

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of COLIN JAMES ROACH, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MARGARET A. DRESDEN,

Respondent-Appellant.

UNPUBLISHED

July 16, 2009

No. 288248

St. Clair Circuit Court

Family Division

LC No. 06-000322-NA

Before: Owens, P.J., and Servitto and Gleicher, JJ.

PER CURIAM.

Respondent appeals as of right from a circuit court order terminating her parental rights 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 child's age], (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], and (j) [a reasonable likelihood exists, based on the parent's conduct or capacity, that the child will suffer harm if returned to the parent's home]. We affirm, and decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Factual and Procedural History

On July 14, 2006, respondent became extremely intoxicated and passed out at her home. The next day, petitioner filed a petition seeking temporary custody of the involved child. The petition alleged that while awaiting a call confirming her placement in a substance abuse treatment facility, respondent "consumed massive amounts of alcohol and pills," verbalized a desire to commit suicide, and required admission to a hospital for stabilization. After conducting a preliminary hearing, a circuit court referee authorized the petition and placed the child in foster care.¹

¹ The child's father died before the commencement of these proceedings.

In September 2006, the circuit court entered an order of disposition recounting that it had exercised jurisdiction over the child on the basis that the “mother does not contest court jurisdiction in this matter.”² The dispositional order directed respondent to (1) obtain and maintain suitable housing for at least six months; (2) obtain and maintain a legal income source for at least three consecutive months; (3) submit to a substance abuse assessment and follow through with all treatment recommendations; (4) undergo a psychological assessment and pursue any recommendations; (5) attend individual counseling; (6) participate in intensive parenting classes; and (7) participate in a parent mentor program and follow through with all mentor recommendations.

Respondent completed an inpatient substance abuse treatment program on August 16, 2006, but failed to attend required aftercare activities; she instead moved to Kentucky to live with her parents. In September 2006, foster care worker Laurie Stroyan reported that respondent “has not seen, spoken to, or called to ask about [the child] since she went to Kentucky.” The circuit court ordered petitioner to conduct home studies and criminal background checks regarding any relatives interested in caring for the child.

At a dispositional review hearing conducted in December 2006, Stroyan reported that respondent claimed to be attending Alcoholics Anonymous meetings and counseling sessions in Kentucky. However, Stroyan could not verify this information with respondent’s counselor. The circuit court continued the child’s foster care placement, and again ordered that respondent participate in services. In January 2007, the circuit court found that the child’s best interests would be served by allowing him to move to Kentucky for reunification efforts. But the foster care review board recommended against the move, which ultimately did not occur.

In June 2007, the circuit court held a permanency planning hearing. According to Stroyan’s written report presented at the hearing, respondent had recently returned to Michigan and planned to remarry Randy Dresden, about whom Stroyan expressed concern because respondent and members of her family had reported that Dresden severely abused respondent. Stroyan asserted that after the child’s removal in July 2006, respondent did not visit him for almost six months, and then only once or twice a month. Respondent failed to provide Stroyan with evidence of drug and alcohol screens or documentation that she had participated in psychological counseling, and respondent had no employment in Michigan. Stroyan concluded that respondent lacked an ability to supply the child a stable and safe environment, and expressed concern that if returned to respondent’s care the child “will be exposed to domestic violence and continued alcohol abuse[.]” Stroyan requested the circuit court’s permission to file a permanent custody petition. The circuit court ordered that Stroyan do so, and later authorized the petition.

In September 2007, the circuit court conducted a termination hearing. Although the court found clear and convincing evidence that the conditions leading to the adjudication continued to exist, it declined to conclude that respondent could not rectify these conditions within a reasonable time, and denied the permanent custody petition. The circuit court ordered that the

² The parties have not provided this Court with the transcripts of any proceedings besides the termination hearing.

child remain a temporary court ward and directed respondent to (1) submit to random drug and alcohol screens; (2) obtain a psychological evaluation; (3) participate in counseling and substance abuse treatment; and (4) “complete all previously required orders again and provide documentation to the worker.” The court’s order further contemplated “that if a new petition to terminate is filed the only issue will be whether the conditions that led to adjudication can be rectified within a reasonable time considering the child’s age.”

In August 2008, petitioner again filed a supplemental petition seeking termination of respondent’s parental rights. The circuit court conducted a second termination hearing in September 2008, and took judicial notice of the facts presented at the prior hearing. Stroyan testified that respondent failed to participate in drug and alcohol screening between September 2007 and December 2007. Stroyan also recounted that after a review hearing in December 2007, respondent’s compliance markedly improved, and in March 2008 she regained custody of the child. But in May 2008, respondent was arrested on a charge of being drunk and disorderly, and petitioner again removed the child. At the end of May 2008, respondent entered a residential treatment program and advised Stroyan that she would remain there for six to 12 months.

Stroyan opined that respondent was a good parent when sober, but that she consistently demonstrated an inability to “maintain sobriety for more than a few months at a time.” Stroyan believed that “[e]ach and every time [the child] is with her this becomes a point of danger for him.” Stroyan additionally repeated respondent’s adult son’s expressed hope that “his little brother didn’t have to go through what he went through, with both of his parents drinking and fighting throughout his life.”

Respondent’s case manager at the residential treatment facility testified that respondent had resided there for three months, and had attained level two of four recovery levels. She believed that respondent would require intensive substance abuse treatment and monitoring well into 2009. The case manager conceded that respondent had previously received residential care at the same facility, but did not successfully complete the program.

In a bench opinion, the circuit court observed that respondent “does what is necessary to get her child back into her care. And when the child comes back into her care she reverts to her old ways.” The court reviewed respondent’s history of prolonged alcohol abuse, noted her most recent arrest in May 2008, and observed that the child was four-years-old and had resided in care for 42 months. The court ruled that clear and convincing evidence warranted termination of respondent’s parental rights pursuant to MCL 712A.19b(3)(c)(i), (g) and (j), and that termination would serve the child’s best interests.

II. Issues Presented and Analysis

Respondent contends that the circuit court lacked clear and convincing evidence of any statutory ground warranting termination of her parental rights. To terminate parental rights, a court must find that the petitioner has proved at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) by clear and convincing evidence. *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). “If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child’s best interests, the court shall order termination of parental rights . . .” MCL 712A.19b(5). This Court reviews for clear error a circuit court’s finding that a ground for termination has been established by clear and

convincing evidence “and, where appropriate, the court’s decision regarding the child’s best interest.” *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005) (internal quotation omitted); see also MCR 3.977(J). Clear error exists when some evidence supports a finding, but a review of the entire record leaves the reviewing court with the definite and firm conviction that the lower court made a mistake. *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996).

The conditions that led to the child’s 2006 adjudication as a temporary court ward stemmed from respondent’s chronic alcohol abuse. The evidence at the termination hearing clearly and convincingly established that after the adjudication, respondent availed herself of substance abuse treatment on an occasional basis, primarily when threatened with imminent termination of her parental rights. The evidence also clearly and convincingly established that despite receiving multiple opportunities to participate in and benefit from treatment, respondent persistently failed to actively comply with screening and other treatment requirements, and repeatedly relapsed. At the time of the 2008 termination hearing, respondent had not completed a single treatment plan component, and her four-year-old son had spent more than three quarters of his life in foster care. These facts clearly and convincingly establish that the conditions leading to the adjudication continued to exist without reasonable likelihood of rectification within a reasonable time considering the child’s age. MCL 712A.19b(3)(c)(i).

We also reject that the court lacked clear and convincing evidence to terminate pursuant to subsections (g) and (j). Respondent’s alcohol binges resulted in several arrests, hospitalizations, and episodic domestic violence. The testimony of respondent’s case manager clearly and convincingly established that a considerable period of time and commitment to treatment remained before respondent could live safely and independently with her child. Given the child’s young age and respondent’s record of recurrent relapses, the circuit court correctly concluded that no reasonable likelihood existed that respondent could provide proper care or custody for her child in the foreseeable future, and thus properly invoked subsection (g) as an alternate basis for termination. And in light of the same clear and convincing evidence already discussed, the circuit court properly terminated respondent’s parental rights under subsection (j). The court correctly concluded that respondent’s chronic alcoholism and history of engaging in domestic violence gave rise to a reasonable likelihood that the child would suffer harm if returned to her care.

We lastly conclude that the circuit court did not clearly err in finding that termination served the child’s best interests. The child had resided in foster care for most of his life, and had spent only intermittent and brief periods of time with respondent. The circuit court astutely emphasized that the child is “over four years old now and it’s time he had some stability in []his life.”

Affirmed.

/s/ Donald S. Owens
/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher