

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TIMMOTHY STEVIN DUNIGAN,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

THERESA GOLDIE DUNIGAN,

Respondent-Appellant,

and

TIMMOTHY S. BOWLING,

Respondent.

UNPUBLISHED

September 15, 2000

No. 221687

Wayne Circuit Court

Family Division

LC No. 95-327406

Before: Owens, P.J., and Jansen and R. B. Burns*, JJ.

PER CURIAM.

Respondent-appellant mother¹, Theresa Dunigan, appeals as of right from the family court's order of July 1, 1999, terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), and (j); MSA 27.3178(598.19b)(3)(c)(i), (g), and (j). We affirm.

¹ Respondent Timmothy Bowling's parental rights were also terminated to the minor child; however he is not a party to this appeal. Therefore, respondent will refer solely to respondent-appellant mother in this opinion.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Respondent first came to the court's attention in May 1995 when a petition was filed concerning her three oldest children. The child involved in this appeal was born in September 1996 and by that time the older three children were temporary wards of the court and in foster care. The petition concerning the child in this appeal was filed on March 25, 1997, and alleged that the child had been seen on March 18, 1997, at Children's Hospital with x-rays revealing two rib fractures and a skull fracture that were two weeks to three months old. Respondent had no explanation for the injuries and denied knowledge of their occurrence.

The termination hearing was held on April 30, 1999 and May 25, 1999. The caseworker testified that she was recommending termination of parental rights because the child had been in foster care for two years (and was 2½ years old), that the older children had been in foster care for four years, that it took nearly two years for respondent to have the children on extended visits, that respondent could not explain the child's skull and rib fractures, and that respondent's compliance with the parent-agency treatment plan had been sporadic. The family court found that the "areas of concern" were that respondent made thirty-five of forty-seven visits, that she had not been able to regain custody of the other children, that the child had been in foster care for two years and he was 2½ years old, that she tended to minimize the child's physical abuse, and that respondent did not have the skills and insights to parent a "gifted child" such as this child.

The family court must find that one of the statutory grounds has been proven by clear and convincing evidence to terminate parental rights. MCL 712A.19b(3); MSA 27.3178(598.19b)(3); MCR 5.974(F)(3). We review the family court's findings and decision under the clearly erroneous standard of review. MCR 5.974(I); *In re Trejo Minors*, 462 Mich 341; 356-357 NW2d 2000.

Our review of the record reveals that the family court did not clearly err in determining that the allegations in the petition had been proved by clear and convincing evidence and that termination of parental rights was in the best interests of the child.² As noted by the family court, the child had been in foster care for most of his life. Respondent had never given any explanation for the serious injuries that the child suffered, namely, his skull and rib fractures. Consequently, there is no indication that the child would be in a safe environment if returned to respondent. Although there was evidence that respondent had made progress, as acknowledged by the family court, the child had been in foster care for over two years by the time of the adjudication hearing and respondent's compliance with the parent/agency agreement had been variable.

² We note that in *Trejo, supra*, p 357, our Supreme Court held that MCL 712A.19b(5); MSA 27.3178(598.19b)(5) allows a family court to find that termination of parental rights is clearly not in the child's best interests despite the establishment of one or more grounds for termination. The Court further noted that the probate court, like the family court in the present case, "went beyond the statutory best interest inquiry by concluding that termination was in the children's best interest." *Trejo, supra*, p 357. "The statute does not require that the court affirmatively find that termination is in the child's best interest." *Id.* Consequently, the family court in this case actually went beyond the statutory best interest finding and, in any event, we find that the family court did not clearly err in its assessment of the child's best interest.

Accordingly, on our review of the entire record, we cannot conclude that the family court's findings were clearly erroneous, or that its decision to terminate parental rights by finding

that the statutory grounds were proven by clear and convincing evidence and that termination was in the best interests of the child were clearly erroneous.

Affirmed.

/s/ Donald S. Owens

/s/ Kathleen Jansen

/s/ Robert B. Burns