

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of D.K.J., D.Z.J., and C.I.G., Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

APRIL JOHNSON,

Respondent-Appellant.

UNPUBLISHED

November 10, 2009

No. 291426

Shiawassee Circuit Court

Family Division

LC No. 05-011168-NA

Before: Stephens, P.J., and Cavanagh and Owens, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to D.K.J. (DOB 4/7/99), D.Z.J. (DOB 7/9/05), and C.I.G. (DOB 10/26/06) pursuant to MCL 712a.19b(3)(c)(i), (g) and (j). We affirm.

Respondent argues that the trial court erred when it found that petitioner had established the existence of grounds for termination of her parental rights. She also argues that the trial court erred when it found that termination of her parental rights was in the children's best interests. We disagree.

An order terminating parental rights need only be supported by one statutory ground. MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). The petitioner has the burden of proving a statutory ground for termination by clear and convincing evidence. *Id.* A trial court's findings of fact are reviewed under the clearly erroneous standard. MCR 3.977(J). A finding of fact is clearly erroneous when we are left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Once a statutory ground for termination has been proven, the trial 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). A trial court's best interests finding is reviewed for clear error. *In re Trejo*, *supra* at 356-357.

After review of the evidence here, we conclude that the trial court properly held that grounds for termination of respondent's parental rights existed. Under MCL 712A.19b(3)(c)(i), a court may terminate a parent's parental rights if it determines that, "[t]he conditions that led to

the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age." Under MCL 712A.19b(3)(g), a court may terminate a parent's parental rights if it determines that, "[t]he 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." MCL 712A.19b(3)(j) provides that a court may terminate a parent's parental rights if it determines that, "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent."

The trial court's conclusion that respondent would not be able to provide proper care and custody to the children within a reasonable time was not erroneous. A parent's failure to comply with the parent-agency agreement is evidence of a parent's failure to provide proper care and custody for the child. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003); *In re Trejo*, *supra* at 360-363, 361 n 16. The testimony indicated that respondent, at least later in the proceedings, was well intentioned with respect to care of the children and was possibly benefiting from services. However, the children were in care over a year before respondent even began to comply with any of the requirements in her parent-agency plan. Six more months passed before the termination hearing continued, and respondent had not yet completed her therapy. In addition, while testimony supported a finding that respondent's parenting skills during her latter supervised visitation times with the children were appropriate, her ability to properly supervise the children in an uncontrolled setting had not yet been tested. Moreover, respondent still had not obtained stable housing or sufficient employment. She was in arrearages on her child support for C.I.G., and had not paid child support for a fourth child who resided with his father. It was clear from respondent's testimony that she continued to think that her housing situation was suitable for herself and the children, despite the fact that Michael Woodworth could have made her and the children move at any time. Her assumption that she could support the children indefinitely through gifts from him was unrealistic. Given this evidence, and respondent's somewhat elusive answers during her testimony, the trial court did not clearly err when it held that this ground for termination had been proven by clear and convincing evidence.

The trial court also did not err when it determined that the conditions that led to the adjudication continued to exist and there was no reasonable likelihood that they would be rectified within a reasonable time. Despite respondent's assertion to the contrary, the conditions that led to the adjudication included multiple incidents. D.K.J. had been left home alone or with his siblings at least 26 times when respondent went to the store. The caseworker reported that the home was dirty, that there was no food in the home, and that trash was piled in the corner of the kitchen. This evidence demonstrated a general lack of responsible parenting. This conclusion was bolstered by respondent's prior participation with services and her lengthy initial lack of involvement in regaining custody of her children during this latest incident. Although by the date of the termination hearing respondent was trying to rectify her parenting skills deficiencies and deal with her underlying mental issues, she had not yet satisfactorily done so. Given the length of time in care to that point, the trial court did not clearly err in finding that the conditions that led to the adjudication would not be rectified within a reasonable time.

The trial court's finding that there was a reasonable likelihood that the children would be harmed if returned to respondent's home was also supported by the evidence. Even apart from

the incident that led to the children's placement in care, respondent's continued failure to establish a stable, self-sufficient lifestyle was indicative of a continued propensity to expose the children to dangerous home situations. Respondent never established her own housing. Testimony from petitioner's caseworker supported a conclusion that respondent's latest significant other was not a safe and suitable person to watch the children. While respondent claimed that the daycare near the house could watch the children if she found work, she did not know how much the service would cost.

Finally, the trial court's best interests finding was not clearly erroneous. C.I.G.'s father testified that C.I.G. was comfortable with her life and that respondent's presence was disruptive. Petitioner's caseworker indicated that the children needed permanency; she opined that respondent could not give this to them because of her lack of progress during the lengthy proceedings. D.Z.J.'s need for stability and the psychological problems that arose from the lack of stability in the past were documented in petitioner's service plan. The evidence supported the finding that the children needed a stable environment, which respondent clearly could not provide.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Mark J. Cavanagh

/s/ Donald S. Owens