

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of N.T.M., D.S.S., and T.B.M.,
Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

QUENITA JENISE MINTER-SMITH,

Respondent-Appellant,

and

NATHANAEL SMITH a/k/a NATHANIEL
SMITH,

Respondent.

UNPUBLISHED

April 13, 2010

No. 294148

Macomb Circuit Court

Family Division

LC Nos. 2008-000314-NA;

2008-000315-NA;

2008-000316-NA

Before: JANSEN, P.J., and CAVANAGH and K. F. KELLY, JJ.

PER CURIAM.

Respondent Quenita Minter-Smith appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

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 McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). The trial court must also find clear and convincing evidence that termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5). This Court reviews a trial court's factual findings in an order terminating parental rights for clear error. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Because the trial court found that the children came within its jurisdiction on the basis of the children's father's no-contest plea at the adjudication, petitioner was required to provide legally admissible evidence at the termination hearing to support the statutory grounds for

termination of respondent's parental rights. MCR 3.977(F)(1)(b); *In re CR*, 250 Mich App 185, 205; 646 NW2d 506 (2002). Petitioner did not present clear and convincing legally admissible evidence to support termination pursuant to MCL 712A.19b(3)(c)(i) and (g). However, any error in terminating respondent's parental rights under these subsections was harmless because the trial court needed clear and convincing evidence of only one statutory ground to support its termination order. See *In re McIntyre*, 192 Mich App at 50. There was clear and convincing, legally admissible evidence that there was a reasonable likelihood, based on respondent's conduct and capacity, that the children would be harmed if they were returned to respondent's home supporting termination pursuant to MCL 712A.19b(3)(j).

Respondent failed to comply with the parent/agency agreement until June 2009. Respondent did not participate in any psychiatric or psychological services, did not attend parenting classes, did not submit random drug screens, and did not have suitable housing. Respondent's behavior during visitation was erratic and, as a result, the trial court suspended respondent's visitation until she completed a psychiatric evaluation through Community Mental Health to assess her behavior. The foster care worker observed respondent's behavior at visitation. Respondent would arrive at the agency around 7:30 a.m. to wait for a 4:00 p.m. visit. After waiting at the agency all day for the visit, once the visits finally began, respondent reported that she could only stay for about 20 minutes because she had something else to do. Then respondent would leave the visits after 15 to 30 minutes. Respondent did not interact with the children during the visits. During many of the visits, respondent sat and stared at the wall, not communicating with the children. When she did communicate with the children, she said things that did not make sense or she yelled at them to listen to the foster care worker who was supervising the visit. Many times, the children played with toys during the visit and acted as if respondent was not there. The foster care worker observed that D.S.S. laughed when respondent acted differently, but that N.T.M. appeared to be frightened.

Respondent's housing throughout the case was unstable and unsuitable. On February 13, 2009, the foster care worker visited respondent's home to perform a home study and found the conditions of the home to be completely unlivable. The home did not have plumbing, and when respondent flushed the toilet the waste went right to the basement. There was about a foot of water on the basement floor. Respondent did not have a refrigerator and stored her food outside in a cooler. The kitchen looked like a laundry room because there were clothes everywhere in the kitchen. The foster care worker considered calling Protective Services for respondent because she did not believe that anyone should be living in that home, but then respondent told her that she had moved into a Salvation Army shelter. However, on March 20, 2009, respondent had been kicked out of the Salvation Army shelter and was again residing in the home without plumbing. Respondent secured a studio apartment on July 12, 2009. Petitioner did not have time to perform a home study before the hearing because respondent's official move-in date was just one month before the termination hearing was scheduled and respondent did not have anything in the apartment yet. The foster care worker did not believe that a studio apartment would be appropriate for respondent and three children aged seven, five, and one.

Respondent's housing instability also caused problems with her mental health services. At the time of the final date of the termination hearing, respondent still had not completed a psychiatric evaluation or participated in any counseling. The foster care worker explained that respondent had to participate in Community Mental Health services in the county in which she

resided. When respondent moved from Macomb County to Wayne County and back, she had to start over with services in the county to which she had just moved. Although the foster care worker testified that respondent had refused psychiatric services and medication, her transience also contributed to her non-compliance.

Based on respondent's behavior and conduct throughout the case, it was clear that she needed psychiatric services. However, as of August 12, 2009, respondent had not yet completed a psychiatric evaluation to determine the extent of her needs or her disability. The trial court had suspended the termination hearing in March 2009, to allow petitioner more time to adequately assist respondent in attaining the services that she clearly needed. When the termination hearing resumed in August 2009, and the foster care worker had spent more time actively pursuing services for respondent and respondent was assigned a guardian, respondent had still not participated in any meaningful way in services. There was still no more information to assess respondent's condition. Although respondent clearly needed help, the purpose of the child protective proceedings is the protection of the children, and the juvenile code is intended to protect the children from unfit homes rather than to punish their parents. See *In re Brock*, 442 Mich 101, 107-108; 499 NW2d 752 (1993). After 17 months of foster care, these children were no closer to reunification with their mother. Considering the clear and convincing evidence of respondent's erratic behavior during visitation, her refusal to submit to psychiatric services and medication, her failure to comply with the parent/agency agreement, and her unstable and unsuitable housing situation, the trial court did not err in concluding that there was a reasonable likelihood that the children would be harmed if returned to respondent's home.

There was clear and convincing evidence that termination was in the children's best interests. MCL 712A.19b(5). Respondent's living arrangements throughout the case consisted of shelters, an unlivable home, and a home from which she was evicted. It was not in the children's best interests to be returned to any of these dwellings. Respondent did obtain a studio apartment one month before the final date of the termination hearing, however the children had been in foster care for 17 months. Based on respondent's pattern of unstable housing, it was unlikely that respondent would retain this housing for an extended period of time.

Moreover, the children were in special education and required some help and attention in school. N.T.M. and D.S.S. receive social security benefits. With respondent just beginning to meet her own needs, it was unlikely that she would be able to meet the children's special needs within a reasonable time considering their ages.

Considering this evidence combined with the appointment of a full guardian for respondent, the trial court did not err in concluding that termination was in the children's best interests.

Affirmed.

/s/ Kathleen Jansen
/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly