

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of HLW, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ANGELA WITHENSHAW,

Respondent-Appellant,

and

BRIAN BOSTON,

Respondent.

UNPUBLISHED

September 29, 2009

No. 289836

Macomb Circuit Court

Family Division

LC No. 2007-000619-NA

Before: Murray, P. J., and Markey and Borrello, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to her minor daughter.¹ We affirm.

Respondent first argues that the trial court incorrectly found that the statutory grounds for termination of parental rights existed under the specified provisions. However, because respondent stipulated below that these grounds were established, the issue need not be addressed. *Holmes v Holmes*, 281 Mich App 575, 588; 760 NW2d 300 (2008). In any event, independent of the stipulation, we would find no clear error in the trial court's decision. See MCR 3.977(J); *In re Jordan*, 278 Mich App 1, 24; 747 NW2d 883 (2008). We will discuss only the establishment of grounds under MCL 712A.19b(3)(g), as additional grounds did not have to be established. See *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000). This provision states:

¹ The order also terminated the parental rights of the putative father, respondent Brian Boston. He has not appealed the order.

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

It is undisputed that this two-year-old child had not been in respondent's care for more than a year, and that respondent had not seen the child for approximately one year. It is also undisputed that respondent was in prison at the time of the termination hearing. Thus, she could not provide proper care or custody at that time. Moreover, she was not to be considered for parole until at least four months after the termination hearing, and her plan at that point was to enter a three-quarter house to provide structure so as to increase her chances for success in overcoming her substance abuse problem. Her belief that she could be ready to assume care of the child within a month of being released from prison was inconsistent with this plan. Notably, respondent had not prospered in response to earlier services aimed at assisting her in providing proper care and she had, in fact, relapsed. Of proper concern to the trial court was her track record of not being able to stay drug free outside of a prison or jail setting. Thus, the trial court did not clearly err in finding that there was no reasonable expectation that respondent would be able to provide proper care and custody for this two-year-old child within a reasonable time considering the child's age.

Respondent next argues that, even if statutory grounds were established, it was not in the child's best interest to terminate her parental rights. Our review is for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).² Once a statutory ground for termination is established by clear and convincing evidence, termination of parental rights must be ordered if "termination of parental rights is in the child's best interests." MCL 712A.19b(5). Here, the trial court noted respondent's lack of visitation and bonding with the child, the noncompliance with a parent/agency agreement, respondent's consistent pattern of substance abuse, and the child's entitlement to a stable home. There was no clear error in the determination that, due to these factors, it would be in the child's best interest to terminate rights.

² Preliminarily, respondent's argument that she had a liberty interest in reunification is mistaken. Once a statutory ground for termination was established, respondent's liberty interest no longer included the right to custody and control of Hannah. See *Trejo*, *supra* at 355-356. Rather, "once at least one ground for termination is proven under subsection 19b(3), we hold that the parent's interest in the companionship, care, and custody of the child gives way to the state's interest in the child's protection." *Id.* at 356.

Finally, respondent argues that petitioner did not make reasonable efforts at reunification as demonstrated by the failure to respond to three letters respondent sent while in prison. We note that letters are not part of the record. Further, although respondent claims she asked for assistance, her caseworker indicated that respondent requested only that DHS not give up on her. The record demonstrates that various services were made available to respondent before her incarceration, but she did not appear to benefit from them. Given the efforts made at reunification before respondent was imprisoned, the ambiguity of the letters, and the fact that much of the parent/agency agreement could not be met while in prison, we find no error based on the failure to respond to the letters.

Affirmed.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Stephen L. Borrello