

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of A'NYAH BROWN, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SHANIKA BROWN,

Respondent-Appellant,

and

CHARLESTON HESTER and ANDRE
ANDERSON,

Respondents.

Before: Talbot, P.J., and Whitbeck and Owens, JJ.

PER CURIAM.

Respondent Shanika Brown appeals as of right the order terminating her parental rights to the minor child.¹ We affirm.

I. Basic Facts And Procedural History

Brown was 16 years old in 2008 when the petition, alleging that Brown had very little income, had trouble obtaining her child's asthma medication, was a court ward and in foster care herself, and had hit her minor child with a stick, was filed.

At the July 2008 bench trial, Brown pleaded no contest to the petition. The trial court found that Brown's plea was knowingly, understandably, and voluntarily made, and,

¹ MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist) and (g) (failure to provide proper care).

consequently, accepted her plea. The subsequent case service plan included the following goals: (1) Brown will make efforts towards improving her parenting skills through weekly parenting classes and weekly visits; (2) Brown will improve her personal emotional stability through weekly therapy sessions and by identifying emotional triggers; and (3) Brown will recognize the importance of utilizing resources in her life.

At an October 2008 dispositional review hearing, Carrie Smietanka, the caseworker, testified that Brown's foster parent, who supervised visits between Brown and the child, stated that they had no problems. Smietanka testified that Brown was "not really able to function probably as an independent adult at this point." Smietanka added, "I think [Brown] mostly needs to focus on her maturity, as I don't think that she would be able to care for her child if she's not providing responsible decision." Smietanka was asked if Brown understood that in order to parent the child, Brown had to have housing, emotional stability, financial stability, and parenting skills, and she stated, "I think she somewhat understands, but I think that it's somewhat far off for her, that she is able to do well in foster care right now as she feels." Smietanka also testified that Brown had been charged with retail fraud for shoplifting at the TJ Maxx in Benton Township. Brown admitted that she was on probation for the charge.

At the January 2009 permanency planning hearing, it was learned that Brown was pregnant with her second child, who is not involved in the case at hand. Brown testified that she had been attending a teen parent program, where she was learning how to properly discipline a child, how to be a good parent, and budgeting money. Brown also testified that she had attended substance abuse classes and that she did not smoke marijuana anymore. According to Brown, she was also attending GED classes. When asked why the court should give her more chance to become a better parent for her child, Brown replied, "Because I love her."

Nevertheless, Smietanka recommended that Brown's parental rights be terminated. Smietanka opined that Brown did not have the ability or maturity to parent two children at one time. Smietanka also testified that Brown had not been fully participating in counseling and that her attendance at parenting class had been sporadic. Notably, Smietanka testified that, although Brown initially claimed that she wanted to get a state identification card "in order to get a job," Brown had not yet followed through on that goal because Brown no longer felt that she needed a job, "particularly after she had her children returned." Smietanka did not think three months of services would make a difference in this case; Smietanka did not think Brown's cooperation was going to improve.

The trial court ordered that the DHS initiate proceedings to terminate parental rights to the minor child. The termination petition requested the termination of parental rights pursuant to MCL 712A.19b(3)(a)(i) (parent is unidentifiable) and (ii) (parent has deserted child); (c)(i) (conditions that led to adjudication continue to exist); (g) (failure to provide proper care); and (j) (risk of harm to the child if returned to the parent).

At the May 2009 termination hearing, Smietanka was asked what services had been offered to address Brown's emotional stability, and she stated that Brown was referred for a psychological assessment with Dr. Paul Kitchen, which Brown completed. Brown also worked with Spencer Carter in outreach services. According to Smietanka, Carter thought Brown would "more than likely" not be able to take care of two children on her own without consistent supervision by a responsible adult. Smietanka was asked if Dr. Kitchen had any insights on

Brown's parenting skills, and she stated that "he stated she needed a significant amount of parenting skills training. He didn't—he felt that she would be very reactive in her parenting styles, didn't display a great deal of ability at that point in time to parent affectively [sic]."

Smietanka also testified that the foster parent reported that she found a burn mark on the child's pants that was not there before the child went to visit Brown. When asked why this was significant, Smietanka stated that the child was asthmatic. Smietanka believed that this incident happened in February 2009. However, Brown claimed that she did not smoke around the child because the child has asthma.

Smietanka also testified that a bonding assessment had been done in this case. According to Smietanka, the assessment revealed that there was not a strong bond between Brown and the child or that it would not be appropriate at that time to return the child to Brown's care.

Smietanka did not believe that Brown had made sufficient progress to have the child returned to her care. Smietanka also stated that she did not think the child would be safe in Brown's care "without some serious supervision." Smietanka opined that termination was in the child's best interests because the child needed stability, "particularly with the developmental delays that she's displaying." Smietanka did not think that Brown would be able to provide stability, even if she was given more time. Smietanka admitted that Brown needed time to mature, but she added, "I would wonder how long that would take and how long it's fair to keep [the child] in foster care waiting for her mother to be able to take care of her."

The trial court found that clear and convincing evidence was presented warranting termination of Brown's parental rights pursuant to MCL 712A.19b(3)(c)(i) and (3)(g). The trial court also found that termination of Brown's parental rights was in the child's best interests. An order terminating Brown's parental rights was entered in June 2009. Brown now appeals as of right.

II. Statutory Grounds For Termination

A. Standard Of Review

Brown challenges the trial court's findings that clear and convincing evidence was presented warranting termination of her parental rights pursuant to MCL 712A.19b(3)(c)(i) and (g). To terminate parental rights, the trial court must find that the DHS has proven at least one of the statutory grounds for termination by clear and convincing evidence.² We review for clear error a trial court's decision terminating parental rights.³ A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that

² MCL 712A.19b(3); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

³ MCR 3.977(J); *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *Sours*, 459 Mich at 633.

a mistake has been made.⁴ Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁵

B. MCL 712A.19b(3)(c)(i)

Brown contends that the trial court erred in terminating her parental rights pursuant to MCL 712A.19b(3)(c)(i). Brown first argues that whether the DHS made sufficient efforts to help her, given her limited intellect as well as her young age, is for this Court to decide. Brown has failed to provide any authority to support this contention. “It is not enough for an appellant . . . to simply announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claim, or unravel or elaborate for him his argument, and then search for authority to either sustain or reject his position.”⁶

Moreover, to the extent that Brown is trying to argue that the DHS did not reasonably accommodate her disability, that is, her intellectual limitations, she has failed to raise this argument in a timely manner below. In *In re Terry*,⁷ this Court acknowledged that the Americans with Disabilities Act (“ADA”) requires that a public agency make reasonable accommodations for those individuals with disabilities so that all persons may receive the benefits of public programs and services. However, this Court stated that any claim that the agency violated the ADA must be raised in a timely manner so that reasonable accommodations can be made.⁸ This Court explained, “Any claim that the parent’s rights under the ADA were violated must be raised well before a dispositional hearing regarding whether to terminate her parental rights, and the failure to timely raise the issue constitutes a waiver.”⁹

Additionally, on the record presented to this Court, we conclude that Brown’s argument lacks merit. The *Terry* Court found that the record did not support the respondent’s claim that the petitioner did not reasonably accommodate her disability because it was undisputed that the respondent was provided with extensive services.¹⁰ Here, Brown was offered numerous services, which included hands on assistance in a teen parenting program, psychological services, and substance abuse classes. The record therefore supports that the DHS took measures to reasonably accommodate her disability and her young age.

The trial court found that the condition that led to adjudication, specifically Brown’s inability to provide for the child’s safety, welfare, and care, continued to exist. Brown does not appear to argue that this finding was erroneous. Rather, she argues that the trial court erred in

⁴ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁵ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

⁶ *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

⁷ *In re Terry*, 240 Mich App 14, 25; 610 NW2d 563 (2000).

⁸ *Id.* at 26.

⁹ *Id.* at 26 n 5.

¹⁰ *Id.* at 27.

finding that there was no reasonable likelihood that the condition would be rectified within a reasonable time considering the child's age. We disagree.

In *In re Terry*, the Court found that the respondent's contention that she needed more assistance to properly care for her children actually provided additional support to terminate her parental rights.¹¹ This Court stated that after the respondent's children came within the jurisdiction of the court, a parent, whether disabled or not, must demonstrate that she can meet the children's basic needs before they will be returned to the respondent's care.¹² "If a parent cannot or will not meet her irreducible minimum parental responsibilities, the needs of the child must prevail over the needs of the parent."¹³

Brown testified below that it would be helpful if the trial court gave her another six months to participate in more services. However, the caseworker disagreed. The caseworker testified that parenting issues had existed during the 14 months the child had been in foster care and continued to exist. The child was not yet two years of age when placed in foster care and there was no indicator that six additional months of services would result in any progress. The caseworker was asked if Brown would be able to show any progress if given an additional six months, and she responded, "I don't think it would be substantial if she were able to do that in six months."

The record clearly supported that Brown was not in a position to provide for the child's basic needs and that the condition that led to adjudication, i.e., Brown's inability to provide for her child, would not be rectified within a reasonable time considering the child's age. Thus, termination was warranted pursuant to MCL 712A.19b(3)(c)(i).

C. MCL 712A.19b(3)(g)

Brown next contends that the trial court erred in terminating her parental rights pursuant to MCL 712A.19b(3)(g). Brown argues that the trial court should have delayed termination in light of the serious efforts she had made during the case.

The case service plan provided that Brown would make efforts towards improving her parenting skills by attending parenting classes on a weekly basis and utilizing and demonstrating learned parenting skills during her weekly visitation with the child; would improve her personal emotional stability by participating in weekly therapy sessions and identifying emotional triggers; and would recognize the importance of utilizing resources in her life. And testimony revealed that there were times during this case when Brown made progress. However, evidence showed that Brown was referred to outreach counseling in August 2008, but the counselor was unable to meet with Brown until October 2008, due to his inability to reach Brown for several weeks. Evidence further showed that, in November 2008, Brown became very defensive in

¹¹ *Id.* at 28.

¹² *Id.*

¹³ *Id.*

counseling and that the counselor planned to discontinue counseling if Brown did not become more willing to participate. Although Brown's attitude improved in January 2009, Brown subsequently had difficulties interacting appropriately with adults in authority roles. There was also evidence showing that Brown's visits with the child were not successful.

Brown's failure to fully comply with the case service plan is evidence of her failure to provide proper care for the child.¹⁴ There was also evidence supporting the finding that there was no reasonable expectation that Brown would be able to provide proper care within a reasonable time considering the child's age. The caseworker stated that Brown had been given ample time and services to display that she could become a mature parent. The caseworker concluded that Brown did not have the capability to be mature enough to visit her child, let alone take care of her full time. The caseworker also concluded that Brown had not shown that she could provide a strong emotional bond to the child. Finally, the caseworker did not think Brown would make substantial progress even if given additional time. Based on this evidence, we find that the trial court did not clearly err in terminating Brown's parental rights pursuant to MCL 712A.19b(3)(g).

III. Best Interests Determination

A. Standard Of Review

Brown contends that the trial court erred in finding that termination was in the child's best interests. Once the DHS has established a statutory ground for termination by clear and convincing evidence, if the trial court also finds from evidence on the whole record that termination is clearly in the child's best interests, then the trial court shall order termination of parental rights.¹⁵ There is no specific burden on either party to present evidence of the children's best interests; rather, the trial court should weigh all evidence available.¹⁶ We review the trial court's decision regarding the child's best interests for clear error.¹⁷

B. Analysis

The caseworker opined that termination was in the child's best interest because the child needed stability, especially with the development delays the child was experiencing. The caseworker testified that a bond assessment was performed, and it was found that there was not a strong bond between Brown and the child. Testimony further revealed that the child was doing well in foster care and had progressed.

¹⁴ *JK*, 468 Mich at 214; *Trejo*, 462 Mich at 360-363, 361, n 16.

¹⁵ MCL 712A.19b(5); *In re Hansen*, 285 Mich App 158, 164; 774 NW2d 698 (2009); *Trejo*, 462 Mich at 350.

¹⁶ *Trejo*, 462 Mich at 354.

¹⁷ *Rood*, 483 Mich at 90-91; *Trejo*, 462 Mich at 356-357.

Given Brown's failure to improve her parenting skills, the lack of a strong bond between Brown and the child, and the fact that Brown was doing well in foster care, we find that the trial court did not clearly err in finding that termination was in the child's best interests.

Affirmed.

/s/ Michael J. Talbot
/s/ William C. Whitbeck
/s/ Donald S. Owens