

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MELISSA MICHELLE GOETZ,
Minor.

MICHELLE DUELL,

Petitioner-Appellee,

v

MARTHA A. GOETZ,

Respondent-Appellant.

UNPUBLISHED

July 9, 2009

No. 290041

Monroe Circuit Court

Family Division

LC No. 08-020913-NA

Before: O’Connell, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Respondent appeals as of right the circuit court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(d).¹ We affirm.

The trial court did not clearly err in finding that § 19b(3)(d) was established by clear and convincing legally admissible evidence. MCR 3.977(E); *In re Utrera*, 281 Mich App 1, 16-17; 761 NW2d 253 (2008). MCL 712A.19b(3)(d) provides for termination where

The child’s parent has placed the child in a limited guardianship under . . . MCL 700.5205, and has substantially failed, without good cause, to comply with a limited guardianship placement plan described in . . . MCL 700.5205, regarding the child to the extent that the noncompliance has resulted in a disruption of the parent-child relationship.

Respondent first voluntarily placed the child with a guardian in 2007. In March 2008, the court entered a consent judgment establishing a limited guardianship for the child and a reunification plan for respondent. The judgment stated that the limited guardianship was necessary because respondent lacked adequate housing for the child, respondent wanted “an

¹ Respondent and David Jewell are the parents of the minor child, Melissa Goetz, who was born October 28, 1997. Petitioner is the child’s guardian ad litem. Jewell is not a party to this action.

alternative to action recommended by child protective services [CPS],”² and respondent needed to improve her parenting. Respondent was granted weekly visits, together with contact by phone and mail. The guardianship was to continue until respondent achieved the following goals: (1) ability to provide a drug-free home, (2) gainful employment, (3) housing, (4) completion of substance abuse treatment, (5) completion of a substance abuse evaluation and compliance with recommendations, (6) completion of a psychological evaluation and compliance with recommendations, (7) not living with Scott Rice, with whom respondent had a pattern of drug abuse, (8) weekly drug screens, and (9) attendance at AA/NA meetings twice a week.

In November 2008, petitioner sought termination of respondent’s parental rights, pursuant to MCL 712A.19b(3)(d), (g), and (j), alleging that respondent had made minimal effort to comply with the reunification plan. At that time, respondent lacked appropriate housing, she had not completed counseling or substance abuse treatment and she had tested positive for cocaine in October 2008. Further, a bench warrant had been issued for her arrest after she failed to appear for sentencing after violating her probation. Following a hearing, the trial court concluded that termination was warranted and that it was in the minor child’s best interest. The court explained:

The . . . Court and the others involved in this case spent many, many hours attempting to repair that . . . parent child bond, making orders, doing really intense supervision of a limited guardianship. As is sometimes the case with these things, in this case [respondent] simply could not bring herself to comply with the elements of this particular plan. She continued to use cocaine throughout the time period of this plan. She, in fact, . . . in one instance, she was getting a substance abuse assessment done and was ordered to do a drug screen and she simply left the Harbor Light facility. People were trying to help her . . . and she was not accepting that help. So there’s no doubt, the evidence is clear and convincing that she has failed to comply with the limited guardianship placement plan.

[¶]The next question is whether or not it is in this child’s best interest for the Court to terminate [respondent’s] parental rights. . . . I remember meeting with Melissa early on in this case and I remember her telling me she just wants her mom to get well. She loves her mother and . . . she was tired of the in and out, back and forth, in and out, back and forth. . . . Melissa shouldn’t have to wait any longer. Melissa needs permanency. Melissa needs to have this done. She’s been placed here, . . . hoping her mom gets well and, regardless of whether or not I find to be even true that [the guardian] has unduly influenced her, the focus in this right now is on the actions of [respondent] and whether or not her actions give Melissa any hope. Unfortunately, they don’t. [Respondent] has not given Melissa any reason to be confident that she is going to recover in order to be a

² Melissa had previously been removed from respondent’s care by CPS; she was returned to respondent’s care well before the guardianship was established.

parent again, and so it's time for Melissa to move on and get some type of permanency in her life.

The record amply demonstrates that respondent did not substantially comply with the limited guardianship placement plan and that her reasons for noncompliance – that she was homeless, addicted to drugs, and had mental health problems – were not “legally sufficient or substantial,” *In re Utrera, supra* at 22, because they were the same basic reasons the limited guardianship was established and were the very conditions that respondent was required to rectify under the plan. There was also evidence that respondent's noncompliance had disrupted the parent-child relationship.

More specifically, respondent testified that she began smoking crack cocaine two years earlier; she also used marijuana. Respondent acknowledged that she needed drug treatment. She explained that, in order to avoid having Melissa removed from her care by CPS, she agreed to a limited guardianship in August 2007. Melissa was placed with Amy Davis in Washtenaw County. The case was later transferred to Monroe County. A new limited guardianship plan was established on February 22, 2008, and an order was entered on March 10, 2008. Respondent knew that the limited guardianship plan called for her to meet certain goals, but testified that she was unaware that she was required to do so within a given time period.

As for compliance with that plan, respondent acknowledged that she had not maintained a drug-free home, residing with Scott Rice for substantial periods of time during the course of these proceedings, until obtaining her own apartment on November 20, 2008. She also acknowledged that during the time they were together, she and Rice used crack cocaine. Respondent obtained a substance abuse assessment, but failed to complete substance abuse treatment, quitting the program after three sessions. Likewise, respondent completed a psychological evaluation, but did not sufficiently address her mental health issues. Despite having been diagnosed as having a combination of substance abuse, substance dependence and bipolar disorder, respondent did not consistently take her prescribed medications and did not attend medication review appointments to allow those medications to be adjusted to mitigate the side effects of which she complained. Additionally, respondent missed numerous appointments with her caseworker, and missed appointments relating to her application for social security disability benefits, with the result that that application was denied.

Cheryl Grahl, the child's paternal grandmother, testified that she became Melissa's guardian in November 2007; Davis no longer wanted to care for the child because of the child's behavioral problems. Grahl testified further that the March 2008 order called for respondent to have family visits once a week. Respondent missed at least six visits and the court suspended visitation twice. Respondent had not seen Melissa since mid-October 2008. Grahl told the court that before telephone calls with respondent, Melissa was her usual self and looked forward to talking to respondent. However, after most calls, she cried and was upset with respondent, because she wanted respondent to be sober and not be with Rice, but she knew that respondent's substance abuse continued and that she was still living with Rice. Grahl indicated that before visits with respondent, Melissa “had no concentration, didn't want to do her work, just a mean demeanor about her,” and that sometimes Melissa was so adamant about not wanting to visit respondent, she “cried and threw a fit.” After visits, Melissa “cried all the way home,” expressing her belief that respondent was still using drugs and living with Rice.

Apparently Melissa did not visit with respondent from November 2007 until March 2008. During that time, according to Grahl, Melissa “did excellent in school,” earning B’s and C’s. When Melissa began visiting respondent again, her grades dropped to “more D’s and C’s” and Melissa had behavioral issues at home and at school. After visitation was suspended in November 2008, Melissa’s behavior “improved tremendously”; she was doing better in school and was not acting out nearly as much. Grahl testified that Melissa had not inquired about respondent since family visits ended. Further, Melissa was aware of the pending termination petition and was “happy” about it. Grahl explained, “She is ready to let go. I think it’s caused her a tremendous amount of stress on [respondent] and Melissa is very happy and content, and just wants to move on.”

A trial court may terminate parental rights at the initial dispositional hearing if a preponderance of the evidence adduced at trial establishes grounds for the assumption of jurisdiction under MCL 712A.2(b) and the court finds on the basis of clear and convincing legally admissible evidence introduced at the trial or at the dispositional hearing that one or more facts alleged in the petition are true and establish grounds for termination under MCL 712A.19b(3). MCR 3.977(E); *In re Utrera*, *supra* at 16-17. Once a statutory ground for termination has been proved, the court shall order termination of parental rights if it finds “that termination of parental rights is in the child’s best interests[.]” MCL 712A.19b(5). The trial court’s findings regarding a statutory ground for termination and the child’s best interests are both reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). “A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court’s special opportunity to observe the witnesses.” *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

As noted above, a court may terminate the rights of a parent to a child if the court finds, by clear and convincing evidence, that the child’s parent has placed the child in a limited guardianship under MCL 700.5205 and has substantially failed, without good cause, to comply with a limited guardianship placement plan to the extent that the noncompliance has resulted in a disruption of the parent-child relationship. MCL 712A.19b(3)(d). Respondent does not dispute that a limited guardianship was established under MCL 700.5205, that the March 10, 2008, consent judgment constituted a limited guardianship placement plan described in MCL 700.5205, or that she substantially failed to comply with the components of the placement plan outlined in the consent judgment. The crux of her argument is that she had good cause for her failure to comply with the plan, that being that she was homeless, mentally ill, and addicted to drugs. We disagree.

Good cause for failure to comply with the plan means “a legally sufficient or substantial reason.” *Utrera*, *supra* at 22. As previously noted, reasons proffered by respondent are the same reasons the limited guardianship was established in the first instance, and were the very conditions respondent was required to rectify under the plan. She was an addict who lacked suitable independent housing and was living with a fellow drug abuser. Rather than participate in substance abuse treatment to rectify her drug habit, take her psychotropic medications and meet regularly with her doctor to have them adjusted, and obtain gainful employment or other legal source of income with which to pay for housing or cooperate with appropriate agencies to obtain low-income housing, respondent continued to use drugs and did little to comply with the plan. Of the nine elements of the plan, respondent partially complied with only two: obtaining a

substance abuse assessment and a psychiatric evaluation. Respondent does not dispute that her noncompliance disrupted the parent-child relationship and Grahl's testimony indicated that such was the case. Therefore, the trial court did not clearly err in finding that § 19b(3)(d) had been proven by clear and convincing evidence.

Further, the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The child had been with a guardian since September 2007, primarily due to respondent's drug abuse. The evidence showed that she was extremely frustrated by respondent's failure to make successful efforts to work toward reunification by separating from Rice and treating her drug habit and that she did not oppose termination of respondent's parental rights. Grahl testified to negative impacts on the child's education and behavior caused by respondent's inability to comply with the plan and indicated that the child was "ready to let go" and to "move on." Therefore, the trial court did not clearly err in terminating respondent's parental rights.

We affirm.

/s/ Peter D. O'Connell
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio