

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of AJAYCE AARON CAMPBELL,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

AARON JEFFERY CAMPBELL,

Respondent-Appellant,

and

CARLA THERESE PAYTON,

Respondent.

In the Matter of AJAYCE AARON CAMPBELL,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CARLA THERESE PAYTON,

Respondent-Appellant,

and

AARON JEFFERY CAMPBELL,

Respondent.

UNPUBLISHED
February 11, 2010

No. 291512
Wayne Circuit Court
Family Division
LC No. 04-428276-NA

No. 294435
Wayne Circuit Court
Family Division
LC No. 04-428276-NA

Before: Sawyer, P.J., and Saad and Shapiro, JJ.

PER CURIAM.

Respondents appeal as of right a trial court order terminating their parental rights to the minor child under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). Additionally, the trial court terminated respondent-mother's parental rights under subsection (i). We affirm.

Respondents argue that the trial court clearly erred in finding that one or more statutory grounds for termination were established by clear and convincing evidence. We disagree. In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). "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 and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5), as amended by 2008 PA 199, effective July 11, 2008. We review the trial court's determinations for clear error. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. *Trejo*, 462 Mich at 356-357; *Jackson*, 199 Mich App at 25. The primary condition that led to the adjudication of the child and that caused the child to remain in the temporary custody of the court was respondents' substance abuse. The child at issue was removed from respondents' care as a newborn infant after testing positive for cocaine at birth. Respondent-mother had a longstanding substance abuse issue and her parental rights were previously terminated to another child, who also tested positive for cocaine at birth, because of her substance abuse and homelessness. Respondent-father also struggled with substance abuse. After assuming temporary jurisdiction over the child, the court entered a dispositional order requiring respondents to comply with treatment plans intended to address their issue.

Unfortunately, the evidence revealed that they lacked substantial compliance. They only minimally attended drug screens (missing over half of the required screens) and failed to consistently attend and benefit from therapy intended to address their substance abuse issue, and respondent-father tested positive for cocaine several times at the end of the proceedings, once as late as four days before the termination trial. Additionally, respondents lacked consistency in attending the visits with the child during the proceedings. Respondents' failure to comply with these requirements, which were contained in their court-ordered treatment plan, was indicative of neglect, *Trejo*, 462 Mich at 361 n 16, and clearly established that they were unsuccessful in addressing the conditions that caused the child to come within the court's jurisdiction so that they could provide him with proper care and custody. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Considering their failure to make a meaningful effort with services during the proceedings, we find that respondents would not reasonably be likely to successfully address their substance abuse issue to be able to provide proper care and custody for the child within a reasonable time, especially considering his young age and the lengthy period of time he has already been outside their care. In addition to their inconsistency with services and drug screens, we find significant respondent-mother's failure to benefit from substance abuse services not only

during these proceedings, but also during the prior proceedings concerning her older child, and respondent-father's drug use toward the end of the proceedings. We find no clear error in the court's finding that the evidence clearly established grounds for termination under MCL 712A.19b(3)(c) and (g). *Trejo*, 462 Mich at 356-357.

Considering respondents' inability to substantially comply with services intended to address their longstanding substance abuse issue and respondent-father's recent cocaine use, we likewise find that the court did not clearly err in finding that the evidence clearly established grounds for termination under MCL 712A.19b(3)(j). *Trejo*, 462 Mich at 356-357. Under the circumstances of this case, it could not be ensured that respondents could provide the child with a safe and drug-free environment and there was a reasonable likelihood that he would be harmed emotionally and/or physically if returned to their home.

We also find no clear error in the trial court's finding that the evidence clearly supported grounds for termination of respondent-mother's parental rights under MCL 712A.19b(3)(i). *Trejo*, 462 Mich at 356-357. Her parental rights to her older child, who like the child at issue tested positive for cocaine at birth, were involuntarily terminated in October 2005 following the initiation of neglect proceedings due to substance abuse and homelessness. It is evident from review of the record that rehabilitative efforts were largely unsuccessful during the prior proceedings as well as during these proceedings given her lack of compliance with services.

We disagree with respondent-mother's contention on appeal that her failure to comply with services was a result of the caseworker's failure to timely refer her for services. While it was apparent that there was some delay in getting the initial services in place and in re-referring respondents for services, it is evident that the delay did not prevent respondent-mother from complying with those services during the proceedings. Instead, her incarceration during the proceedings as well as her failure to consistently submit to the required drug screens after her release impeded her ability to participate in therapeutic and parenting services. Moreover, once services resumed, she failed to take full advantage of them in that her attendance was inconsistent and sporadic. We also disagree with respondent-father's contention on appeal that the caseworker's failure to provide bus tickets prevented him from complying with drug screens. From our review of the record, it is apparent that the caseworker attempted to accommodate respondents' transportation issues so that they could attend services, screens, and visits with the child, yet they failed to attend consistently. Had respondents taken full advantage of the available services, they might have made progress toward addressing their issue.

Finally, the trial court did not clearly err in concluding that permanency was in the child's best interests and in terminating respondents' parental rights. Although the evidence showed that respondents maintained a relationship with the child by visiting him during the proceedings, albeit not always on a consistent basis, they clearly failed to resolve their substance abuse issue that caused the child to come under the temporary custody of the court. Given that the child had already been outside their care for 20 months, his entire life, during that time they failed to progress to a point where reunification was possible, and the child was in a placement that could provide him with future permanence, we cannot say that the trial court clearly erred in terminating respondents' parental rights, instead of further delaying the child's permanency and

stability. *Trejo*, 462 Mich at 356-357. Under these circumstances, the evidence clearly established that termination was in the child's best interests. MCL 712A.19b(5), as amended by 2008 PA 199.¹

Affirmed.

/s/ David H. Sawyer
/s/ Henry William Saad
/s/ Douglas B. Shapiro

¹ We note that, although in its oral findings the referee found that permanency was in the child's best interests, the referee in its written report and recommendation adopted by the court applied the prior version of MCL 712A.19b(5). At the time of these termination proceedings, MCL 712A.19b(5) had been amended to require a finding that termination of parental rights *is* in the child's best interests, 2008 PA 199, effective July 11, 2008, rather than finding that termination is *not* in the child's best interests. Regardless, any error in the court's findings was harmless and does not warrant reversal, considering that the record was replete with evidence to support a finding that termination was in the child's best interest. See *In re Hansen*, 285 Mich App 158, 165-166; 774 NW2d 698 (2009), applying MCR 2.613(A).