

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SHEMIKA LENISE SHIRLEY,
ANTHONY DEANDRE ROSS, ALIYAH
SIMONE ROSS, and NYASHA RENEE POOL,
Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TAMMIE RENEE ROSS,

Respondent-Appellant,

and

ISAAC ROBERT SHIRLEY,

Respondent,

and

DWAYNE WILSON and MICHAEL JOHNSON,

Respondents-Not Participating.

Before: Cavanagh, P.J., and Talbot and Meter, JJ.

PER CURIAM.

Respondent appeals as of right the termination of her parental rights to her minor children, Shemika Lenise Shirley (DOB 5/15/88), Anthony Deandre Ross (DOB 5/21/90), Nyasha Renee Pool (DOB 9/27/91), and Aliyah Simone Ross (DOB 9/27/96), pursuant to MCL 712A.19b(3)(a)(ii); MSA 27.3178(598.19b)(3)(a)(ii) [parent has deserted the child for ninety-one or more days and has not sought custody of the child during that period], (c)(i) [conditions that led to adjudication continue to exist and are not likely to be rectified within a reasonable time],

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(g) [parent, without regard to intent, fails to provide proper care or custody for the child], and (j) [reasonable likelihood of harm if child is returned to parent's home]. We affirm.

Respondent argues that the family court erred in terminating her parental rights. A two-prong test applies to a family court's decision to terminate parental rights. First, the court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b; MSA 27.3178(598.19b) has been met by clear and convincing evidence. *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). This Court reviews the findings of fact under the clearly erroneous standard. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding of fact is clearly erroneous where the reviewing court is left with a definite and firm conviction that a mistake has been made. *Jackson*, *supra* at 25.

Once a statutory ground for termination has been met by clear and convincing evidence, the court must terminate parental rights unless "there exists clear evidence, on the whole record, that termination is not in the child's best interest." *In re Trejo*, 462 Mich 341, 356, 364-365; 612 NW2d 407 (2000); see also MCL 712A.19b(5); MSA 27.3178(598.19b)(5). The trial court's ultimate decision regarding termination is reviewed in its entirety for clear error. *In re Hall-Smith*, 222 Mich App 470, 472; 564 NW2d 156 (1997).

Petitioner filed an amended petition to have the court take temporary custody of the children on January 29, 1997. The petition was based on allegations that respondent neglected the children by failing to provide a suitable place to live and neglecting the special medical needs of the youngest child. The petition further alleged that respondent was incarcerated for shoplifting. At a hearing held on February 25, 1997, respondent admitted that she had failed to provide a suitable and stable home for the children and that she had been incarcerated since December 1996, for shoplifting. Respondent further testified that the youngest child was born four months premature and weighed only one pound and seven ounces at birth. Respondent denied using drugs while she was pregnant or having a history of drug use. Respondent admitted that she sometimes thought the youngest child's heart monitor was on when it actually was not on, and that it was a problem that she did not have a permanent home for the children. Respondent testified that when she turned herself in to police for the shoplifting charges, she planned on her cousin keeping the children; however, her cousin took the children to protective services.

At the February 25, 1997, hearing Mary Mueller, a social worker at Children's Hospital, also testified. According to Mueller, the youngest child was a patient in the newborn intensive care unit four times between September and December 1996. Mueller testified that the baby was born premature and underwent surgery after her birth because she had jejunal atresia, which is a blockage of the intestines. Mueller stated that the baby was discharged on October 24, 1996, with instructions to respondent on how to care for the baby with medications, an apnea monitor for her heart, and a feeding tube. Mueller testified that the baby was readmitted three more times and diagnosed with failure to thrive, apnea, and fever. Mueller further testified that on December 18, 1996, she filed a form with the Department of Social Services because she spoke with respondent on December 12, 1996, and respondent told her that she was having trouble caring for the baby and that she wanted her cousin to care for the baby; Mueller asked respondent to bring her cousin in for instructions on the baby's medical needs but respondent failed to do so.

Mueller further stated that during the baby's last admission, which was five days long, respondent was seen visiting the baby only once and could not be reached.

Toniya Benson, a worker for Ennis Center for Children, also testified at the February 25, 1997, hearing. Benson recommended a treatment plan for respondent that contained the following requirements: (1) drug and alcohol assessment, (2) demonstration of emotional and psychological ability to parent, (3) parenting classes, (4) individual and family counseling, (5) appropriate conduct with the children, (6) a psychological evaluation at the Clinic for Child Study, (7) a legal source of income, (8) suitable housing, (9) cooperation with petitioner and the Ennis Center for Children, (10) attendance at all hearings, (11) the maintenance of a consistent family bond through visitation, (12) compliance with the Department of Corrections, and (13) training in the specialized needs of the children. The court adopted this treatment plan and the children were placed in the temporary custody of petitioner.

The family court held several dispositional review and permanency planning hearings. At the August 6, 1997, review hearing Benson testified that respondent was released from jail on July 30, 1997. She further testified that two visitations were scheduled after respondent's release and respondent was late for one visit and completely missed the other visit. Benson stated that respondent was given information regarding housing and referred to parenting classes. According to Benson, respondent indicated she was willing to comply with the treatment plan; however, she did not sign the parent/agency agreement.

At the August 11, 1998, hearing, the court was informed that respondent relocated to Minnesota and maintained contact with the children by telephone. At the January 27, 1999, hearing, Benson explained that respondent had been out of town since April 1998; however, she received letters from Minnesota authorities stating that respondent completed parenting classes and drug screens, attended several counseling sessions and support groups in Minnesota, had suitable housing, and worked at White Castle, thus completing her parent/agency agreement with Minnesota authorities. Benson noted, however, that she was concerned regarding the lack of interaction between respondent and the children, who remained in Detroit. Respondent maintained that she was not trying to abandon her children by moving. The court ordered that the children be allowed to visit respondent in Minnesota for the Easter holiday; however, respondent was responsible for providing appropriate transportation for the children.

At the April 22, 1999, hearing Benson testified that there were scheduled visitations on January 27, 1999; February 2, 1999; and March 16, 1999; however, respondent failed to either attend the visits or call to cancel. According to Benson, she did not allow respondent to take the children for the Easter holiday because respondent said she was living in Detroit again and Benson did not have an address for respondent at that time. Benson stated that respondent's parent/agency agreement was comparative to the plan that respondent completed in Minnesota; however, respondent failed to complete her parenting time with the children in Michigan. Respondent testified that she moved back to Detroit prior to Easter because it was too expensive for her to travel between Minnesota and Michigan. Respondent further testified that she did not attend the February visit because she was unable to make her flight and that she left a message for Benson regarding the situation with a security guard at the agency. Respondent stated that she did not attend the March 16 visit because she and her baby were ill.

On June 23, 1999, petitioner filed a supplemental petition seeking permanent custody of the children because of respondent's failure to substantially comply with her treatment plan. On September 9, 1999, the family court held a hearing on petitioner's request. At the hearing, Benson testified that respondent never informed her that she moved to Minnesota; she became aware of respondent's relocation in April 1998, when a Minnesota caseworker contacted her. According to Benson, she had contact with respondent from July 1997, when respondent was released from jail, until April 1998. Benson testified that while respondent lived in Minnesota, which was from approximately April 1998 until March 1999, respondent called and asked about the children and sent them birthday cards and gifts; however, respondent only visited with the children once in November 1998, even though weekly visitations were scheduled during that time. Benson further testified that since respondent returned to Michigan she failed to comply with required drug screens and failed to visit the children on a regular basis. Benson testified that respondent's visitation with the children was suspended on June 23, 1999, when petitioner filed a petition for permanent custody.

Benson testified that the children had certain special needs. Benson stated that the three oldest children received counseling and attended special education classes and one of the children was hospitalized in May 1999 because he heard voices. Benson further testified that the youngest child continues to have medical difficulties. Benson concluded that, based on her experience, respondent would be unable to make progress on her parent/agency agreement within a reasonable time; therefore, Benson recommended that respondent's parental rights be terminated because the children needed a stable home and lifestyle.

The family court found that respondent failed to demonstrate "sufficient consistency in her relationship with the children to provide any indication she could successfully parent the children and assist them in continuing the progress they have made or provide appropriate emotional, physical or financial stability." The court noted that although respondent completed a portion of her treatment plan, she "made insufficient progress with her own problems to allow for family reunification." The court further noted that the children had serious behavioral, emotional, academic, and physical problems that needed to be addressed. The family court also found that respondent often missed visitations with the children and was late for visitations on numerous occasions. The court found that termination of respondent's parental rights was clearly not contrary to the children's best interests because they were in need of permanent placement and respondent "evidenced little intention to comply with the Parent Agency Agreement and there [was] no indication of her willingness or ability to do so." Therefore, the family court terminated respondent's parental rights on September 13, 1999.

On these facts, we conclude that the family court did not clearly err in terminating respondent's parental rights in this case. The court's findings on the statutory factors were not clearly erroneous. Furthermore, the family court's findings regarding the children's best interests were not clearly erroneous. See MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *Trejo, supra*.

Furthermore, we find respondent's contention that the termination of her parental rights was in violation of her right to a hearing to be without merit. As evidenced by a complete

transcript, the family court held a permanent custody hearing, at which respondent and her attorney were present, on September 9, 1999.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Michael J. Talbot

/s/ Patrick M. Meter