

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of AMBER RENE HARVEY,
GERALD EVERETT HARVEY III, JESSICA
ANN HARVEY, ANDREW JAY HARVEY, and
ANTHONY LEE HARVEY, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SHERRY RENE HARVEY,

Respondent-Appellant,

and

GERALD EVERETT HARVEY,

Respondent.

In the Matter of MICHAEL STANLEY HARVEY
and BRIAN LEE HARVEY, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SONYA MAE GARDNER,

Respondent-Appellant,

and

UNPUBLISHED

May 14, 2009

No. 288369

Oakland Circuit Court

Family Division

LC No. 07-729467-NA

No. 288379

Oakland Circuit Court

Family Division

LC No. 07-729468-NA

GERALD EVERETT HARVEY,

Respondent.

Before: Wilder, P.J., and Meter and Hood

PER CURIAM.

In these consolidated appeals, respondent Sherry Renea Harvey appeals as of right from an order that terminated her parental rights to the minor children, Amber Renea Harvey, Gerald Everett Harvey III, Jessica Ann Harvey, Andrew Jay Harvey, and Anthony Lee Harvey, pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). Respondent Sonya Mae Gardner appeals as of right from a separate order that terminated her parental rights to the minor children, Michael Stanley Harvey and Brian Lee Harvey, pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (g), and (j).¹ We affirm.

When the children were removed in January 2007, all seven of them were living with the father and respondent Gardner. The father was in jail on a complaint for domestic violence and respondent Gardner was in jail on an outstanding warrant. The home was in deplorable condition. Brian was found covered in feces and needed a nurse's care in cleaning him. The home was filthy and there was little, if any food, found in the kitchen. Prior services did not seem to help the family. It was alleged that respondent Harvey had frequent contact with her children and knew of their living conditions, but she did nothing to protect them. In fact, it was alleged that she lived at the home from time to time herself. She had a history of mental illness and prior protective services in Kentucky. Respondent Gardner had a history of substance abuse and domestic violence. All three parents were provided parent-agency agreements, which included parenting classes, substance abuse treatment, mental health treatment, visitation, housing, and income.

By April 2008, DHS filed petitions to terminate the parental rights of all three parents. The trial court did not clearly err in finding that the statutory grounds for termination were proven by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondent Gardner pleaded no contest to the allegations in the termination petition. She had left Oakland County in April 2007 and did not return until January 2008. During that time, she had not seen the children or complied with any aspect of her PAA.² Trial was held with regard to respondent Harvey. It was revealed that, while Harvey availed herself of some services, she did not appear to benefit from them. She continued to struggle with her mental health. Harvey was a paranoid schizophrenic. She admitted that she had not been taking her medication and failed to provide the worker with a treatment plan. Although she attended

¹ The parental rights of the father of the seven children, Gerald Everett Harvey, were also terminated in the two respective orders. He is not participating in these appeals.

² Contrary to Gardner's assertions, the trial court and the parties agreed that the factual basis for the plea was the petition itself.

individual therapy, the therapist reported that Harvey merely went through the motions and was not invested. Harvey also completed parenting classes, but parenting time was chaotic. She was passive, did not initiate activity, and did not redirect the children. Instead, she allowed the two oldest children, Amber and Gerry, to essentially parent the three younger children. Harvey did not have verifiable income or housing and even testified that she was not ready to care for the children. Therefore, there was clear and convincing evidence to support a finding that at least one statutory basis for termination existed with regard to both Harvey and Gardner.

Having found the statutory grounds for termination proven by clear and convincing evidence, the trial court was obligated to terminate both Harvey's and Gardner's parental rights if it was in the children's best interests to do so. MCL 712A.19b(5). A combined best interests hearing was held in August 2008. Repeated at the best interests hearing was evidence that Harvey took an extremely passive role during her visits with the children. She did not actively engage in the visits and was content to let Amber and Gerry redirect the younger children's negative behavior. Harvey did not approach the children or initiate contact or activities. All five children had behavioral issues, including truanting, aggressive behavior against each other and authority figures at school, and running away. The psychological evaluations revealed that the three youngest children did not indicate any sort of desire to be reunited with Harvey. In contrast, both Amber and Gerry expressed a desire to be reunited and they felt connected to Harvey. The psychologist opined that the two children did not want to be separated from one another and that they were both ready to accept neglectful or poor care in exchange for remaining as a family. Termination of Harvey's parental rights was in the best interests of all five of her children. The children had been in care for 18 months. During that time, Harvey showed little progress. She had enrolled in a psychiatric program only a month before the hearing. Such a belated effort did the children little good. Even if she received the mental health services that she needed, it would take months for Harvey to demonstrate the stability needed to parent her children. Harvey even admitted that she was not ready. The children should not have been asked to wait longer for Harvey to prove herself. They were entitled to permanence and stability.

As for respondent Gardner, the testimony revealed that, when she returned to Oakland County in January 2008, she aggressively participated in her PAA. Her therapist provided very favorable testimony on her behalf. Gardner completed a two-phased substance abuse program and a refresher parenting class. She also attended individual therapy on a regular basis and had not had a positive drug screen since April 2007. However, the fact remained that Gardner had not seen either child since April 2007. Michael was almost three and Brian was almost two at the time of the hearing. There was no indication that the boys shared any sort of bond with Gardner. Gardner blames the court for not initially placing the boys with family members in Clare County, but the fact remains that she chose to leave Oakland County, and her two little boys, knowing full well that she could not complete the PAA and she would not be able to see them. She chose to separate herself from them and stayed completely out of touch for eight months. In December 2007 Gardner was advised that Brian had been diagnosed with cerebral palsy and would likely need leg braces, physical therapy, occupational therapy, and might need a walker until the age of 18. Gardner did not sound overly concerned and did not ask many questions. She failed to demonstrate an attempt to gain any knowledge about his diagnosis. She admitted that she earned minimum wage as a waitress and that she was living with a friend. She testified that she was not in a position to immediately take care of the boys and could not put a

time frame on when she thought the boys should be returned to her, acknowledging that they were unfamiliar with her and that she would need to earn their trust. Therefore, although Gardner appeared to be making great strides in addressing her substance abuse problem, it was in the children's best interests to terminate her parental rights. They had been in foster care for 18 months. They were very young, aged two and three, and had not seen their mother in over a year. They were entitled to permanence and stability.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Patrick M. Meter

/s/ Karen M. Fort Hood