

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SHERRY ROSE STEWART and
ANTHONY JOSEPH STEWART, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DENISE RENE STEWART,

Respondent-Appellant,

and

MILFORD MICHAEL STEWART, ROGER
SASSON, and JAMES MILLER

Respondents.

UNPUBLISHED

April 20, 2010

No. 293495

Wayne Circuit Court

Family Division

LC No. 07-469930

Before: M. J. KELLY, P.J., and TALBOT and WILDER, JJ.

PER CURIAM.

Respondent Denise Rene Stewart appeals as of right the trial court's order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g) and (j).¹ Because we conclude that there were no errors warranting relief, we affirm. This appeal has been decided without oral argument under MCR 7.214(E).

Respondent first argues that the trial court erred when it found that petitioner had demonstrated grounds for termination of respondent's parental rights by clear and convincing

¹ An older sibling, Milford Stewart, was also involved in the proceedings. However, due to Milford's age and at his request, the trial court did not terminate respondent's parental right to him. The parental rights of respondent-fathers were also terminated, but they are not parties to this appeal. Although the termination order also cites MCL 712a.19b(3)(a)(ii), the parties agree that this ground for termination does not apply to respondent mother.

evidence. Respondent also argues that the trial court erred when it determined that termination of her parental rights was in the children's best interests.

Petitioner has the burden of proving a statutory ground for termination by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). We review the trial court's findings of fact for clear error. MCR 3.977(J). A finding of fact is clearly erroneous when this court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Once a statutory ground for termination has been proven, the trial court shall order termination of parental rights if it finds "that termination of parental rights is in the child's best interests[.]" MCL 712A.19b(5). We review the trial court's best interests finding for clear error. *In re Trejo*, 462 Mich at 356-357.

Under MCL 712A.19b(3)(c)(i), a court may terminate a parent's parental rights if it determines that, "[t]he 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." A court may terminate a parent's parental rights if it determines that, "[t]he 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." MCL 712A.19b(3)(g). Finally, under MCL 712A.19b(3)(j) a court may terminate a parent's parental rights if it determines that, "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent."

The trial court did not clearly err when it found that respondent would not be able to provide proper care and custody for the children within a reasonable time. Although respondent made some effort at the last minute to comply with her parent-agency agreement, her virtually total non-compliance for two years prior to that supports the trial court's finding. In addition, though respondent had apparently begun parenting classes and drug treatment classes, she had not yet completed them. Nor had she addressed her other difficulties, including finding suitable housing and employment, and dealing with her mental health issues. A parent's failure to comply with the parent-agency agreement is evidence of a parent's failure to provide proper care and custody for the child. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003); *In re Trejo*, 462 Mich at 360-363. Given respondent's very late start, it was also reasonable for the court to conclude that respondent would be unable to properly care for the children within a reasonable time.

Nor did the trial court err when it determined that the conditions that led to the adjudication continued to exist and there was no reasonable likelihood that the conditions would be rectified within a reasonable time. The children were taken into care due to respondent's lack of parenting skills, her failure to obtain education for the children, the "deplorable" housing conditions in which she and the children lived, and possible drug use. As of the date of the bench trial, the children were attending school. However, this was not due to any effort on respondent's part, and she had not yet completed the parenting classes, which presumably would aid her in maintaining the conditions necessary to foster the children's education. In addition, she was still living in temporary housing and had failed to submit to a number of the random drug screens. Thus, the conditions that led to the adjudication continued to exist. Given the amount of time already spent trying to rectify the conditions at issue, the trial court did not

clearly err in finding that the conditions that led to the adjudication would not be rectified within a reasonable time.

The evidence also supported the trial court's finding that there was a reasonable likelihood that the children would be harmed if returned to respondent's care. Even apart from the situation that led to the children's placement in care, respondent's continued failure to establish a stable, self-sufficient lifestyle showed a reasonable likelihood of a future risk of exposure to dangerous home conditions. Respondent focuses on the lack of physical danger to the children, and the fact that she did not physically abuse them. While this is true, the history of neglect, and the apparently still unresolved underlying mental health issues that appears to have led to that neglect, supports a finding that the children would likely be again neglected if returned to respondent's care. This constitutes the likelihood of future harm. See MCL 722.622(j).

We also conclude that the trial court's best interests finding was not clearly erroneous. Details of the children's educational deficits are documented in the file, along with the indication that they will continue to need individual developmental support. Respondent is not in a position to provide that support. In addition, two of petitioner's caseworkers testified that they believed that termination was in the children's best interests due to their needs, the length of time in care, the fact they were happy and thriving in their foster care placement, and the fact that they needed permanence.

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Kelly
/s/ Michael J. Talbot
/s/ Kurtis T. Wilder