation on July 16, 2007. However, the drug screen obtained on that date was positive for cocaine use. Respondent continued to reside at various locations and, despite ongoing reluctance, provided her brother's address for contact purposes. Respondent tested positive for cocaine on five occasions from late-April through mid-June 2007. Two specimens

were diluted, and respondent failed to participate in screens on four additional dates. On June 20, 2007, respondent tested positive for the use of opiates, with the laboratory reporting that respondent had attempted to alter the specimen.¹ Respondent continued to deny that she used illegal substances and refused to admit to drug use after providing a positive drug screen. The circuit court found that respondent failed to make progress and continued its previous orders.

At the dispositional review hearing on October 25, 2007, Atkins reported that respondent's visitation remained suspended due to her inability to provide three consecutive clean drug screens. Respondent's attendance at counseling was described as sporadic; she failed to appear for at least nine sessions over the two-month period spanning September and October. Respondent failed to provide verification of her attendance at either Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) classes, did not attend or complete the rescheduled psychological evaluation, and missed two doctor appointments. Atkins testified that respondent reported being unemployed and claimed to be attending classes at Lansing Community College, but did not provide documentation to verify her enrollment. Respondent continued a nomadic lifestyle, residing with various relatives, but reported finally procuring her own residence. Respondent's landlord verified that she had moved into the home on August 17, 2007, but an eviction was pending due to her failure to pay rent. Respondent failed to appear for 10 drug screens between April and August 2007, and tested positive for cocaine on seven occasions. Atkins was unable to complete an unannounced home visit, as respondent was not at any of the addresses that had been supplied. Results of the substance abuse evaluation recommended that respondent participate in intensive outpatient treatment, NA classes, random drug screens and additional mental health treatment. The circuit court determined that respondent had failed to demonstrate any significant progress during the preceding two reporting periods and continued all prior requirements, including an immediate drug screen following the hearing.

The circuit court conducted a permanency planning hearing on January 24, 2008. Atkins reported that respondent demonstrated minimal and inconsistent attendance with counseling. Although respondent provided documentation regarding her attendance at AA meetings from May through July 2007, her participation in this program waned in the following six months. Respondent attended some parenting classes, but they were not at the recommended locations and she continued to miss a number of her random drug screens. Atkins reported that respondent had not visited her children since December 10, 2007 due to her failure to comply with drug screens; however, she did manage to visit 24 times with Rodriguez while he was in prison. Respondent was jailed in November 2007 for driving without a license and warrants for her arrest remained outstanding. Based on respondent's failure to demonstrate any appreciable progress or consistency with her treatment plan, Atkins recommended that DHS be authorized to submit a petition to terminate respondent's parental rights. The circuit court authorized the petition and suspended respondent's visitation.

On March 4, 2008, petitioner filed a petition to terminate respondent's parental rights. The petition sought termination pursuant to MCL 712A.19b(3)(c), (g) and (j), citing respondent's history of substance abuse, criminal activity, failure to attend counseling and appointments, her

¹ Respondent did produce a prescription that could account for her testing positive for opiates.

lack of stable employment and housing and failure to attend visitation with the minor children due to the existence of outstanding warrants and her inability to attend or pass random drug screens. At the subsequent dispositional hearing on March 6, 2008, a question arose regarding respondent's access to drug rehabilitation services. Atkins testified that respondent had been provided the names and numbers for various service providers and had been offered her choice in selecting among these providers for enrollment. However, respondent remained ineligible for drug rehabilitation because all of the programs required, as a precondition, that the applicant admit the existence of a problem with substance abuse, which respondent refused to acknowledge. An inpatient appointment had been scheduled for respondent in December 2006, but respondent failed to appear. In addition, respondent was arrested in late January 2008 on drug charges involving delivery and possible manufacture.

On June 5, 2008, the circuit court conducted another dispositional review hearing. Atkins reported that respondent pleaded guilty to delivery of cocaine and had been incarcerated for several weeks. Following her release from jail, respondent began attending New Vision for drug rehabilitation. Respondent's probation officer reported that she had expressed a desire to remain in the 90-day program, and regretted her past noncompliance. Although Atkins acknowledged respondent's new commitment to treatment as a positive step, she continued to recommend termination based in part on respondent's failure to have any interaction or visitation with her children for the immediately preceding six-month period.

On July 7, 2008 the circuit court commenced a termination hearing. Atkins provided a lengthy historical review describing respondent's history of noncompliance with her treatment program, persistent failures to submit to drug screens, and multiple positive screens. Although respondent currently received drug rehabilitation treatment, her participation was a condition of her probation and not considered a "voluntary" submission. Reportedly, respondent absconded from the program on June 14, 2008, before successful completion. Atkins reported that respondent had procured a prescription for narcotics from a hospital, despite having been instructed to inform medical providers of her substance abuse history. Rather than forego the prescribed narcotics, which would have been prohibited at New Vision, respondent left the program. Respondent subsequently enrolled in an outpatient treatment program, asserted she had discontinued her drug use, and claimed to be following all of the terms and conditions of her probation to preclude a return to jail. At the conclusion of the hearing, the circuit court terminated respondent's parental rights and determined that termination was not contrary to the best interests of the minor children.

II. Standard of Review

Termination of parental rights is appropriate where petitioner proves by clear and convincing evidence at least one ground for termination. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). Once this has occurred, the circuit court shall terminate parental rights unless it finds that the termination is clearly not in the best interests of the child.² *Id.* at 352-353

² MCL 712A.19b(5) has been amended, effective July 11, 2008, to require that the trial court make an affirmative finding that termination of a parent's parental rights is in the best interests of the child. 2008 PA 199. The amended statute does not affect the instant case because the
(continued...)

(footnote added). This Court reviews the circuit court's findings under the clearly erroneous standard. *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). The circuit court's decision regarding the children's best interests is also reviewed for clear error. *In re Trejo*, *supra* at 356-357.

III. Analysis

Respondent contends that because she began making progress during the months before the termination hearing, the circuit court clearly erred by terminating her parental rights. The record evidence established respondent's lengthy history of drug abuse and criminal activity. Despite the absence of her children during the 18 months of these proceedings, respondent failed to alter her lifestyle until the last possible moment. The evidence strongly supported the circuit court's conclusion that respondent's belated interest in drug rehabilitation derived from an interest in remaining out of jail, rather than a genuine interest in seeing her children. Further, respondent's claim that she previously lacked transportation for drug treatment is utterly without merit. Respondent managed to secure transportation to visit her boyfriend in prison on 24 separate occasions, signifying that visitation with her children was not a priority. The court found respondent's excuses and explanations incredible regarding her failure to comply or demonstrate progress on her treatment plan. We afford deference to the circuit court's special opportunity to judge the credibility of the witnesses who appear before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Based on this record, we find no error in the circuit court's conclusion that clear and convincing evidence supported the statutory grounds for termination. MCR 3.977(J); *In re Sours*, *supra* at 633; *In re Gazella*, 264 Mich App 668, 672; 692 NW2d 708 (2005). Furthermore, no evidence substantiated that termination would contravene the best interests of the minor children. MCL 712A.19b(5). Accordingly, the circuit court did not clearly err in terminating respondent-appellant's parental rights.

Affirmed.

/s/ Michael J. Talbot
/s/ Richard A. Bandstra
/s/ Elizabeth L. Gleicher

(...continued)

termination order was entered on July 7, 2008.