

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of RAVIN MARIE SMYTH,
MICHAEL EUGENE BROTHERTON, JR., and
JAMES BROTHERTON, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RACHEL MARIE SMYTH,

Respondent-Appellant,

and

MICHAEL EUGENE BROTHERTON,

Respondent.

UNPUBLISHED

March 31, 2009

No. 287327

Oakland Circuit Court

Family Division

LC No. 06-726073-NA

Before: Wilder, P.J., and Meter and Servitto, JJ.

PER CURIAM.

Respondent Rachel Marie Smyth appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i) and (g). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The trial court did not clearly err in finding that the statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The conditions leading to adjudication were respondent's unstable, environmentally unfit home and her two-year-old daughter's physical neglect, constituting failure to provide proper care or custody. These conditions were caused by a variety of factors, including respondent's lack of employment and financial acumen, lack of parenting skills and knowledge of how to maintain a home, and issues identified in respondent's psychological evaluation, such as anger, domestic violence and previous substance abuse. The initial disposition was held January 22, 2007, and 18 months elapsed before termination of respondent's parental rights. Nearly two years elapsed between her daughter's removal and termination, and respondent gave birth to two sons during the proceeding. Reunification services continued up to the time of termination.

Respondent was a young mother, giving birth to her daughter at the age of 17. She was 21 when her parental rights were terminated, and she argues on appeal that the agency sabotaged reunification efforts by failing to consider her youth and inexperience, requiring compliance with unnecessary services it knew respondent would not be able to attend, and failing to provide financial and transportation assistance. The evidence showed respondent completed parenting classes and demonstrated appropriate parenting skills at visits, did not exhibit mental health issues and, as the trial court noted, was not a bad or abusive parent and appeared to have matured somewhat during the course of the proceeding. However, after three weeks of in-home services and nearly two years of protective services intervention, she remained homeless and unemployed, and she had failed to demonstrate she no longer used substances or had learned how to better manage her anger and prevent domestic violence. She had not yet reached a point where a financial plan or budget could be implemented, and she remained completely unable to provide a home for herself or her children.

Respondent argues on appeal that the agency should have provided housing, transportation, and financial assistance in an effort to enable her to care for her children, rather than requiring compliance with unnecessary services, refusing financial or transportation assistance, and refusing to allow the paternal grandfather to serve as a placement for the children. Respondent further asserts that the agency's management of her case helped create the conditions that led to the termination of her parental rights. However, the evidence showed respondent's parent agency agreement was based on her psychological evaluation and did not contain unnecessary requirements; each element was directed toward rectifying one of the conditions of adjudication or to enable her to demonstrate that she had rectified them. The evidence also showed the paternal grandfather's initial interest and attempts to become eligible for the children's placement were not mentioned later in the proceeding, his desire to care for the children waned, and he had a disagreement with the children's father.

The testimony of respondent and her sons' father made it clear that compliance with services was not their priority. During much of the proceeding respondent was not working and did not have children at home to care for, providing ample time to comply with services. The trial court did not err in finding respondent would be unable to adequately parent children 24 hours a day, seven days a week in light of the fact she was unable to arrange bus transportation and dedicate a few hours a week to providing a drug screen and attending counseling. It correctly noted that rectifying conditions of adjudication and becoming able to properly care for the children was respondent's, not the agency's or court's, responsibility. Given respondent's inability to significantly change her circumstances in nearly two years, the trial court did not err in determining there was no reasonable expectation she would become able to provide proper care or custody for the children within a reasonable time.

Further, the evidence showed that termination of respondent's parental rights was in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The trial court ordered respondent to attend the court Clinic for an updated psychological evaluation between the termination and best interests hearings to assist it in determining the children's best interests, but respondent did not attend the scheduled evaluation. Evidence showed respondent's daughter remained somewhat bonded to her despite residing in foster care for nearly two years, but her two sons were removed at birth and did not share a parent-child bond. Respondent had not become able to provide a proper home for the children

after nearly two years of protective services intervention. Her inability to follow through on services demonstrated she would not follow through on meeting the many appointments and needs of three children. Although respondent might possess adequate skills someday, the evidence showed it would not be within a reasonable time considering the age of the children. Therefore, the trial court did not err in finding termination of respondent's parental rights and provision of a proper, stable home was in the children's best interests.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Patrick M. Meter
/s/ Deborah A. Servitto