

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of GREGORY TYRONE
EDWARDS, TIA MARIE EDWARDS, and
KEANU TYRESE EDWARDS, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TINA MARIE WATSON, a/k/a TINA MARIE
EDWARDS,

Respondent-Appellant,

and

GREGORY TYRONE EDWARDS, SR.,

Respondent.

UNPUBLISHED
December 1, 2000

No. 223909
Wayne Circuit Court
Family Division
LC No. 97-352878

Before: Smolenski, P.J., and Holbrook, Jr. and Gage, JJ.

PER CURIAM.

Respondent-appellant Tina Marie Watson appeals as of right from an order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(a)(ii), (b)(i), (c)(i), (g), and (j); MSA 27.3178(598.19b)(3)(a)(ii), (b)(i), (c)(i), (g), and (j). We affirm.

In a termination proceeding, the petitioner bears the burden of demonstrating a statutory basis for termination, by clear and convincing evidence. MCR 5.974(F)(3). The petitioner need only establish one statutory ground for termination. *In re Trejo Minors*, 462 Mich 341, 360; 612 NW2d 407 (2000). Once that statutory basis for termination is shown, the trial court shall terminate parental rights unless it finds that doing so is clearly not in the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); MCR 5.974(F)(3); *In re Trejo Minors*, *supra*, 462 Mich 344. This Court reviews for clear error the trial court's decision that a ground for termination has been proven by clear and convincing evidence. *Id.* at 356-357; MCR 5.974(I); *In*

re Miller, 433 Mich 331, 337; 445 NW2d 161 (1989). “A finding is ‘clearly erroneous’ [if] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *Id.*, quoting *In re Riffe*, 147 Mich App 658, 671; 382 NW2d 842 (1985).

In the present case, appellant argues that petitioner failed to prove a statutory ground for termination by clear and convincing evidence. As to Gregory and Tia, the court terminated appellant’s parental rights under MCL 712A.19b(3)(a)(ii), (b)(i), (c)(i), (g), and (j); MSA 27.3178(598.19b)(3)(a)(ii), (b)(i), (c)(i), (g), and (j). As to Keanu, the court terminated appellant’s parental rights under MCL 712A.19b(3)(g) and (j); MSA 27.3178(598.19b)(3)(g) and (j). We do not believe that the trial court committed clear error in finding that these statutory grounds for termination were proven by clear and convincing evidence.

First, the trial court found that appellant had deserted Gregory and Tia for more than ninety-one days, and had not sought custody during that period. MCL 712A.19b(3)(a)(ii); MSA 27.3178(598.19b)(3)(a)(ii). During the course of the guardianship, the children were placed with their maternal grandmother and appellant exercised visitation with the children at the grandmother’s home. However, in late May, 1998, the trial court ordered that appellant could exercise only supervised visitation at the FIA facilities, because appellant was not in compliance with the treatment plan. At trial, appellant admitted that she did not visit the children after the visitation arrangements changed, until the following November. Because it is uncontested that appellant failed to visit the children for a period longer than ninety-one days, the trial court properly held that this statutory ground for termination had been proven by clear and convincing evidence.

Next, the trial court found that appellant had caused physical injury to Gregory and Tia, and that there was a reasonable likelihood that the children would suffer injury or abuse in the foreseeable future if returned to appellant’s care. MCL 712A.19(b)(3)(b)(i); MSA 27.3178(598.19b)(3)(b)(i). When the FIA first took Gregory and Tia into custody, Gregory stated that both respondents had physically abused him and his younger sister. Multiple scars and marks were discovered on Gregory’s upper back and neck, demonstrating that he had been physically abused. At trial, appellant admitted that she had physically beaten both children in the past, and that she had caused the mark on Gregory’s neck. Further, after the children were placed in foster care, appellant threatened Gregory that she would get to him and make him answer for telling the authorities what went on in respondents’ home. Evidence introduced at trial also demonstrated an atmosphere of domestic violence existing in respondents’ home. Testimony was presented that appellant shot respondent-father in the leg on one occasion, and stabbed him on another occasion. Although appellant began attending domestic violence counseling sessions in March, 1999, the evidence supported the trial court’s finding that appellant had not resolved her domestic violence problems through counseling, and that she continued to avoid responsibility for violence in the home. Accordingly, the trial court properly held that this statutory ground for termination had been proven by clear and convincing evidence.

Next, the trial court held that appellant was a respondent in a termination of parental rights proceeding, that 182 or more days had elapsed since the initial dispositional order, that the conditions that led to the adjudication continued to exist, and that there was no reasonable

likelihood that the conditions would be rectified within a reasonable time, considering the ages of the children. MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i). The evidence presented at trial supported a finding that appellant had a long-standing substance abuse problem involving cocaine, marijuana, and alcohol. Appellant admitted that she started using cocaine after Gregory and Tia had been placed in the court's custody. She also admitted using cocaine while pregnant with Keanu, and the child had cocaine in his system at birth. Appellant did not enroll in a substance abuse treatment program or submit to drug screens until Gregory and Tia had been in foster care for over two years. Even after that point, she provided some screens which were positive for drugs and alcohol. The evidence presented at trial supported the trial court's conclusion that appellant did not appreciate the full extent of her substance abuse problem, and that the children did not have additional time to wait. Accordingly, the trial court properly held that this statutory ground for termination had been proven by clear and convincing evidence.

Next, the trial court found that appellant, without regard to intent, had failed to provide proper care or custody for Gregory, Tia, and Keanu, and that there was no reasonable expectation that she would be able to provide proper care and custody within a reasonable time, considering the ages of the children. MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g). The evidence presented at trial documented appellant's problems with substance abuse and domestic violence. She admitted physically abusing Gregory and Tia when they were in her care, and admitted using cocaine while pregnant with Keanu. Given her long delay in seeking treatment for drug abuse and domestic violence and her limited progress in those treatment programs, the trial court properly held that this statutory ground for termination had been proven by clear and convincing evidence.

Next, the trial court found that there was a reasonable likelihood, based on appellant's conduct or capacity, that the children would be harmed if returned to her care. MCL 712A.19b(3)(j); MSA 27.3178(598.19b)(3)(j). Given the evidence discussed above, we conclude that the trial court did not commit clear error in finding that this statutory basis for termination was established by clear and convincing evidence.

Appellant next contends that the trial court erroneously determined that the best interests of the children supported termination of her parental rights. Under MCL 712A.19b(5); MSA 27.3178(598.19b)(5), once a statutory ground for termination is established, the court must terminate parental rights unless there exists evidence, on the whole record, that termination is clearly not in the child's best interests. *In re Trejo Minors*, *supra*, 462 Mich 344. This Court reviews the trial court's decision regarding the child's best interests for clear error. *Id.* at 356-357. The trial court may consider evidence introduced by any party when determining whether termination is clearly not in a child's best interest. *Id.* at 353. Neither the petitioner nor the party opposing termination bears the burden of proving the best interests of the child, because subsection 19b(5) permits the court to determine the child's best interests from the evidence on the whole record. *Id.* at 352-353. Given the evidence produced below and the trial court's factual findings that supported termination under multiple statutory subsections, we cannot say that the trial court clearly erred in applying those same facts to determine that the whole record did not demonstrate that termination was clearly not in the best interests of the children.

Finally, appellant argues that the trial court violated her due process rights when it conducted a pretrial hearing without appellant's presence. The record reflects that the trial court conducted a pretrial hearing on July 24, 1997, at which time the court exercised jurisdiction over Gregory and Tia and placed them in the court's temporary custody. Appellant was not present for the hearing because she was incarcerated. Her attorney, who was present at the hearing, was unaware of appellant's incarceration. Appellant argues that the trial court should have somehow discovered that she was incarcerated and should have adjourned the hearing until she could be present, or should have provided a writ of habeas corpus to allow her to attend the hearing. Appellant does not explain what evidence would have been presented, or how the outcome of the proceedings would have been different, had she been present at the July 24, 1997 pretrial hearing. Further, appellant participated in subsequent hearings before the trial court, but failed to raise the argument that her absence from the pretrial hearing deprived her of due process of law. Therefore, appellant's claim is unpreserved for appellate review.

"This Court disfavors consideration of unpreserved claims of error." *People v Carines*, 460 Mich 750, 761; 597 NW2d 130 (1999). Unpreserved error must be reviewed under the plain error rule. *Id.* at 763. To avoid forfeiture under the plain error rule, three requirements must be met: (1) error must have occurred, (2) the error was plain, i.e., clear or obvious, and (3) the plain error affected substantial rights. *Id.* The third requirement necessitates a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings. *Id.* Because appellant has failed to indicate how her absence from the pretrial hearing affected the outcome of the lower court proceedings, she has forfeited appellate review of this unpreserved issue under the plain error rule.

Affirmed.

/s/ Michael R. Smolenski
/s/ Donald E. Holbrook, Jr.
/s/ Hilda R. Gage