

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED

July 27, 2010

In the Matter of FOREST and JENKINS, Minors.

No. 295080  
Wayne Circuit Court  
Family Division  
LC No. 03-422870

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Before: SAWYER, P.J., and BANDSTRA and WHITBECK, JJ.

PER CURIAM.

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

Termination of parental rights requires a finding that at least one of the statutory grounds contained in MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Trejo Minors*, 462 Mich 341, 350, 356-357; 612 NW2d 407 (2000). Once a statutory ground has been proven, the trial court must order termination of parental rights if it finds that termination is in the children's best interests. MCL 712A.19b(5). Trial court findings are reviewed for clear error. MCR 3.977(J); *In re Trejo*, 462 Mich at 356-357.

The minor children initially came within the court's jurisdiction because respondent was homeless and had no legal source of income. Her own testimony established that, five years later, she was still homeless and still had no legal source of income. Moreover, her parenting skills remained poor, and she did not demonstrate that she could remain drug and alcohol free for any substantial length of time. Respondent asked the trial court to give her more time to achieve her treatment goals. However, "the Legislature did not intend that children be left indefinitely in foster care, but rather that parental rights be terminated if the conditions leading to the proceedings could not be rectified within a reasonable time." *In re Dahms Minors*, 187 Mich App 644, 647; 468 NW2d 315 (1991), citing MCL 712A.19b(3)(c)(i). Given the evidence, the trial court did not clearly err in holding that respondent had failed to rectify the conditions that led to adjudication and that there was no reasonable likelihood that she would be able to do so in a reasonable time, considering the children's ages and special needs.

Respondent also failed to provide proper care and custody for her oldest child, D. Forest.<sup>1</sup> For the first five years of his life, D. Forest lived with respondent, who was addicted to drugs and alcohol, mentally ill, and saw nothing wrong with whipping him or with knocking him to the floor for his behavior. She did not feed him properly or keep him clean when he was briefly returned to her custody four years later. Respondent was under court order to equip herself to provide proper care and custody of her children by conquering her drug and alcohol addiction, complying with psychiatric treatment, learning parenting skills, and finding housing and legal income. She may have physically complied with the parent agency agreement in some respects, but a respondent must do more than physically comply with services offered. She must also benefit from the services such that she can provide a safe, nurturing home for the minor child, or the family will not be reunified. *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005).

Here, respondent did not benefit from five years of services. Her own testimony established that she remained jobless and homeless. Other evidence showed that her parenting ability had not improved. While she was in treatment at the time of the termination hearing, she had been in various types of treatment for the five previous years without success. The evidence showed that she failed to accomplish any of the objectives of her treatment plan. Respondent's failure to comply with the court's order is indicative of continuing neglect. *In re Trejo*, 462 Mich at 361 n 16. The trial court did not clearly err in holding that respondent failed to provide proper care and custody for the minor children and that there was no reasonable expectation that she would be able to do so within a reasonable time. MCL 712A.19b(3)(g).

The court also did not err in finding that petitioner had established a ground for termination under MCL 712A.19b(3)(j). Although respondent argues that she never hurt her children, she admitted that she caused a prominent scar on D. Forest's face during a whipping, and that she knocked him to the floor for speaking disrespectfully to his father's girlfriend when he was around four years old. The evidence additionally established that she harmed D. Forest when he was returned to her care in 2008 by failing to feed him and keep him clean and that she failed to benefit from parenting classes. Respondent's failure to substantially comply with the court-ordered case service plan "is evidence that return of the child to the parent may cause a substantial risk of harm to the child's life, physical health, or mental well being." *In re Trejo*, 462 Mich at 346, n 3, quoting MCR 5.973(C)(4)(b) (now MCR 3.976[E][2]). Considering this evidence, the trial court did not clearly err in finding that there was a reasonable expectation that the minor children would be harmed if they were returned to respondent's home.

Respondent also argues that petitioner failed to make reasonable efforts to reunify the children with her because she did not receive the appropriate mental health treatment and medication regimen or other assistance that would have helped her to regain custody of her children. Under most circumstances, including those present in this case, the statute requires the state to make "[r]easonable efforts to reunify the child and family." *In re Rood*, 483 Mich 73,

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<sup>1</sup> The second child, M. D. Jenkins, lived with his father in Ohio from a very young age, and twins A. M. Jenkins and A. D. Jenkins were removed at birth.

99-100; 763 NW2d 587 (2009), quoting MCL 712A.19a(2). The adequacy of the state's attempts to provide services "may bear on whether there is sufficient evidence to terminate a parent's rights." *In re Rood*, 483 Mich at 89, citing *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005).

Respondent argues that she was diagnosed with bipolar disorder three years ago and only received appropriate medication six months ago when she was prescribed Lexapro and Metazapan. Yet the record establishes that petitioner provided respondent with multiple services for five years, including inpatient and outpatient substance abuse treatment, individual psychotherapy, psychiatric services, multiple parenting classes, and job search assistance. Although respondent testified that she was diagnosed as bipolar in 2006, nothing in the record supports that testimony. The DHS had respondent evaluated at the outset of this case, and the evaluator opined that respondent suffered from cannabis abuse and depressive disorder. She was first authorized for a psychiatric evaluation on May 9, 2005, but did not actually get evaluated until January 12, 2008, when she was diagnosed with Major Depressive Disorder, Recurrent, Severe With Psychotic Features, and Narcissistic Personality Disorder. She was prescribed medication and reported that she was taking it as directed. However, a worker found a full pill bottle on respondent's floor, with a refill date of many months earlier. A letter of referral from Sacred Heart dated October 14, 2009, lists four medications, none of which appears to be prescribed for bipolar disorder. There appears to be no factual basis for respondent's argument that she did not receive appropriate treatment for her mental illnesses.

Even if there were a factual basis for respondent's claim, there is no legal basis for this argument. In order to successfully claim a lack of reasonable efforts, a respondent must establish that he or she would have fared better if the petitioner offered other services. *In re Fried*, 266 Mich App at 543. Respondent did not establish how she would have fared better if DHS had offered other services. She failed to specify what other services would have helped her reunite with her children. She did not say what she would have liked DHS to do that it did not do, except to get her on medication sooner for an illness she does not appear to have.

Finally, respondent argues that termination was not in the children's best interests because DHS admitted there is a bond between her and the children, and because she visited on a regular basis and employed the parenting advice she received. We disagree. Once a court finds clear and convincing evidence establishing a statutory ground for termination of parental rights, and that termination of parental rights is in the best interests of the children, the court must order termination of parental rights. MCL 712A.19b(5). Determination of the child's best interest can be based on the record as a whole. *In re Trejo*, 462 Mich at 353. The existence of a bond between parent and children can be outweighed by other considerations in determining the best interests of children. See, e.g., *In re LE*, 278 Mich App 1, 29-30; 747 NW2d 883 (2008).

Here, the record as a whole established that termination of respondent's parental rights was in the minor children's best interests. Respondent admits to having used drugs three days before the scheduled termination hearing because she did not care. While she did go into treatment days later, and while she was in treatment at the time of the termination hearing, a five-year history established that she was unable to remain clean and sober for any substantial period of time. She could not provide her children with the stability and permanence they needed; she could not even provide them with a home of their own or money to buy food. She did not know

when that might change. The children had been in foster care for five years; the two youngest have never lived with respondent. The trial court did not clearly err by finding that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ David H. Sawyer

/s/ Richard A. Bandstra

/s/ William C. Whitbeck