

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

August 17, 2010

In the Matter of D.C.H., Jr., Minor.

No. 295513

Van Buren Circuit Court

Family Division

LC No. 09-016392-NA

Before: M.J. KELLY, P.J., and MARKEY and OWENS, JJ.

MEMORANDUM.

Respondent-appellant mother appeals by right the trial court's order terminating her parental rights to the minor child under MCL 712A.19b(3)(b)(i) and (j). We affirm.

The trial court did not clearly err in finding that the statutory grounds for termination of respondent mother's parental rights were established by clear and convincing evidence. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The evidence showed respondent mother's use of heroin during pregnancy caused the child's severe and permanent special needs. The minor child was at risk of choking to death if not given constant, undivided attention, and required a multitude of medical and therapy appointments. The evidence showed respondent mother did not participate in services and remained homeless and unemployed during this proceeding. Neither she nor the maternal grandmother could provide the calm, quiet, sanitary environment or the uninterrupted, continuous attention the minor child required, and his very life would be at risk if placed in their care. Respondent mother's doubt regarding the seriousness of her child's condition and her failure during the eight-month proceeding to attend his medical or therapy appointments or visit him regularly, or to participate in services designed to facilitate her own rehabilitation, clearly supported the trial court's finding that there was a reasonable likelihood the minor child would suffer additional injury or abuse if placed in respondent mother's care, and that her conduct would cause him harm. MCL 712A.19b(3)(b)(i) and (j).

Further, the evidence showed termination of respondent's parental rights was clearly in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich at 356-357. Respondent mother had failed to resolve her addiction, poverty and homelessness for several years, and the minor child was at risk of death if not given constant, undivided attention. Given no possibility of reunification within a reasonable time, the trial court did not err in finding termination of respondent mother's parental rights in the minor child's best interests.

Finally, respondent mother argues the trial court violated her right to a fundamentally fair proceeding by terminating her parental rights without providing her additional time to rectify her addiction, homelessness and poverty, and by failing to place the minor child under the maternal grandmother's guardianship instead of terminating parental rights.

There is no question that parents have a due process liberty interest in caring for their children and that child protective proceedings affect that liberty interest. *In re AMB*, 248 Mich App 144, 209; 640 NW2d 262 (2001). The Supreme Court enunciated factors to evaluate whether procedures are adequate to meet the requirement of due process in *Mathews v Eldridge*, 424 US 319, 335; 96 S Ct 893; 47 L Ed 2d 18 (1976):

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

The fundamental principle underlying these factors, which constitute a balancing test, is that due process "is flexible and calls for such procedural protections as the particular situation demands." *Id.* at 334, quoting *Morrissey v Brewer*, 408 US 471, 481; 92 S Ct 2593; 33 L Ed 2d 484 (1972).

Respondent mother's liberty interest in parenting the minor child was significant, but the evidence showed she had not addressed her addiction, poverty, or homelessness for at least five years, and that the maternal grandmother cared for respondent mother's other five children and could not possibly provide the undivided attention and quiet environment the minor child required. Allowing respondent mother additional time would have had little or no probative value as a procedural safeguard given her history and lack of any possibility she would be able to safely parent the child within a reasonable time. The minor child's medical needs were so extensive and serious that state intervention was required to protect his very life. Given clear and convincing evidence of grounds to terminate her parental rights under MCL 712A.19b(3)(b)(i) and (j), the state's interest in protecting the child clearly outweighed respondent mother's liberty interest in his care and custody.

The trial court did not violate respondent mother's due process right to a fundamentally fair proceeding.

We affirm.

/s/ Michael J. Kelly
/s/ Jane E. Markey
/s/ Donald S. Owens