

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TAYONNA MICHELLE SMITH-
TOLBERT, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

OCTAVIA MICHELLE TOLBERT,

Respondent-Appellant.

UNPUBLISHED

November 19, 2009

No. 291422

Wayne Circuit Court

Family Division

LC No. 07-467571-NA

Before: Talbot, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i) ["The 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"] and (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"]. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Further, there was clear and convincing evidence that termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5).

Respondent argues that the trial court erred in terminating her parental rights because petitioner severely delayed respondent's progress by failing to follow through after Oakland County rejected the case and by changing workers. When the petitioner removes a child from her parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that led to the child's removal by adopting a service plan. *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005). The reasonableness of the petitioner's services is relevant to the sufficiency of evidence for termination of a respondent's parental rights. *Id.*

There was a delay from May 2, 2007, to September 21, 2007, after petitioner attempted to transfer the case to Oakland County and it was returned to Wayne County. However, the trial court did not consider respondent's compliance during this period in its evaluation to terminate respondent's parental rights. There was no evidence that respondent made any inquiries or effort to regain custody of her child during this time. In addition, there was no evidence that respondent required more services than were offered, and she does not argue that she should have been offered other services. Although there were three different workers and two different referees during the pendency of this case, respondent does not explain how this affected her ability to participate in the treatment plan or argue that having the same worker or the same referee would have affected the outcome of this case. Petitioner offered respondent several different types of referrals, bus tickets, and weekly visitation with the child. Respondent failed to take advantage of the majority of the services offered. Thus, there was clear and convincing evidence that petitioner made reasonable efforts to assist respondent in reunification with her child. *In re Fried, supra* at 542-543.

There was also clear and convincing evidence to support termination pursuant to MCL 712A.19b(3)(c)(i) and (g). The petition was filed after respondent had been arrested and incarcerated twice, leaving the minor child without proper care and custody. Respondent also had a history of marijuana use and a transient lifestyle. Respondent and her daughter had moved from shelter to shelter and lived in abandoned houses. Respondent's treatment plan required her to participate in individual and family therapy, substance abuse assessment and counseling, parenting classes, and weekly visitation. Respondent was required to drop random drug screens, obtain suitable housing, stay in contact with petitioner, and attend all court hearings. The trial court also ordered respondent to comply with any criminal court requirements and resolve any outstanding warrants.

Respondent failed to comply with the treatment plan. At the termination hearing, respondent admitted that the armed robbery charge against her remained unresolved. Respondent failed to provide any verification of stable housing or employment. Respondent presented a new address at the termination hearing, having been evicted from her previous address and living in a shelter. Although housing was one of the issues that brought the minor child into care, and the trial court ordered respondent to obtain stable housing, respondent never presented her home to the foster care worker for approval and verification because the worker never "asked" for it. Respondent did not participate in any type of counseling. Referrals and appointments were made for respondent, but she failed to attend scheduled appointments. Respondent submitted about six random drugs screens, one of which was positive for marijuana, and did not complete a substance abuse assessment. Respondent completed parenting classes, but the worker did not believe that respondent benefited from the classes. The minor child reported that respondent had encouraged the child to report that her aunt, the foster care provider, had physically abused the minor child so that her aunt would get into trouble. The worker concluded that this type of behavior from respondent was detrimental to the minor child and not consistent with skills that respondent would have learned in parenting classes.

Respondent failed to visit her child regularly. When the visits first began, respondent visited the minor child at her foster care home. These visits were changed to supervised agency visits because respondent had inappropriate conversations with the child. Respondent was offered about one year of weekly supervised visitation at the agency. In the first six months,

respondent visited her daughter at the agency nine times. On a few occasions, the minor child became very upset because she was already at the agency waiting for respondent when respondent called to cancel. After the first six months, respondent did not visit once.

Respondent offered no explanation regarding why she had not complied with the treatment plan, and her testimony was often contradictory and evasive. She either claimed that she did everything that she was required to do or she denied any knowledge of the requirements. Her testimony did not support her assertion that, if given more time, she would comply with the trial court's orders. Respondent's failure to complete the requirements of the treatment plan and to admit that she was responsible for meeting the requirements of the treatment plan in order to regain custody of her daughter provided clear and convincing evidence that respondent would not rectify the conditions that led to adjudication or provide proper care and custody of the child within a reasonable time.

The trial court also properly concluded that termination of respondent's parental rights was in the child's best interests. At the termination hearing, respondent testified that she wanted to plan for her daughter and that she was willing to participate in a treatment plan to regain custody of her child. However, there was no evidence to support respondent's assertion. The minor child had been in foster care for about a year and a half and respondent's participation in the treatment plan was too minimal to begin to address any of the issues that brought her child into care. Respondent not only failed to comply with the treatment plan but also failed to accept any responsibility as the child's parent to meet her daughter's needs. The court did not err in concluding that termination was clearly in the minor child's best interests.

Affirmed.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell
/s/ Alton T. Davis