

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ANGELINNA DESIREE-LYNN
GURDEN, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CHRISTINE ALANE GURDEN,

Respondent-Appellant.

UNPUBLISHED
February 10, 2009

No. 286973
Shiawassee Circuit Court
Family Division
LC No. 06-011720-NA

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

PER CURIAM.

Respondent appeals as of right 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]. We affirm, and decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Factual and Procedural History

This case involves both a parent and child with specialized needs. Respondent gave birth to the minor child on September 1, 2006. The biological father of the infant has not been positively identified. Respondent was diagnosed with bipolar and schizoaffective disorder early in her life and experiences delusions and hallucinations when not properly medicated. Due to respondent's noncompliance with her medication regimen, she was repeatedly admitted to the stress unit at Memorial Hospital during the year before her daughter's birth. Respondent discontinued use of her psychotropic medications after realizing she was pregnant, and received limited prenatal care.

The infant was hydrocephalic and remained in the hospital's neonatal intensive care unit for a brief time. After the child's hospital discharge, respondent, her relatives and guardian, and a DHS representative together decided to place the infant in foster care. Respondent agreed that she lacked the ability to care for the infant until she restarted her psychotropic medications and her condition stabilized. Respondent required 24-hour care while her new medication regimen

was introduced. She then moved into an apartment, and acquired a roommate, Becky Almond, who possessed experience working with physically and mentally disabled individuals.

Petitioner sought a temporary wardship for the minor child, and the parties waived a preliminary hearing. On October 30, 2006, the circuit court adjudicated the minor child a temporary court ward in accordance with respondent's admission to the allegations contained in an amended petition. At the initial dispositional hearing conducted November 13, 2006, the circuit court ordered respondent to fully comply with a parent-agency agreement requiring her to: (a) engage in services at Community Mental Health to improve her interpersonal skills and understand concepts essential to parenting a child, (b) complete parenting classes and internalize the concepts taught, (c) visit the minor child twice weekly, (d) complete psychological and psychiatric evaluations, (e) maintain suitable housing and employment, and (f) maintain contact with the assigned DHS caseworker and her attorney.

Eighteen months elapsed between the initial dispositional hearing and commencement of the termination hearing in May 2008. In the interim, the circuit court conducted three review hearings, a permanency planning hearing, and two additional hearings. On February 21, 2008, petitioner filed a supplemental petition seeking termination of respondent's parental rights. At the termination hearing, opinions and testimony varied significantly regarding respondent's ability to demonstrate the skills necessary to parent the minor child. However, no dispute existed regarding respondent's willing participation in her treatment plan and her motivation to have a relationship with the minor child.

Alesha Bower, respondent's initial caseworker, opined that despite respondent's participation in various services, she failed to sufficiently benefit, remained deficient with regard to interpersonal communication skills, and continued to require a great deal of assistance. Respondent did complete a parenting class, but it was not geared toward the care of a special needs child, and Bower deemed respondent's ability to parent as unimproved. Bower observed that the minor child had very specialized needs and opined that the demands of caring for the child, including scheduling medical appointments, monitoring the child's physical development and providing daily physical therapy would prove overwhelming to respondent. Bower noted that respondent had a stable history of part-time employment, an established home, and maintained regular contact with the minor child's foster parents regarding her physical condition. However, Bower concluded that respondent would not be capable of obtaining the necessary skills within the requisite time period to effectively parent the minor child.

Dr. Leonard VanderJagt testified regarding a psychological evaluation he conducted in February 2007. The evaluation focused on respondent's capabilities, competencies and possible deficits in managing her everyday life as both an individual and parent. VanderJagt noted that although respondent remained stable on medication at the time of the evaluation, she possessed a prolonged history of mental illness, struggled to meet her own needs, and required assistance in daily living. VanderJagt did not question respondent's efforts but opined that her "extremely modest cognitive intellectual assets" impaired her abilities, making it unlikely that either her condition or capability to parent independently would improve. Significantly, VanderJagt indicated that despite learning new skills, respondent was deficient in her ability to apply this learning to new or unique situations.

Psychiatrist Nazar Al-Saidi treated respondent as an inpatient and continued to monitor respondent's medications on an outpatient basis. Al-Saidi affirmed that respondent had psychiatric stability while maintained on medication and that she consistently complied with treatment, but expressed his inability to render an opinion regarding her parenting abilities. Elizabeth Kibby, respondent's caseworker from Community Mental Health, verified respondent's continued participation in therapy. Kibby noted that respondent had met certain goals in her treatment program and was working on new objectives, and that respondent's primary focus was on becoming a good parent to her child. Kibby asserted that respondent did not hesitate to seek assistance or advice from family members or others when confronted with a challenge or new situation.

Almond reported that she had shared an apartment with respondent since September 2007, and directly observed respondent during her parenting time with the minor child. Almond assisted respondent with transportation and provided a great deal of physical assistance during respondent's initial visits with the child. Almond opined that respondent relaxed somewhat and assumed more responsibility with the child when not being observed during supervised visitations, and now independently performed the majority of caretaking tasks. Almond acknowledged that as recently as one month before the hearing, respondent still needed some assistance in caring for the minor child and identifying her needs, but asserted that reunification was appropriate and that respondent had a close and responsive support network available to assist her.

Initially, respondent had two hours of visitation twice weekly with the minor child in respondent's home, which she faithfully attended. Between January 2007 and June 2007, a parent aide, Nancy Honeycutt, along with DHS visitation coach Kim Crawford, supervised respondent's visits with the child and provided relevant instruction regarding the child's physical and emotional care. Honeycutt testified that respondent required verbal coaching to interact with the child and reminders pertaining to physical care issues, indicating that despite the consistent training provided, respondent failed to transfer the skills attained during one session to the next visitation period. While Honeycutt acknowledged some improvement based on repetition, she indicated that respondent had difficulty adapting to the child's changing requirements. Crawford reported that she had not observed significant improvement in respondent's parenting skills, and noted that respondent continued to require prompting to interact with the minor child. After June 2007, McNamara and Almond assumed some of the supervision of respondent's visits with the minor child. However, Crawford opined that in September 2007, when her coaching terminated, respondent remained incapable of independently caring for the child.

Respondent's parenting time with the minor child was gradually increased to two weekly visits of six hours' duration. In September 2007, the guardian ad litem asked DHS to again provide supervision rather than continue to use respondent's friends and contract workers. Bower and another caseworker supervised ten visits between September 2007 and early 2008. Both testified that respondent failed to engage the minor child on a consistent basis and only passively interacted with the child. They indicated that Almond rather than respondent performed the majority of care giving and opined that respondent would not be capable of independently parenting the child within a reasonable time period.

In contrast, McNamara and Almond, who supervised parenting time before the termination hearing, opined that respondent had become much more independent in caring for

the child and was very interactive. They attributed earlier difficulties to respondent's anxiety as a new mother and being observed so closely by DHS workers. McNamara believed that with some additional time and the availability of services, respondent could properly care for the child. Respondent also emphasized her willingness to seek help or assistance when needed, and her very close support system. Respondent expressed that she felt capable of caring for the child and meeting her needs with minimal assistance.

Between the termination hearing dates of May 22, 2008 and June 10, 2008, the circuit court ordered that Honeycutt observe respondent during two eight-hour parenting time opportunities, with neither Almond nor respondent's guardian present. On June 10, 2008, Honeycutt testified in detail regarding her observations during these visits, concluding that respondent was not sufficiently responsive to the minor child's signals and indications of her needs. Honeycutt noted that respondent did not actively engage the minor child in verbal and physical interaction and demonstrated no significant improvement in this area of concern.

The circuit court rendered a bench opinion on July 8, 2008, noting the difficulty of the case and that it had "wrestled" with its decision. The circuit court emphasized and placed great weight on VanderJagt's opinions regarding respondent's difficulty processing information, which negatively impacted her ability to adapt old learning to new circumstances or situations. The circuit court specifically recognized respondent's improvements and the efforts expended to meet the requirements of her treatment plan. However, the circuit court determined that clear and convincing evidence established a ground for termination under MCL 712A.19b(3)(g), because respondent could not currently, or within a reasonable time, independently care for the child without the assistance of other individuals or services. The circuit court further noted that it considered the "overall picture, overall things that this child would not be able to gain or develop or mature to their fullest, again because of the unfortunate disability of the mother," and found it in the child's best interests to terminate respondent's parental rights.

II. Standard of Review

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). If a statutory ground for termination is established, the trial court must terminate parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests. MCL 712A.19b(5)¹; *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000). A trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(J); *Trejo, supra* at 355-357; *Sours, supra* at 632-633.

III. Analysis

¹ 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 interest of the child. 2008 PA 199. The amended statute does affect the instant case because the termination order was also entered on July 11, 2008.

The circuit court did not clearly err in finding that clear and convincing evidence supported the statutory ground for termination of respondent's parental rights. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The record reflects that the circuit court carefully weighed all the evidence in deciding this difficult case. Clear and convincing evidence supports the circuit court's conclusion that, due to the unfortunate fact of respondent's mental illness and without regard to intent, respondent failed to provide proper care for the minor child and was not reasonably expected to do so within a reasonable time.

All parties agreed that respondent loved her child and made every effort to become an appropriate, effective parent. The circuit court carefully considered whether respondent could independently parent, or would develop that ability within a reasonable time. After 18 months of visits involving hands-on supervision and instruction, several witnesses testified that respondent remained unable to parent the child without substantial assistance. The psychologist who had evaluated respondent one year earlier testified that respondent's condition would not change, and that she would never be able to properly parent. Even respondent's advocates, including her guardian and Almond, testified that respondent was not yet able to independently parent, although she had made significant progress and could become an effective parent within a reasonable time. Further, the observations of the court-assigned parent aide revealed that respondent could adequately feed and clothe the child, but lacked an ability to proactively nurture and protect her and to promote all aspects of her development. Clear and convincing evidence supported that, due to no fault of her own, respondent was not able, and would not within a reasonable time become able, to effectively respond to the current and ever-changing demands of parenting this special needs child.

Clear and convincing evidence also established that termination of respondent's parental rights would serve the child's best interests. MCL 712A.19b(5). The circuit court determined that the child would be unable to develop or mature to her fullest capacity if parented by respondent. Respondent argues on appeal that the evidence did not show, and the circuit court did not make specific findings, regarding the manner in which the child would fail to develop or mature to her fullest potential if parented by respondent. However, respondent's psychological evaluation demonstrated that respondent learned and thought only in very concrete terms, and lacked an ability to adapt new learning to changed circumstances. The testimony of various witnesses provided clear examples of respondent's failure to implement concrete instructions and advice, such as washing hands, using a changing pad, giving the child a toy to distract her from wiggling while changing her diaper, dressing her appropriately, and making eye contact. The minor child's medical requirements, daily therapies, and exercises would change over time. More importantly, the evidence showed respondent failed to take proper action in circumstances requiring discernment, such as in assessing the child's need for water, more food, and sleep. Consequently, clear and convincing evidence supported the circuit court's finding that the minor child would fail to develop and mature to her fullest potential because respondent, despite great love for her child, would act only as a caretaker, and not as an interactive, proactive parent.

Affirmed.

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