

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KEITH ALLEN STIDAMS,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MATTHEW A. STIDAMS,

Respondent-Appellant,

and

SHERRI RENEE ELLIS,

Respondent.

UNPUBLISHED

January 26, 2010

No. 292727

St. Joseph Circuit Court

Family Division

LC No. 06-000124-NA

In the Matter of KEITH ALLEN STIDAMS,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SHERRI RENEE ELLIS,

Respondent-Appellant,

and

MATTHEW A. STIDAMS,

Respondent.

No. 292986

St. Joseph Circuit Court

Family Division

LC No. 06-00124-NA

Before: Stephens, P.J., and Gleicher and M.J. Kelly, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from a circuit court order terminating their parental rights to the minor child 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], and (g) [irrespective of intent, the parent fails to provide proper care and custody and no reasonable likelihood exists that he or she might do so within a reasonable time given the child's age]. We affirm.

Respondent mother gave birth to the KAS, the involved minor child, on February 7, 2006. Two days later, petitioner, the Department of Human Services (DHS), filed a petition requesting temporary custody of the child, averring that respondent mother had "tested positive for cocaine, meth., barbiturates [sic] and morphine during her pregnancy." The circuit court dismissed the petition on the basis of its finding that the allegations of drug use during pregnancy "were not supported by evidence showing that the infant tested positive for illegal drugs." Petitioner next filed a temporary custody petition concerning KAS on February 15, 2006, asserting that police found respondents at a drug house and that respondent father was in possession of methadone. The petition further set forth that respondents had extensive histories of drug abuse, that they lacked stable housing, and that recently respondent mother while intoxicated had arrived with KAS at a women's shelter, where staff had to care for the child.

The circuit court exercised jurisdiction over KAS after respondent father admitted to having a history of drug use, possessing methadone at the time of the police raid, and being currently incarcerated for manufacturing marijuana. Respondent mother subsequently admitted to a lengthy and arduous struggle with dependency on opiates, primarily morphine. The circuit court ordered that KAS remain in foster care and that respondents undergo psychological and substance abuse evaluations, refrain from using or possessing drugs or alcohol, submit to random drug screens, obtain and maintain suitable employment and housing. The court also advised respondent mother that she could begin supervised visits with KAS once she provided three negative drug screens.¹

On April 23, 2008, respondent mother entered Hope House, a drug-free, therapeutic living environment. At a July 2008 dispositional review hearing, a Child Protective Services (CPS) worker advised the court that respondent mother had relapsed while residing at Hope House and had been discharged from the program, but intended to reapply for admission. At an October 2, 2008 dispositional review hearing, foster care worker Nicole Notestine testified that respondent mother had completed a psychological evaluation but had not reapplied to Hope

¹ At a dispositional review hearing on April 17, 2008, KAS's paternal grandfather advised the court that he took prescription methadone for foot pain. The circuit court opined, "I think Methadone is stupid. . . . [T]here's 25 or maybe 50 pain medications besides Methadone. . . . I think it's addictive." Respondent mother admitted to having abused methadone in the past.

House, although she was actively participating in an “early recovery group.” Notestine added that respondent father remained incarcerated and respondent mother still lacked transportation and stable housing. Heather DeCastro, an infant mental health worker, reported that respondent mother had achieved significant progress improving her parenting skills.

At a dispositional review hearing conducted on December 4, 2008, both respondents reported substance abuse setbacks. Respondent father, who had been released from jail on November 3, 2008, twice tested positive for alcohol during the weeks before the hearing. Although respondent mother’s parenting skills continued to improve, she provided multiple positive drug screens during October and November 2008; her last negative screen occurred on November 17, 2008. While respondents had recently obtained suitable housing, Notestine expressed concerns that when living together they triggered each other’s drug use. According to Notestine, respondents’ supervised visits with KAS had generally gone well, but “[a]s far as the stability and the substance use, I don’t believe that there’s been much progress.” At the February 2009 permanency planning hearing, a CPS worker testified that during the preceding three months, both respondents submitted positive drug screens, including for methadone. Respondent mother’s most recent positive screen occurred in the week before the hearing. The circuit court ordered petitioner to file a termination petition.

The evidence presented at the termination hearing established that on March 11, 2009, almost a month after the permanency planning hearing, respondents had enrolled in the Victory Clinic’s methadone program, where they received methadone six days a week. DeCastro revealed that respondent mother was pregnant, characterized respondents’ housing as appropriate, and expressed her belief that respondents were “pretty good parents and together they’d probably be better parents.” Nevertheless, DeCastro opined that in light of the substantial length of time that respondents had abused substances and their “lack of treatment” during that interval, respondents could not safely parent KAS within a reasonable time. DeCastro further related respondent father’s claims that within five minutes he could persuade respondent mother to use drugs and that his desire to abuse substances “consumes him.”

Notestine observed that respondent father had spent most of the proceedings incarcerated, and that respondents had made “very little” progress toward reuniting with KAS. Notestine disagreed that the Victory Clinic was “the right way to go,” and noted that Victory Clinic personnel told her that methadone therapy involves a “few year process.” The circuit court agreed with Notestine’s negative view of methadone therapy, declaring, “I’ll be blunt; I think Methadone is worse than methamphetamine.” The circuit court also described methadone as a “transfer drug” rather than a “replacement drug.” On cross-examination, Notestine acknowledged that aside from her “displeasure” with the Victory Clinic, respondent mother had otherwise followed all recommendations in fully cooperative and compliant fashion.

Respondents testified that methadone did not make them feel “high,” but merely permitted them to function normally and avoid drug seeking behaviors. Although respondent mother conceded her awareness that her baby would be born addicted to methadone and would endure a difficult withdrawal from the drug, she felt that she could not quit because her own withdrawal would “have a negative effect on my baby.” Respondent father explained that he intended to cease using methadone in “no more than a year and a half at the very most[.]” Respondent mother introduced a letter authored by a Victory Clinic counselor, which stated in relevant part, “This treatment is ongoing, and requires this client to be on site Monday through

Saturday for medication. ... There is no specific time frame for this opiate replacement therapy. Our treatment regimen is difficult because of the commitment it requires from our clients.”

In a written opinion entered on June 12, 2009, the circuit court reviewed respondents’ histories of drug abuse, and noted respondents’ concessions that “they are triggers for each other and they struggle to put [KAS] or even each other ahead of their addictions.” The circuit court then turned to the issue it deemed “most significant” to the case, respondents’ decisions to pursue methadone therapy. The circuit court addressed the methadone therapy issue and the statutory grounds warranting termination in relevant part as follows:

Most of [respondents’] testimony was to try to convince everyone that becoming addicted to methadone was the right thing to do. They felt [it] was their last chance. Their only exhibit was a letter from the Victory Clinic. The Court has seen these letters before but never has anyone come to Court to support the parent. They talk about recovery but not about detoxification from methadone and all drugs. Dependency is still the foundation of this type [of] treatment. Sad but true.

Both [respondents] admit they try sobriety but [there are] too many triggers and methadone keeps at least a calm level and [is] not about getting high. Is sobriety really the goal of methadone everyone raised the issue in questioning.
...

[Respondents] admit they reinforce each other to go to Victory Clinic and it is the basis of them not having time and money for personal stability. It takes a lot to go to and from [the] clinic daily. The Court has seen that alot [sic] before.

* * *

. . . The Court cannot trust the parents to safely parent [KAS] because of their “conduct and capacity.” That concept does fit also into 19b(3)(g) as alleged for it does not require culpability to not be able to safely provide “proper care and custody in a reasonable time.” 19b(3)(g) is also about conduct and capacity and about safety. The court finds the prosecutor proved by clear and convincing evidence that 19b(3)(g) has been proved as to both parents.

The Court further finds the prosecutor proved by clear and convincing evidence that the conditions that existed 16 months [ago] still exist at the termination trial and 19b(3)(c)(i) was adequately proven. That is true by the evidence presented since the first petition when [the] baby [was] born in 2006. The Court does not know what issues existed to dismiss the 2006 petition but the Court finds the testimony and evidence during this case show mother did abuse drugs before even [KAS’s] birth and she is now even abusing drugs while carrying another baby. Trust is the issue and the Court cannot trust these parents to safely parent [KAS].

The Court finds no one was at Court to offer support for the parents. Not substance abuse counselor, Victory Clinic, domestic violence advocates or family

and friends. The parent's [sic] decision to go on methadone to pursue their selfish lifestyle is not supported by anyone. They are alone.

The circuit court further determined that KAS's best interests would be served by termination and "stay[ing] bonded to his foster parents."

Respondents now contest the circuit court's termination ruling. The petitioner bears the burden of proving a statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). Once a statutory ground for termination is established by clear and convincing evidence, the circuit court must order termination if "termination of parental rights is in the child's best interests." MCL 712A.19b(5). We review for clear error a circuit court's findings of fact. MCR 3.977(J); *In re Trejo*, 462 Mich at 356-357. "A finding is clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989) (internal quotation omitted).

Respondents dispute that the record contains clear and convincing evidence of their parental unfitness under either statutory ground invoked by the circuit court. We first address respondents' challenge to the court's reliance on MCL 712A.19b(3)(c)(i). The conditions that led to the circuit court's March 2008 adjudication included respondents' physical and emotional neglect of KAS, precipitated by their substance abuse and lack of proper housing. Clear and convincing evidence established that despite respondents' commendable progress toward improving their parenting skills, they continued to abuse substances until the month before the termination hearing. During the 13 months that elapsed between the adjudication and the termination hearing, respondent mother maintained sobriety for less than two months, and respondent father spent eight months incarcerated. Although respondents insisted that methadone did not make them feel "high," both acknowledged that they had previously abused methadone; respondent father's drug screens as recently as January and February 2009 were positive for methadone.

In summary, the evidence presented at the termination hearing clearly and convincingly substantiated that notwithstanding KAS's prolonged placement in foster care, respondents failed to alter their lifestyles until the last possible moment. We find no clear error in the circuit court's conclusion that given respondents' lengthy substance abuse histories and belated efforts at treatment, the conditions leading to the adjudication continued to exist without reasonable likelihood of rectification within a reasonable time, given KAS's young age. For substantially the same reasons, we also conclude that the circuit court did not err in terminating respondents' parental rights pursuant to MCL 712A.19b(3)(g).²

² In reaching our decision whether petitioner established the statutory grounds for termination, we have not considered the circuit court's opinions regarding methadone therapy, which neither constitute evidence nor supply a basis for terminating respondents' parental rights.

Respondents further assert that the order of termination cannot stand because the circuit court improperly shifted the burden of proof to them, as exemplified by the court's findings that "no one was at Court to offer support for the parents. Not substance abuse counselor, Victory Clinic, domestic violence advocates or family and friends." We agree that this statement reflects a potential misapprehension concerning the applicable burden of proof. It is "well established" that petitioner bears the burden of proving a statutory ground for termination of parental rights. *In re Trejo*, 462 Mich at 350; MCR 3.977(A)(3). Respondents bore no responsibility to present evidence or prove their fitness. However, apart from the circuit court's quoted observation regarding the absence of witnesses on respondents' behalf, the balance of the circuit court's opinion reflects that it properly evaluated the evidence supporting termination according to the correct standard of proof. Both sides presented evidence, and the circuit court properly weighed all of the evidence before rendering a decision. We view the court's apparent misstatement about respondents' failure to offer proof as harmless error. MCR 3.902(A), MCR 2.613(A).

Respondents lastly challenge the circuit court's best interests finding pursuant to MCL 712A.19b(5). In light of the evidence of record establishing that (1) KAS had spent a large portion of his life in foster care, (2) respondents had no unsupervised visits with the child for more than a year, (3) overcoming respondents' longstanding substance abuse issues would require them to successfully complete a "difficult," extended period of intensive therapy, and (4) KAS was thriving in his current placement,³ we detect no clear error in the circuit court's finding that termination of respondents' parental rights served KAS's best interests.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly

³ Respondents correctly observe that a legal or natural parent's fitness "must be measured by statutory standards without reference to any particular alternative home which may be offered the children." *In re Mathers*, 371 Mich 516, 530; 124 NW2d 878 (1963) (internal quotation omitted). In this case, however, the circuit court properly considered the child's well being in foster care as relevant to its determination concerning the effect of termination on his best interests, not with respect to whether the statutory grounds warranting termination existed. *Id.* (explaining that evidence regarding the advantages of a potential foster home may be relevant to an order of disposition); see also *In re Foster*, 285 Mich App 630; __ NW2d __ (2009).