

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KENDRA GULLEY, ERROL
CLARK, JR., and KIERRA ROLAX, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

KEISHA BUTLER,

Respondent-Appellant,

and

DOSSIE GULLEY, JR., ERROL CLARK, SR., and
KIRK ROLAX,

Respondents.

Before: Wilder, P.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from a trial court order terminating her parental rights to her three minor children under MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i). We affirm.

The Family Independence Agency (“FIA”) filed a termination petition alleging instances of neglect and/or abuse by respondent while the children were in respondent’s custody. Specifically, the petition alleged that respondent (1) failed to follow through with medical treatment for the children and, particularly, that Errol had asthma and a bowel condition; (2) failed to cooperate with a public health nurse, missed appointments and failed to keep Errol’s immunizations current; (3) was unwilling or unable to maintain suitable housing for the children, placing the children’s health at risk; (4) demonstrated cruel

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and demeaning parenting techniques towards the children by swearing at them and using corporal punishment; (5) refused to cooperate with a substance abuse assessment although her yard was littered with empty alcohol containers; and (6) refused to cooperate with the Families First program and the case worker to improve conditions in the home. After an adjudicative hearing on the petition, at which respondent admitted the first three counts of the petition were true, the trial court removed the children from respondent's custody and placed them in relative foster care.

After an initial dispositional hearing, the trial court entered a dispositional order designed to rectify the abuse and neglect resulting from respondent's parenting deficiencies. Although the record discloses that respondent made some initial attempts to comply with the orders and remedy the conditions, her efforts proved unsuccessful. Consequently, petitioner filed a supplemental termination petition alleging that "182 days or more have elapsed since the issuance of an initial dispositional order and the 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 age of the children."

At the termination hearing in this matter, evidence was introduced concerning respondent's progress while she was under the court's jurisdiction. At the conclusion of the hearing, the trial court found that the initial conditions that brought the minor children within the court's jurisdiction, particularly the housing problem and the lack of attention paid to the children, continued to exist throughout the dispositional process. Further, the trial court found that "there is no reasonable likelihood that there will be an improvement in these underlying problems in a reasonable time, given the age of any of these children" and "it is not in the best interests of the children to not terminate the mother's parental rights." Accordingly, the trial court terminated respondent's parental rights.

On appeal, respondent first argues that the trial court wrongly terminated her parental rights solely on the basis that she did not follow the FIA treatment plan and dispositional orders issued by the trial court. We disagree.

This Court reviews a trial court's factual findings in a parental termination case for clear error. MCR 5.974(I). A finding of fact is clearly erroneous when the reviewing court has a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Deference must be accorded to the trial court's assessment of the credibility of witnesses before it. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991). The trial court's ultimate decision regarding termination is reviewed in its entirety for clear error. *In re Hamlet (After Remand)*, 225 Mich App 505, 515; 571 NW2d 750 (1997).

Respondent's parental rights were terminated under MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i), which provides:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 days or more have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The 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 age of the child.

As noted, the minor children initially came within the jurisdiction of the trial court because of abuse and neglect allegations while the children were in the custody of respondent. Because the children were removed from respondent's home and placed with their grandparents pending a termination hearing, respondent's parental fitness could only be evaluated by the trial court in other ways. *In re Sours Minors*, ___ Mich ___; ___ NW2d ___ (1999). Thus, the trial court ordered respondent to attend parenting classes, maintain frequent contact with FIA caseworkers, visit her children on a regular basis and refrain from abusing or neglecting the children during visitation, obtain suitable housing for herself and the children, participate in substance abuse treatment and refrain from the use of alcohol or drugs, and continue mental health treatment.

Respondent correctly notes that a parent's failure to complete the terms of a court-ordered treatment plan does not alone establish a basis for termination of parental rights. There must also be clear and convincing evidence of the statutory grounds for termination. *In re Bedwell*, 160 Mich App 168, 176; 408 NW2d 65 (1987). However, noncompliance with a treatment plan and dispositional order is a relevant consideration in a termination proceeding as long as there is evidence that the treatment plan and dispositional order was necessary to improve the parent's deficiencies. *Id.* See *In the Matter of Mason*, 140 Mich App 734, 737; 364 NW2d 301 (1985). In the instant case, the trial court expressly determined that successful completion of the treatment plan and the trial court's order was necessary in order to correct respondent's parenting deficiencies and to insure the children's physical and emotional well-being. In its findings, the trial court explained at length why respondent's efforts to comply with the dispositional orders were important to correct her parenting deficiencies. Thus, while not dispositive, respondent's failure to follow through with the trial court's dispositional order was a proper consideration in determining whether her parental rights should be terminated. Contrary to respondent's argument, the trial court did not base its decision to terminate respondent's parental rights solely on her failure to comply with the dispositional orders; rather, the trial court simply recognized that there was a connection between respondent's failure to comply with the orders and her ability to properly care for the minor children in the foreseeable future. Accordingly, we find no error with the trial court's findings.

Respondent next argues that the trial court erred in terminating her parental rights because there was insufficient evidence to support termination. We disagree.

At the termination hearing, there was considerable evidence concerning respondent's failure to meet many of the basic parenting responsibilities, as well as those responsibilities imposed by the trial court that would have helped ameliorate the continuing neglect. In particular, evidence was presented that respondent failed to attend parenting classes to correct her demeaning and abusive behavior to the

minor children, failed to secure adequate housing for the children, failed to visit her children on a regular basis, often going several months without seeing the children at all, and failed to maintain frequent contact with her case worker who was responsible for providing assistance in obtaining housing, mental health treatment, parenting classes and additional benefits and services necessary to correct the parenting deficiencies. When these factors are viewed together, we conclude that the trial court did not clearly err in finding that the statutory ground for termination under MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i) was established by clear and convincing evidence. MCR 5.974(I); *Miller, supra*. Further, respondent failed to show that termination of her parental rights was clearly not in the children's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997). Thus, the trial court did not clearly err in terminating respondent's parental rights to the minor children. *Id.*

Affirmed.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Brian K. Zahra